

**AMERICAN EXPRESS® CENVET  
PLATINUM BUSINESS CHARGE  
CARD MEMBER AGREEMENT**

**TERMS AND CONDITIONS**

**Effective  
1 May 2017**

## **INTRODUCTION**

This document along with the Financial Table make up the agreement for your card account with us (called your *account*). It replaces any previous agreement provided to you for your account. Your use of your account is governed by this agreement.

*You* and *your* mean the person who applied for this account. *We*, *us* and *our* mean American Express Australia Limited (ABN 92 108 952 085). *Business* means the business entity (whether a company, partnership, sole trader, association or other or organisation) which is liable to us, jointly and severally with you for all charges to the account and whose name may appear on the card with your name. *Card* means any card or other account access device we issue for the purpose of accessing your account. *Charge* means all transactions made using a card or otherwise charged to your account, and includes purchases, fees, liquidated damages, commissions, taxes and all other amounts you and the business have agreed to pay us or are liable for under this agreement. *Online account* means a secure website where you may access account information. *Merchant* means **Cenvet Australia Pty Limited**.

**By using your account (or by signing and keeping the card), you and the business agree to the terms of this agreement.**

**This agreement contains an arbitration clause which provides that any claim or dispute relating to your account, this agreement or other agreement with us, will be resolved by arbitration. Please refer to the "Arbitration" section of this agreement for additional details.**

**This agreement contains a limitation of liability clause which limits our responsibility and liability. Please refer to the "Limitation of Liability" section of this agreement for additional details.**

## **USE OF YOUR CARD(S)/CODES**

To prevent misuse of your account, you must ensure that you:

- sign the card in ink as soon as received;
- keep the card secure at all times;
- regularly check that you still have the card in your possession;
- do not let anyone else use the card;
- ensure that you retrieve the card after making a charge;
- never give out your card details, except when using the card in accordance with this agreement; and
- follow any activation process we tell you about, as soon as possible.

To protect your PIN (personal identification number), telephone codes, on-line passwords and any other codes provided and approved by us to be used on your account (called *codes*), you must ensure that you:

- memorise the code;
- destroy our communication informing you of the code (if applicable);
- do not write the code on the card;
- do not keep a record of the code with or near the card or account details;
- do not tell the code to anyone;
- if you select a code, do not choose a code that can easily be associated with you such as your name, date of birth or telephone number; and
- take care to prevent anyone else seeing the code when entering it into an electronic device.

## **PERMITTED USES**

You may use your account, subject to any restrictions set out in this agreement, to pay for goods and services from the merchant only. Here are some examples:

- using your card to pay for goods and services by presenting the card to the merchant and complying with their request to sign or enter a code; and
- using your card or the account to pay for goods and services ordered from the merchant by telephone, internet or mail.

If permitted by the merchant, you may return to the merchant goods or services obtained using your account and receive a credit to your account.

## **PROHIBITED USES**

You must not:

- use your card to pay for goods or services with any other establishment other than the merchant;
- give your card or account number to others or allow them to use your card or account for charges, identification or any other purpose;
- return goods or services obtained using your account for a cash refund;
- use your card to obtain cash from the merchant for a charge recorded as a purchase;
- use your Card for amounts that do not represent bona fide sales of goods or services, e.g. purchases at Merchants that are owned by you (or your family members) or employees or any other person contrived for cash flow purposes;

- obtain a credit to your account except by way of a refund for goods or services previously purchased on your account;
- use your account if you or the business are bankrupt or insolvent or if you do not honestly expect to be able to pay your closing balance on your next statement;
- use your card if it is found by you after having been reported to us as lost or stolen;
- transfer balances from another account with us to pay your account;
- use your account if your card has been suspended or cancelled or after the valid date shown on the front of the card; or
- use your account for an unlawful purpose, including the purchase of goods or services prohibited by the laws of Australia or any other country where the card is used or where the goods or services are provided.

It is your responsibility to ensure that there is no prohibited use of your account by you and the business. You and the business will be responsible for any prohibited use of your account even if we did not prevent or stop the prohibited use.

## **STATEMENTS**

We will send or make available to you statements of account (called *statements*) periodically. We will normally send or make available to you a statement once every month. Each statement will show important information about your account, such as the outstanding balance on the last day of the statement period (called the *closing balance*), the payment due, the payment due date and will include charges made by you. If your account is seriously overdue or inactive or the balance is less than \$10 or in credit, we may stop sending you statements.

Always check each statement for accuracy and contact us as soon as possible if you need more information about a charge on any statement.

If you have a complaint or problem with your statement or any charge on it, inform us immediately. If we request, you agree to promptly provide us with written confirmation of your complaint or problem.

## **FEES**

The fees and commissions that apply to your account are set out and described in the Financial Table. You and the business agree to pay these fees and commissions and you authorise us to charge them to your account when due.

