

**IMPORTANT: FRY'S CREDIT ACCOUNT OPENING DISCLOSURES.** The following information on interest rates, interest charges, and fees are accurate as of: October 1, 2023

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	<b>32.24%</b>  The APR will vary with the market based on the Prime Rate.
How to Avoid Paying Interest on Purchases	Your due date is at least 24 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance due by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than \$2.
For Credit Card Tips from the Consumer Financial Protection Bureau	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at: <a href="http://www.consumerfinance.gov/learnmore">http://www.consumerfinance.gov/learnmore</a> .

Fees	
Penalty Fees:	
Late Payment	Up to <b>\$35</b>
Returned Payment	Up to <b>\$25</b>
These fees may vary by state. See your Agreement for the fee applicable to your Account.	

**How We Will Calculate Your Balance:** We use a method called 'average daily balance (including new purchases).' See your Account Agreement for more details.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your Account Agreement.

**The Fry's Credit Account is issued by First Electronic Bank, P.O. Box 521271, Salt Lake City, UT 84152-1271 ("Bank").**

Current Rate Schedule:

Standard APR: 32.24%  
Standard Daily Periodic Rate: 0.088329%

**THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION. UNLESS YOU PROMPTLY REJECT THE ARBITRATION PROVISION (SEE SECTION 31(n), THE ARBITRATION PROVISION WILL HAVE A SUBSTANTIAL EFFECT ON YOUR RIGHTS IN THE EVENT OF A DISPUTE, INCLUDING YOUR RIGHT TO BRING OR PARTICIPATE IN ANY CLASS PROCEEDING. THE ARBITRATION PROVISION DOES NOT APPLY TO "COVERED BORROWERS" UNDER THE MILITARY LENDING ACT.**

This Credit Agreement ("Agreement") governs your account with First Electronic Bank, an FDIC-insured industrial bank located in Utah, and should be reviewed carefully and retained for your records. If the Bank approves your application and opens an account for you, you agree with the Bank as follows:

**1. DEFINITIONS.** In this Agreement and in your monthly billing statement, the following definitions will apply: the words "you," "your," and "yours" refer to each person in whose name this Account was opened and to whom we direct the billing statement; these words also refer to anyone you have authorized to use the Account or for whom you have requested an additional Card. The words "we," "us," "our," and "Bank" refer to First Electronic Bank, or to any of its successors or assignees. The word "Account" means your revolving line of credit account with the Bank. The words "Authorized User" mean any person whom you give permission to use your Account. The word "Card" means the credit card(s) that may be issued to you under this Agreement for use in connection with your Account. The words "Fry's" refers to Fry's Electronics, Inc.

**2. ACCEPTANCE OF AGREEMENT.** You acknowledge and agree that any use of the credit associated with your Account constitutes your acceptance of the provisions contained in this Agreement, which includes an arbitration provision. The application you signed or otherwise submitted (including the federal and state notices), any temporary card and the card carrier the Bank sends with your Card are part of and are incorporated into this Agreement.

**3. PROMISE TO PAY.** You promise to pay us, in accordance with the terms of this Agreement, for all credit that we extend on your Account, and all other amounts owed to us under the terms of this Agreement. If this is a joint Account, each of you agrees to be liable individually and jointly for the entire amount owed on your Account, even if the Account is only used by one of you.

**4. CREDIT LIMIT.** Your initial credit limit is disclosed in the card carrier accompanying your Card, or on the face of any temporary Card. Thereafter, your credit limit and available credit on your Account will be disclosed on each monthly billing statement. You agree not to exceed your credit limit unless authorized by us. You are liable for the entire outstanding balance on your Account, even if it exceeds your credit limit. We may establish from time to time the minimum amount of credit we will extend under the Account for a single transaction. Credit balances do not serve to increase your credit limit. The Bank may increase or decrease your credit limit at any time and will notify you of such change in accordance with applicable law.

**5. USE OF ACCOUNT.** You may use your Account to make purchases on credit at any Fry's store. If a Card is issued to you for use in connection with your Account, the Card must be signed to be used. The Card is the property of the Bank and must be returned to the Bank if the Bank so requests.

