

**CREDIT AGREEMENT for the FRY'S CREDIT ACCOUNT from FIRST ELECTRONIC BANK**

**IMPORTANT: FRY'S CREDIT ACCOUNT OPENING DISCLOSURES.** The following information on interest rates, interest charges, and fees are accurate as of: November 1, 2014

<b>Interest Rates and Interest Charges</b>	
<b>Annual Percentage Rate (APR) for Purchases</b>	<b>26.99%</b> The APR will vary with the market based on the Prime Rate.
<b>Penalty APR and When it Applies</b>	<b>29.99%</b> The Penalty Rate will vary with the market based on the Prime Rate.  This APR may be applied to your Account if you fail to make you minimum payment due, as shown on your monthly billing statement, for 60 days.  If you APR is increased, the Penalty APR will apply until you make six consecutive minimum payments when due, beginning with the first payment due following the date of the increase.
<b>How to Avoid Paying Interest on Purchases</b>	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.
<b>Minimum Interest Charge</b>	If you are charged interest, the charge will be no less than \$2.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	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> .

<b>Fees</b>	
<b>Penalty Fees:</b>	
Late Payment	Up to <b>\$35</b>
Returned Payment	Up to <b>\$25</b>
	These fees 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 760, Draper, UT 84020 ("Bank").**

Current Rate Schedule:

Standard APR:	26.99%
Standard Daily Periodic Rate:	0.07395%
Penalty APR:	29.99%
Penalty Daily Periodic Rate:	0.08216%

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 the 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. In addition, you may request a change in your credit limit by writing to First Electronic Bank, P.O. Box 760, Draper, UT 84020 or by calling 1-866-322-8008.

**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. 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 Plan may be offered from time to time as specified prior to or at the time of purchase: 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 1-866-322-8008 for information.

**9. 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 35 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.

**10. 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 and the Penalty 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. In addition, the APR for purchases may increase from the Standard APR to the Penalty APR if you fail to make any Minimum Payment Due by 60 days from the due date shown on your billing statement. The increase to the Penalty APR as described in this paragraph will take effect as of the first day of the billing period following your failure to make the Minimum Payment Due by 60 days after the payment due date and will continue until you make six consecutive minimum payments by the due date shown on your statement, beginning with the first payment due following the effective date of the increase. An increase in the variable APR means you will pay higher interest charges and perhaps a higher minimum payment.

**11. 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 Penalty APR is determined by adding 26.74% 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 10 for details relating to how these rates may change, including if you default under this Agreement.

**12. 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 Deferred 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 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 and displayed as "Deferred Interest Charge" on your billing statement. The Deferred Interest Charge, if any, is accumulated from billing cycle to billing cycle and posted to your Account as Interest Charges only if the applicable Promotional Plan balance 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.

**13. 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. **Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.**

**14. 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. Mountain 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. The provisions relating to application of payments in Paragraph 18 of the Agreement apply solely for determining which items of merchandise remain subject to our security interest. 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 and payments in excess of the minimum payment will be applied according to applicable law, including provisions applying to deferred interest plans.

**15. 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.

**16. 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. Mountain 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.

**17. 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.

**18. SECURITY INTEREST.** To the extent permitted by applicable law, you grant to us, and we shall retain, a purchase money security interest under the Uniform Commercial Code, in each item of merchandise purchased on your Account as shown on sales slips, until the unpaid balance of that item is paid in full. For purposes of determining at any time which items remain subject to our security interest, payments on your Account will be applied in accordance with any mandatory provisions of applicable law and, absent such provisions, shall be applied as follows: first to interest charges; then to late fees, copy fees, returned payment fees or other fees on your Account; and then to debt cancellation charges and purchases charged to your Account on different dates, in the order of entry to your Account, and in the case of debt cancellation fees and purchases charged to your Account on the same date, the lowest priced shall be deemed first paid. However, it is expressly agreed that no security interest is or will be retained or acquired by us in any consumer's principal dwelling. This does not apply to a lien created by a court judgment. In the event of default, we shall have all the rights of a secured party under applicable law including, to the extent permitted by applicable law, the right to repossess items that remain subject to our security interest.

**19. 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 866-322-8008 of the loss, theft or possible unauthorized use. In any case, your liability will not exceed \$50.

**20. 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, or from which you call 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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.

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

**28. 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.

**29. 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.

**30. ARBITRATION CLAUSE AND DISCLOSURES.** (a) Arbitration Disclosures. (1) Arbitration is final and binding on the parties and subject to only very limited review by a court. (2) In arbitration the parties are waiving their right to litigate in court, including their right to a jury trial. (3) Discovery in arbitration is more limited than discovery in court. (4) Arbitrators are not required to include factual findings or legal reasoning in their awards. The right to appeal or to seek modification of arbitrator’s rulings is very limited. (5) A panel of arbitrators might include an arbitrator who is or was affiliated with the banking industry. (6) Arbitration will apply to all disputes between the parties, not just those concerning this Agreement. (7) If you have questions about arbitration, consult your attorney or the American Arbitration Association.