## **LIQUIDATED DAMAGES**

If you do not pay the full closing balance by the due date on your monthly statement, you are in default and you agree that we may charge you liquidated damages as specified in the Financial Table on any overdue amount. Liquidated damages may themselves be included in a future closing balance in any subsequent statement until paid in full.

## **RIGHT TO CHANGE FEES, LIQUIDATED DAMAGES AND COMMISSIONS**

We reserve the right to change the circumstances in which any of the fees, liquidated damages or the currency conversion commission on your account are charged and the amount of those fees or commission. We will provide notice of any change if required by applicable law in accordance with the "Changes" section of this agreement.

You and the business agree that we may impose additional fees and commissions at any time by giving you notice as set out in the "Changes" section of this agreement.

## **LIABILITY**

You and the business are jointly and severally liable and promise to pay to us when due all amounts outstanding on your account which includes paying:

- charges on all cards issued to you even if there was no signature or card presented (including telephone, internet and mail orders) and even after cards have been cancelled and this agreement has been ended;
- charges made by any other person if you allowed them to use your account;
- charges made in breach of this agreement or fraudulently by you or permitted by you; and
- unauthorised charges related to a lost or stolen card or code being used by an unauthorised person under the circumstances and within the limits set out in the "Lost and Stolen Cards and Misuse of Your Account" section of this agreement.

## **CHARGE APPROVAL**

Unless we inform you of a spending limit, each charge is approved based on the expense level and credit history of all of your accounts established with us, our subsidiaries and affiliates and/or licensees, as well as on your credit history with other financial institutions and your personal resources and income known by us.

We may at our discretion decide and inform you of a credit limit applicable to your account which is the maximum amount which can be outstanding at any time on your account.

You agree to manage your account so that charges billed to your account do not exceed the credit limit.

## **CARD IS OUR PROPERTY**

Although you use cards on your account, all cards remain our property at all times. You may be asked and you agree to return the card to us or anyone we ask to take it on our behalf, including the merchant. We may also inform the merchant that your card is no longer valid.

## **PAYMENTS**

Payments are due and payable to us on the date set out on your monthly statement, unless we notify you that it is due immediately.

Payments may be made by any of the methods set out in your statement. You must also comply with any instructions and requirements regarding payments as set out in your statement or that we otherwise provide you.

You must pay us in Australian dollars. Payments will not be credited to your account until received and cleared by us. Any time periods that we may provide are estimates only. Please make sure that you allow sufficient time for us to receive and clear payments by the payment due date even if the payment due date falls on a weekend or holiday. This includes mailing time for payments sent by mail and processing time for payments made using payment services offered by participating financial institutions (which you should check with the financial institution). We are not responsible for any delays in receiving payments and you must pay any charges which may apply. If you choose to pay by direct debit, you agree that any specific terms that we provide to you at enrolment will apply and form part of this agreement. Third parties involved in the sending or processing of payments such as postal authorities or financial institutions are not our agents and their receipt of a payment will not be considered a payment received by us.

We do not have to accept payments that do not conform to our requirements. If we accept a payment that does not conform to our requirements (for example, a payment made in a foreign currency), the payment may be delayed and will not be credited to your account until it is converted into the required form. We may charge your account for any costs we incur and we may impose additional charges for converting payment including the currency conversion commission as specified in this agreement.

If we accept late or partial payments or any payment described as being in full or in settlement of a dispute, we will not lose any of our rights under this agreement or the law including the right to recover the full balance owing.

Payments for your account must be sent separately from payments to any other account. If multiple payments are sent together or if you do not clearly designate your account to be paid, we may apply payments to any account at our sole discretion.

Although we may credit your account for a payment, we reserve the right to reverse the payment if it is returned or dishonoured for any reason.

If you do not make your payment as required or if there is a dishonoured payment, we may consider your account in default under the "Default" section of this agreement.

### **ALLOCATION OF YOUR PAYMENTS**

We will normally apply payments to your account in the following order:

- first, to applicable delinquency charges, linked credit card account minimum dues, if any, purchases, in that order;
- second, to fees;
- third, to other fees charged by us that appear as a separate item on your monthly statement, for example statement reprint fees; and
- fourth, to charges, other than those above.

### **PAYMENTS TO THIRD PARTIES**

If your account application was obtained from a third party, such as the merchant or sales agent, or if your account or the card is co-branded with another business, we may pay compensation to them, although the amount of compensation payable to them is unascertainable at this time.

### **CHARGES MADE IN FOREIGN CURRENCIES**

If you make a charge in a currency other than Australian dollars that charge will be converted into Australian dollars. The conversion will take place on the date the charge is processed by us, which may not be the same date on which you made your charge as it depends on when the charge was submitted to us. If the charge is not in U.S. dollars, the conversion will be made through U.S. dollars, by converting the charge amount into U.S. dollars and then by converting the U.S. dollar amount into Australian dollars. If the charge is in U.S. dollars, it will be converted directly into Australian dollars.