**6. CREDIT AUTHORIZATIONS.** Some purchases will require our prior authorization and you may be asked by the merchant to provide identification. If our authorization system is not working, we may not be able to authorize a transaction, even if you have sufficient available credit. We will not be liable to you if any of these events happen. We are not responsible for the refusal of any merchant to accept or honor the Card.

**7. AUTHORIZED USERS.** You may permit another person to have access to your Account (via methods such as your Account number, your Card, additional Cards you may request on your Account, etc.). However, if you do, you must pay us for all charges made by those persons, including charges for which you may not have intended to be responsible. In addition, you must pay us all fees that may become due under the terms of this Agreement in connection with such charges. You must notify us to revoke permission for any person you have previously authorized to use your Account. If you tell us to revoke another person's use of your Account, we may close that Account number and set up a new Account with a different Account number.

**8. SPECIAL TERMS.** You may make purchases under any type of program for qualified merchandise. If an Invoice shows that a specific plan applies, then the purchase will be governed by the terms on the Invoice and the terms of this Agreement. You accept the special terms by making the purchase. The Invoice will state the length of the special terms period, if any.

**9. TYPES OF CHARGES.** There are two types of charges or "Plans" under your Account: you may make a purchase on (a) the Regular Plan or (b) a Promotional Plan. The standard provisions of this Agreement apply to all Promotional Plan transactions unless otherwise specified prior to or at the time of purchase under a particular Promotional Plan offering, and will continue to apply to any and all transactions that are not subject to a Promotional Plan. The following Promotional Plans may be offered from time to time as specified prior to or at the time of purchase: (a) Same As Cash Monthly Payment Plan – If you pay the full cash sales price of the purchase by the promotional due date, as indicated on your billing statement, and pay the Minimum Payment Due when due each billing cycle, as indicated on your billing statement, no interest charges will be imposed on the purchase. If such payments are not so made, interest charges will be imposed from the purchase date. All purchases that do not fall under a Promotional Plan are referred to as Regular Plan purchases. Certain rules apply to the allocation of payments and interest charges on your promotional purchase if you make more than one purchase on your Account. Call 1-855-457-0419 for information.

**10. MONTHLY BILLING STATEMENT.** We will send you a monthly billing statement summarizing each transaction on your Account during the preceding billing period. The billing statement will also show the total amount that you owe the Bank at the end of the current billing period, including any interest charges, fees, debt cancellation (if applicable), the minimum payment due, the payment due date (which date is at least 24 days from the monthly statement closing date), and a summary regarding any Promotional Plan charges and due dates. It also shows your current Credit Limit. We will mail or deliver your billing statement to only one address. If your Account is a joint Account or if more than one person is permitted to use the Account, you agree that all billing statements and notices regarding the Account may be sent solely to the address shown on our billing records.

Please review each billing statement carefully. You must notify us promptly of any change in your name, residence or billing address by writing to us at the "Mail Inquiries" address on your billing statement. Preservation of your rights under federal law regarding resolution of billing errors depends upon your timely recognition of potential errors, as explained in paragraph 36 below. If you default under this Agreement, we may, in our sole discretion, stop sending you billing statements if we deem your Account uncollectible or if we institute delinquency collection proceedings.

**11. VARIABLE ANNUAL PERCENTAGE RATE (APR).** The interest rate on your account is subject to change from time to time based on changes in an independent index which is the Prime Rate as published in *The Wall Street Journal* on the first day of the month that *The Wall Street Journal* is published (the "Index"). If the index becomes unavailable, the Bank may designate a substitute Index after providing notice to you. The Standard APR will increase when the Prime Rate increases. If the Prime Rate changes, resulting in a change in the APR, the change will take effect on the first day of your next billing period. Each time the APR changes, we will apply it to any existing balances, subject to special terms of any applicable Promotional Plans. An increase in the variable APR means you will pay higher interest charges and perhaps a higher minimum payment.