(b) Disputes. Any claim or controversy (“Dispute”) between or among you and the Bank, including our respective employees, agents, affiliates, and assigns, including, but not limited to, Disputes arising out of or relating to this Agreement, this arbitration provision (“Arbitration Clause”), or any related agreements or instruments relating hereto or delivered in connection herewith (“Related Agreements”), and including, but not limited to, a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the applicable arbitration rules of the American Arbitration Association (the “Administrator”). The provisions of this arbitration clause shall survive any termination, amendment, or expiration of this Agreement or Related Agreements. The provisions of this arbitration clause shall supersede any prior arbitration agreement between or among the parties.

(c) Proceedings. The arbitration proceedings shall be conducted in a city mutually agreed to by the parties. Absent such an agreement, arbitration will be conducted in Salt Lake City, Utah, or such other place as may be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)’ award issued within 150 days of the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator(s), including the sanction of summarily dismissing any Dispute or defense with prejudice. The arbitrator(s) shall have the authority to resolve any Dispute regarding the terms of this Agreement, this arbitration clause, or Related Agreements, including any claim or controversy regarding the arbitrability of any Dispute. All limitations periods applicable to any Dispute or defense, whether by statute or agreement, shall apply to any arbitration proceeding hereunder and the arbitrator(s) shall have the authority to decide whether any Dispute or defense is barred by a limitations period and, if so, to summarily enter an award dismissing any Dispute or defense on that basis. The doctrine of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder so that a party must state as a counterclaim in the arbitration proceeding any claim or controversy which arises out of the transaction or occurrence that is the subject matter of the Dispute. The arbitrator(s) may in the arbitrator(s)’ discretion and at the request of any party consolidate in a single arbitration proceeding any other claim arising out of the same transaction involving another party to that transaction that is bound by an arbitration clause with “Bank”, such as borrowers, guarantors, sureties, and owners of collateral.

(d) Arbitrator Selection. The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys’ fees and costs, arbitration administration fees and costs, and arbitrator(s)’ fees). The arbitrator(s), either during the pendency of the arbitration proceeding or as part of the arbitration award, also may grant provisional or ancillary remedies including but not limited to an award of injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver.

(e) Judgment. Judgment upon an arbitration award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration award is binding upon the parties only if the amount does not exceed Twenty Thousand (\$20,000); if the award exceeds that limit, any party may demand the right to a court trial. Such a demand must be filed with the Administrator within 30 days following the date of the arbitration award; if such demand is not made within that time period, the amount of the arbitration award shall be binding. The computation of the total amount of an arbitration award shall include amounts awarded to attorneys’ fees and costs, arbitration administration fees and costs, and arbitrator(s)’ fees.

(f) Limitations. No provision of this arbitration clause, nor the exercise of any rights hereunder, shall limit the right of any party to: (1) judicially or non-judicially foreclose against any real or personal property collateral or other security; (2) exercise self-help remedies,

including but not limited to repossession and setoff rights; or (3) obtain from a court having jurisdiction thereover any provisional or ancillary remedies including but not limited to injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver. Such rights can be exercised at any time, before or after initiation of an arbitration proceeding, except to the extent such action is contrary to the arbitration award. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration, and any claim or controversy related to the exercise of such rights shall be a Dispute to be resolved under the provisions of this arbitration clause. Any party may initiate arbitration with the Administrator. If any party desires to arbitrate a Dispute asserted against such party in a complaint, counterclaim, cross-claim, or third-party complaint thereto, or in an answer or other reply to any such pleading, such party must make an appropriate motion to the trial court seeking to compel arbitration, which motion must be filed with the court within 45 days of service of the pleading, or amendment thereto, setting forth such Dispute. If arbitration is compelled after commencement of litigation of a Dispute, the party obtaining an order compelling arbitration shall commence arbitration and pay the Administrator's filing fees and costs with 45 days of entry of such order. Failure to do so shall constitute an agreement to proceed with litigation and waiver of the right to arbitrate. In any arbitration commenced by a consumer regarding a consumer Dispute, the Bank shall pay one half of the Administrator's filing fee, up to \$250.

(g) Applicable Law. Notwithstanding the applicability of any other law to this Agreement, the arbitration clause, or Related Agreements between or among the parties, the Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall apply to the construction and interpretation of this Arbitration Clause. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

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

**32. 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 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 Sandy, Utah.

**33. 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.

**34. 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.

**35. 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 825, Draper, Utah 84020. 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 760, Draper, Utah 84020. 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.

**052903130**