**12. ANNUAL PERCENTAGE RATES.** The APR for purchases is based on a monthly "Prime Rate" plus a margin. The Standard APR is determined by adding 23.74% to the Prime Rate. The corresponding daily periodic rates are 1/365th (1/366th for a leap year) of the then current APR. The applicable APRs at the time of account opening are displayed in the Current Rate Schedule immediately preceding this Agreement. Subsequent applicable APRs will appear in the monthly billing statement. The APRs may change. Please see paragraph 11 for details relating to how these rates may change.

**13. MILITARY LENDING ACT DISCLOSURES. Notice for active duty military personnel and dependents:** Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account). If you would like to hear about your Military Lending Act rights and a description of your payment obligation, please contact us at 1-877-634-6368

**14. INTEREST CHARGES.** The following interest charges apply whether before or after default, judgment, or the closing of your Account:

**(a) When Periodic Interest Charges Begin To Accrue.** Your due date is at least 24 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month, otherwise, periodic interest charges will be assessed on each purchase from the date of the transaction. If during the previous billing cycle you paid in full by the Payment Due Date, then in the current billing cycle you will have an additional interest-free period on the amount of any Regular Plan Purchases paid by the Payment Due Date, based on our payment allocation method. Under certain Promotional Plans that may be offered from time to time, interest charges may be waived under the specific terms that will be provided at or prior to the time of purchase under such Promotional Plan. **(b) Calculation of Interest Charges.** The total amount of interest charges for a billing period will be calculated as follows: (1) Regular Plan - We calculate the interest charge on your account by applying the periodic rate to the Average Daily Balance of your account (including new transactions). To get the Average Daily Balance we take the beginning balance of your Regular Plan account each day, add any new purchases and fees and subtract any payments or credits. This gives us the daily balance (any unpaid interest charges incurred during that billing period are not included in the daily balance). Then we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "Average Daily Balance," which is also called the "Balance Subject to Interest Rate" on your monthly statement. We then multiply the Average Daily Balance by the daily periodic rate (DPR). That number is then multiplied by the number of days in the billing period. (2) Promotional Plans - We calculate the interest charge on your account by applying the periodic rate to each Promotional Plan Average Daily Balance. These are special promotional transaction balances on which interest charges are accruing but will be waived provided (i) the balance for the Promotional Plan is paid in full by the Promotion Expiration Date as specified on the front of your billing statement, and (ii) you do not default, by failing to make any Minimum Payment Due by 60 days from the due date shown on your billing statement, before the Promotional Plan has been paid in full. Promotional Plans with different promotional expiration dates or terms are treated as different Credit Plans for this purpose. To get the Promotional Plan Average Daily Balance, we take the beginning balance of each Promotional Plan account each day and subtract any payments or credits applicable to that Plan. This gives us the daily balance. Then we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us each Promotional Plan Average Daily Balance, which is also called the "Deferred Interest Balance" on your monthly statement. We then multiply the Promotional Plan Average Daily Balance by the daily periodic rate (DPR). That number is then multiplied by the number of days in the billing period. (3) The sum of the amounts determined under (1) and (2) above is your interest charge on purchases. The deferred interest charge, if any, determined under (2) above is accumulated from billing cycle to billing cycle and posted to your Account as interest charges only if the applicable Promotional Plan has not been paid in full by the Promotion Expiration Date or if you default, by failing to make any Minimum Payment Due by 60 days from the due date shown on your billing statement, before the Promotional Plan transactions have been paid in full. **(c) Days in Billing Period.** For interest charge calculation purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and includes the Statement/Closing Date of the current billing period. The number of days in the billing period may vary. **(d) Minimum Interest Fee.** A minimum interest charge of \$2.00 will be assessed on each Account for any billing cycle in which an interest charge is due.

**15. MINIMUM PAYMENT DUE.** You agree to pay us, in time for receipt by us on or before the applicable due date and time shown on your billing statement and this Agreement, the total "minimum due" amount reflected on your billing statement. The total minimum payment due will be equal to the greater of \$35.00 (\$2.00 if there is no Regular Plan balance or if the Regular Plan balance is less than \$35.00) or 1% of balance plus billed interest charges plus any fees plus any Past Due amount, rounded up to the next whole dollar. If the balance shown on your statement is less than \$35.00, your Minimum Payment Due will be the entire balance. Your receipt of a credit does not relieve you of your obligation to pay the Minimum Payment Due. You may at any time pay more than the minimum payment due without penalty. However, when you pay more than your minimum payment due it will not extend, delay or otherwise impact your payment due in the following billing period. **Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.**

**16. PAYMENTS.** The payment due date on your Account will be the same date each month and will be at least 24 days from the closing date on your statement. All payments must be made in U.S. dollars drawn on funds on deposit in the United States. You may, at any time, pay more than the monthly Minimum Payment Due or even the entire outstanding balance without a penalty. No partial prepayment will extend the due date of any succeeding payment. Payments on your Account should be mailed to us at our remittance address shown on your billing statement. Payments accompanied by the payment coupon portion of your billing statement received by us at that address before 5:00 p.m. Pacific Time on any banking day will be credited to your Account as of that day. Payments received by us at any other location, or in any other form, may be subject to a delay in crediting of up to 5 days after receipt. You may not mail us cash. You agree that any payment may be returned to you if your check is: (a) missing a signature; (b) drawn with different numeric and written amounts; (c) restrictively endorsed; (d) postdated; or, (e) not paid on presentment. However, if you wish us to consider a payment marked "paid in full", "without recourse", or similar language, such payment must be marked for special handling and sent to the "Mail Payments" address on your billing statement. You agree that we may accept any such payment, late payments, partial payments, and payments marked "paid in full", "without recourse", or otherwise restrictively endorsed without waiving our right to payment in full of your entire Account balance. Your Available Credit may be increased by the amount of your payment within a reasonable time after that payment is received. If you have multiple plan balances, payments in the amount of the minimum payment will be allocated to the total Minimum Payment Due. **Any payment amount above the minimum payment due will be applied as follows: (1) If you have a deferred interest promotion plan balance in the last two cycles prior to expiration, excess payments will be applied to that balance first, and (2) In all other situations, we will apply excess payments to your higher interest balances.**

**17. ELECTRONIC PAYMENTS.** When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. Your check will not be returned to you by us or your bank.

**18. OTHER CHARGES.** Other charges on your Account include the following:

**(a) Late Payment Fee.** We may add the following fees to your purchase balance if we do not receive your minimum monthly payment by 5:00 p.m. Pacific Time on the payment due date shown on your billing statement. The Late Payment Fee will be up to \$25. If you are late more than once in a six month period, the late payment fee will go up to \$35. If you make on time payments for six months, it will return to \$25. (For Iowa Residents the late payment fee will be up to \$15).

**(b) Returned Payment Fee.** We may add a fee of up to \$25 (up to \$20 Iowa Residents) to your purchase balance when a check or other payment on your Account is not honored, when we must return it because it cannot be processed, or when an automatic debit is returned unpaid. At our option, we may assess this fee the first time your check or payment is not honored, even if it is honored upon resubmission.

**(c) Statement Copy Fee.** We may add a fee of \$5 to your purchase balance for each billing statement page copy you request on your Account, unless otherwise prohibited by law.

**(d) Reissue Card Fee.** We may add a fee of \$5 to your purchase balance for each card that you request be reissued on your Account. We may add a fee of \$30 to your purchase balance for each card if you request expedited delivery.

**(e) Invoice/Sales Slip and Payment Copy Fee.** We may add a fee of \$5 to your purchase balance for each copy you request of (1) an invoice/sales slip, and (2) your payments.

**(f) Research Fee.** We may add to the purchase balance a fee of \$15 per hour for research that you request on your Account (unless such research discloses a billing error made by the Bank) plus \$5.00 per page for any photocopies.

**(g) Expedited Payment Fee.** We may permit you to make a payment on your Account by authorizing us over the telephone to transfer or pay funds from your deposit account to your Fry's Credit Account. We may impose a fee of up to \$15 for each such payment authorized by you for any expedited payment facilitated by our representative.

**(h) Paper Statement Fee.** We may add a fee of \$1 if we mail a paper billing statement to you.

**19. DEFAULT.** You will be in default under this Agreement if the minimum monthly payment listed on the billing statement as Minimum Payment Due is not received at the correct address on or before the payment due date, or if you breach any other provision of this Agreement, file for bankruptcy, or become insolvent or generally unable to pay your debts, or have furnished false or misleading information in applying for your Fry's Credit Account. After your default or your death, and subject to the limitations of applicable law, we may at our option: (a) close your Account and declare the entire unpaid balance on your Account immediately due and payable, (b) require you to surrender the products purchased with any outstanding loans from your Account, and (c) exercise all other rights and remedies available to us under applicable law. In the event of your default, and subject to any limitations or requirements of applicable law, you agree to pay all costs, including reasonable attorney's fees, incurred by us (a) in collecting all amounts due on your Account, whether or not suit is brought against you, and (b) in protecting ourselves from any harm that we may suffer as a result of your default.

**20. LOST OR STOLEN CARD OR UNAUTHORIZED USE.** You may be liable for the unauthorized use of your Card or your Account. You will not be liable for unauthorized use that occurs after you notify us immediately by telephone at 1-855-457-0419 of the loss, theft or possible unauthorized use. In any case, your liability will not exceed \$50.

**21. COMMUNICATIONS BETWEEN US, CONSENT TO ELECTRONIC COMMUNICATIONS AND TELEPHONE MONITORING AND RECORDING.**

We may use any means of communication to contact you for any lawful purpose (including debt collection). Such means of communication may include, but is not limited to postal mail, telephone, email, text message or other technology, even if you are charged for the contact. We may contact you at any address (including any e-mail or text message address) or telephone number (including any cellular telephone number or land line number that is later ported to a cellular telephone) that you give to us. We may monitor, tape or electronically record our telephone calls with you, including any calls with our customer service department, collection department and any other department.

**We may contact you using an automatic dialing and announcing device that may play recorded messages. You understand and agree that by providing us with a cellular telephone number, you consent to receive calls at that number by an automatic dialing and announcing device or recorded message.** No contact to you will be deemed unsolicited.

**22. FINANCIAL INFORMATION.** You agree to provide us with current financial information and updated application information in such form and at such times as we may request. We may contact any source we deem necessary in investigating your credit worthiness, including obtaining consumer credit reports on you from consumer reporting agencies in connection with your application and later in connection with reviewing, renewing, and/or taking collection action on your Account.

**23. CREDIT REPORTING.** We may report your performance under this Agreement to credit reporting agencies, including your failure to make minimum payments on time. If you add other Authorized Users or request additional Cards on your Account for others, you understand that we may report Account information in your name as well as in the names of those other people. We may also obtain follow-up credit reports on you (for example, when we review your Account for a credit line increase). If you wish to know the names of the agencies we have contacted, write us at the address listed on the billing statement. We may also respond to inquiries about our credit experiences with you as permitted by law. You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligation.

**24. SHARING CUSTOMER INFORMATION; PRIVACY NOTICE.** We are permitted by law to share any information about our transactions and experience with you, but other information you provide to us or that we obtain from third parties (for example, credit bureaus) will not be shared among our affiliates.

**25. RESPONSIBILITY FOR GOODS OR SERVICES.** We are not responsible for goods or services you purchase using your Account except to the extent required by applicable law.

**26. CHANGING THIS AGREEMENT.** We may amend this Agreement by changing, adding or deleting any term, condition, service or feature ("New Term") of your Account or of this Agreement at any time. We will notify you of such changes to the extent and in the manner

required by applicable law. We may apply any new terms to the outstanding balance in the Account at the time of the change, as allowed by applicable law, as well as to any advances made after the effective date of the change.

**27. CLOSING YOUR ACCOUNT.** We may close your Account and/or suspend your right to use your Account at any time for any reason; we will notify you of such action to the extent and in the manner required by applicable law. We may also reissue a different Card account number at any time. You must return the Card to us upon request. You may close your Account at any time by notifying us in writing. If yours is a joint Account, any one Account holder may terminate this Agreement. We will have no obligation to notify the other Account holder. Upon receipt of your written notice, your right to use the Card will be automatically revoked. You will be required to repay the outstanding balance in accordance with applicable law.

**28. NO WAIVER BY US.** We can delay in enforcing, or fail to enforce, any of our rights under this Agreement without losing them.

**29. SEVERABILITY.** If any of the provisions of this Agreement are held to be unenforceable or invalid for any reason, the remaining provisions hereof shall nevertheless remain enforceable, and shall be interpreted in such a manner to preserve the enforceability of this Agreement to the maximum extent permitted by applicable law.

**30. ASSIGNMENT OF ACCOUNT.** You may not assign your rights under this Agreement or your Account to anyone. We may sell or assign any or all of our rights under this Agreement, including our security interest, at any time.

**31. ARBITRATION PROVISION.** This Arbitration Provision does not apply to you if, as of the date of this Agreement, you are a member of the Armed Forces or a dependent of such member entitled to protection under the Federal Military Lending Act. Unless you exercise your right to reject arbitration under subsection (n) below, the following Arbitration Provision will apply: (a) General: Either you or we may elect to arbitrate or require the other party to arbitrate any Claim (as defined below) under the following terms and conditions. If you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) have a court or a jury decide the Claim; (ii) participate in a class action in court or in arbitration, either as a class representative or a class member; (iii) act as a private attorney general in court or in arbitration; or (iv) join or consolidate your Claim(s) with claims of any other person. The right to appeal and the right to discovery are more limited in arbitration than in court. Other rights that you would have if you went to court may also not be available in arbitration. (b) Definitions: The following definitions apply to this Arbitration Provision, even if terms defined in this Arbitration Provision are defined differently elsewhere in this Agreement: (i) "We," "us" and "our" mean First Electronic Bank or any subsequent holder of this Agreement. Also, these terms include the parents, subsidiaries, affiliates and successors of such company, as well as the officers, directors, agents and employees of any of the foregoing. These terms also include any party named as a co-defendant with us in a Claim asserted by you, such as marketing companies, credit bureaus, credit insurance companies, credit card or loan servicers and debt collectors. "You," "your" and "yours" include each and every Cardholder or Authorized User. (ii) "Administrator" means the American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, [www.adr.org](http://www.adr.org), 800-778-7879; JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, [www.jamsadr.com](http://www.jamsadr.com), 800-352-5267; or any other company selected by mutual agreement of the parties. If both AAA and JAMS cannot or will not serve and the parties are unable to select an Administrator by mutual consent, the Administrator will be selected by a court. The party initiating an arbitration selects the Administrator. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any Administrator that has in place a formal or informal policy that would purport to override subsection (d) below, captioned "No Class Actions" (the "Class Action Waiver"). (iii) "Claim" means any claim, dispute or controversy between you and us that in any way arises from or relates to this Agreement or the Account, including disputes arising from actions or omissions prior to the date of this Agreement. "Claim" has the broadest reasonable meaning, and includes initial claims, counterclaims, cross-claims and third-party claims. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity (including any claim for injunctive or declaratory relief). However, it does not include disputes about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof (including, without limitation, the Class Action Waiver, the final sentence in subsection (j) under the caption "Survival, Severability, Primacy" and/or this sentence); all such disputes are for a court and not an arbitrator to decide. However, any dispute or argument that concerns the validity or enforceability of this Agreement as a whole is for the arbitrator, not a court, to decide. Claim does not include: (1) any individual action brought by you or us in small claims court or your state's equivalent court, unless such action is transferred, removed, or appealed to a different court; (2) the exercising of any self-help rights by you or us or (3) any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind. The institution and/or maintenance of any such right, action or litigation will not constitute a waiver of the right of either of the parties to compel arbitration regarding any other dispute subject to arbitration pursuant to this Arbitration Provision. (c) Starting or Demanding Arbitration: To start an arbitration, the party asserting the Claim (the "Claimant") must commence the arbitration in accordance with the Administrator's rules. To require arbitration of a Claim, the party defending the Claim (the "Defending Party") must give the Claimant a written demand for arbitration. This demand may be given after a lawsuit has been filed and may be given in papers or motions in the lawsuit. If an arbitration is commenced or an arbitration demand is given, the Claim shall be resolved by arbitration under this Arbitration Provision and the applicable rules of the Administrator then in effect. (d) No Class Actions: **Notwithstanding any language herein to the contrary, if you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) participate in a class action in court or in arbitration, either as a class representative, class member or otherwise; (ii) act as a private attorney general in court or in arbitration; or (iii) join or consolidate Claims by or against you with claims by or against any other person, and the arbitrator shall have no authority to conduct any such class, private attorney general or multiple-party proceeding.** (e) Location and Costs: Any arbitration hearing that you attend will take place in a location that is reasonably convenient for you. If you cannot obtain a waiver of the Administrator's or arbitrator's filing, administrative, hearing and/or other fees, we will consider in good faith any request by you for us to bear such fees. We will pay for our own attorneys, experts and witnesses and will pay the reasonable fees and charges of your attorneys, experts and witnesses if and to the extent you prevail in the arbitration. Even if you do not win the arbitration, we will pay any of

the Administrator's or arbitrator's filing, administrative, hearing and/or other fees, and the fees and charges of your attorneys, experts and witnesses, if and to the extent we are required to pay such fees and charges by law or the Administrator's rules or in order to make this Arbitration Provision enforceable. (f) Arbitrator Selection: The arbitrator will be appointed by the Administrator in accordance with the rules of the Administrator. However, unless the parties agree otherwise, the arbitrator must be a retired or former judge or a lawyer with at least 10 years of experience. (g) Discovery; Getting Information: In addition to the parties' rights under the Administrator's rules to obtain information prior to the hearing, either party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other party the opportunity to object.

(h) Effect of Arbitration Award: Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's award will be final and binding, except for: (1) any appeal right under the Federal Arbitration Act, 9 U.S.C. §1 et seq. (the "FAA"); and (2) Claims involving more than \$50,000. If permitted by the Administrator's rules, for Claims involving more than \$50,000, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider anew any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. The costs of any appeal will be borne in accordance with subsection (e) above, captioned "Location and Costs." (i) Governing Law: This Agreement governs Transactions involving interstate commerce and accordingly this Arbitration Provision shall be governed by the FAA and not by any state law concerning arbitration. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation and privilege rules that would apply in a court proceeding, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive and other equitable relief, and attorneys' fees and costs. Upon the timely request of either party, the arbitrator shall write a brief explanation of the basis of his or her award. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and the Administrator's rules. (j) Survival, Severability, Primacy: This Arbitration Provision shall survive the termination of this Agreement, your fulfillment or default of your obligations under this Agreement and/or your or our bankruptcy or insolvency (to the extent permitted by applicable law). In the event of any conflict or inconsistency between this Arbitration Provision and the Administrator's rules or other provisions of this Agreement, this Arbitration Provision will govern. If any portion of this Arbitration Provision, other than the Class Action Waiver, is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. If a determination is made with respect to any Claim that the Class Action Waiver is unenforceable, only this sentence of the Arbitration Provision will remain in force and the remaining provisions shall be null and void, provided that the determination concerning the Class Action Waiver shall be subject to appeal. (k)

Amendment/Termination: Notwithstanding any provision of this Agreement to the contrary, we will not amend this Arbitration Provision in a manner that adversely affects your rights or responsibilities in a material manner unless we give you a right to reject the amendment and/or the Arbitration Provision in its entirety. (l) Notice and Cure: Prior to initiating a lawsuit or arbitration regarding a Claim, the Claimant shall give the Defending Party written notice of the Claim (a "Claim Notice") and a reasonable opportunity, not less than 30 days, to resolve the Claim on an individual basis. Any Claim Notice to you shall be sent in writing by mail to the address for you maintained in our records. Any collection letter we send to this address shall be deemed to be a Claim Notice. Any Claim Notice to us shall be sent to us by certified mail, return receipt requested, at First Electronic Bank, P.O. 521271, Salt Lake City, UT 84152-1271 (or such other address as we subsequently provide you). Any Claim Notice you send must provide your Account Number and telephone number. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. The Claimant must reasonably cooperate in providing any information about the Claim that the Defending Party reasonably requests. Upon receipt of a Claim Notice, we will credit your Account for the standard cost of a certified letter. (m) Special Payment: If (i) you submit a Claim Notice on your own behalf (and not on behalf of any other party) in accordance with subsection (l), captioned "Notice and Cure" (including the timing requirements thereof); (ii) we refuse to provide you with the relief you request; and (iii) an arbitrator subsequently determines that you were entitled to such relief (or greater relief), the arbitrator shall award you at least \$7,500 in addition to the attorney, witness and expert fees and costs to which you are entitled. (n) **RIGHT TO REJECT ARBITRATION:** You may reject this Arbitration Provision by sending us a written rejection notice in accordance with this subsection (n). We must receive the rejection notice within 45 days after we mail you a Fry's Credit Card. You may not reject arbitration by phone or by any method other than the method described in this subsection (n). In order for a rejection notice to be valid and effective, it must: (i) state that you (or both or all of you, if more than one) wish to reject the Arbitration Provision; (ii) state your name, address and Account number; and (iii) be signed by you (or both or all of you, if more than one). If you reject this Arbitration Provision, that will not affect any other provision of this Agreement.

**32. CLASS ACTION WAIVER.** You waive the right to initiate or participate in a class action against the Bank relating to this Agreement.

**33. GOVERNING LAW.** This Agreement is governed by and construed in accordance with the laws of the United States. To the extent state law applies to this Agreement, this Agreement will be governed by the laws of the state of Utah. This Agreement is not valid until accepted by the Bank in Utah, and any credit extended to you is extended in and from Utah, regardless of where you reside or use your Account. You agree that if a dispute arises and you file suit against the Bank, services of process on the Bank may be made only at Bank's main office in Salt Lake City, Utah.

**34. ENTIRE AGREEMENT.** This Agreement is the final expression of the agreement between you and the Bank and may not be contradicted by evidence of any alleged oral agreement.

**35. FOR FURTHER INFORMATION.** For further information about your Account or this Agreement, you may call us at the telephone number on the front of the billing statement.

**36. YOUR BILLING RIGHTS (KEEP THIS DOCUMENT FOR FUTURE USE).** This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

**What To Do If You Find A Mistake On Your Statement:** If you think there is an error on your statement, write to us at First Electronic Bank, P.O. Box 521271, Salt Lake City, Utah 84152-1271. In your letter, give us the following information: (a) Account information: Your name and account number. (b) Dollar amount: The dollar amount of the suspected error. (c) Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake. You must contact us 1) within 60 days after the error appeared on your statement, or 2) at least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong. You must notify us of any potential errors *in writing*. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

**What Will Happen After We Receive Your Letter:** When we receive your letter, we must do two things: 1) within 30 days of receiving your letter, we must tell you that we received your letter - we will also tell you if we have already corrected the error; and 2) within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct. **While we investigate whether or not there has been an error:** 1) we cannot try to collect the amount in question, or report you as delinquent on that amount; 2) the charge in question may remain on your statement, and we may continue to charge you interest on that amount; 3) while you do not have to pay the amount in question, you are responsible for the remainder of your balance; and 4) we can apply any unpaid amount against your credit limit. **After we finish our investigation, one of two things will happen:** (a) *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount. (b) *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us. If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

**Your Rights If You Are Dissatisfied With Your Credit Card Purchases:** If you are dissatisfied with the goods or services that you purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase. To use this right, all of the following must be true: 1) the purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services); 2) you must have used your credit card for the purchase; and 3) you must not yet have fully paid for the purchase. If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at: First Electronic Bank, PO Box 521271, Salt Lake City, Utah 84152-1271. While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

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