Unless a specific rate is required by applicable law, you understand and agree that the American Express treasury system will use conversion rates based on interbank rates that it selects from customary industry sources on the business day prior to the processing date, increased by a single conversion commission as set out in the Financial Table or as otherwise disclosed by us. If charges are converted by third parties prior to being submitted to us, any conversions made

by those third parties will be at rates and may include a commission selected by them.

The amount of any refund of a charge made in foreign currency will generally differ from the amount of the original charge because:

- in most cases, the rate applied to any refund will differ from the original rate applied to the charge; and
- any currency conversion commission charged on the original purchase is not refunded. However, we do not charge an additional currency conversion commission on the refunded amount.

## **USE OF CASH MACHINES**

The Express Cash™ Program is governed by one or more agreements separate from this agreement

## **RECURRING CHARGES**

You may authorise the merchant to bill your account at regular intervals for goods or services (called *recurring charges*). Here are some important things that you need to know about recurring charges and your account.

## **REPLACEMENT CARDS AND CANCELLED CARDS**

A replacement or new card (called a *replacement card*) may be issued to you if your card is lost, stolen, damaged, cancelled, renewed or switched to a different card type. Your card may also be cancelled or no further charges permitted without a replacement card being issued (called a *cancelled card*).

**In order to avoid potential disruption of recurring charges and the provision of goods or services by the merchant in the case of a replacement card or cancelled card, it is always your responsibility to contact the merchant and provide replacement card information or make alternate payment arrangements.** You and the business agree to be responsible for any recurring charges that may continue to be charged to your account from a card that has been replaced or cancelled.

Recurring charges may be automatically charged to a replacement card without notice to you.

Please note that we generally do not provide replacement card information (such as card number and card expiry date) to the merchant.

## **STOPPING RECURRING CHARGES**

To stop recurring charges being billed to your account, you must have the right to do so by law or under your arrangement with the merchant and you must advise the merchant in writing or in another way permitted by the merchant, to stop billing charges to your account.

## **OUR ENROLLMENT SERVICES**

If we permit, you may authorise us or our agent to enrol you with the merchant for recurring charges. You will remain responsible to make other payment arrangements until the recurring charges begin to be applied to your account. We are not responsible for any failure to enrol your account for recurring charges or if the merchant fails to charge your account. The paragraph "Stopping Recurring Charges" above also applies if you use our enrolment services.

## **AUTHORISATION**

We may require charges to be authorised by us before they are accepted by the merchant. We may refuse any request for authorisation of a charge on reasonable grounds, including for example and without limitation where the value of charge exceeds the available credit balance, where we suspect the charge is fraudulent, is subject to Australian or United States sanctions or does not comply with this agreement, or where we reasonably believe that you may be unable to fulfil your obligations under this agreement.

## **RENEWAL AND REPLACEMENT CARDS**

You and the business authorise us to send you a renewal card or a replacement card before the current card expires. You must destroy any expired cards by cutting them up. This agreement as amended or replaced continues to apply to any renewal or replacement cards we issue.

## **PRIVACY**

The collection, use and disclosure of your information by us is regulated by the Privacy Act. Our Privacy Statement sets out policies on the management of your personal information. In particular, it sets out policies dealing with:

- The collection, use and disclosure of your credit information and personal information.
- How you can access your personal information.
- How you can opt-out from our marketing lists.

A full copy of our Privacy Statement is provided at the end of this agreement.

## **ADDITIONAL SERVICES**

We may make available additional services or benefits which will be subject to separate terms and conditions. Examples of services or benefits include insurance, assistance services, rewards programs and merchant offers.

We may receive compensation from additional service providers and our compensation may vary by provider and product. Your account will be charged for any fees or premiums that may apply for services and benefits.

Services and benefits that are provided by third parties are subject to the terms and conditions set by the third party and any dispute must be settled directly with the third party. Services and benefits may be changed or cancelled with or without notice. We are not responsible for any service or benefit not directly provided by us.

If your account is closed, it will be your responsibility to obtain replacement services and benefits or make new payment arrangements with the third party if the service is still available.

## **LOST AND STOLEN CARDS AND MISUSE OF YOUR ACCOUNT**

You must tell us immediately by telephone on the number set out at the front of this agreement if:

- a card is lost or stolen,
- a renewal card has not been received,
- someone else learns a code, or
- you suspect that your account is being misused.

If a card that you have reported lost or stolen is later found, you must destroy it and wait for the replacement card.

For unauthorised charges, provided that you and the business complied with this agreement including the section "Use of your Card(s)/Codes" and provided that you and the business did not contribute to, were not in any way involved in or did not benefit from the theft, loss or misuse of the card then you and the business will not be liable to us for any unauthorised charges, unless you have delayed notifying us, in which case you will be liable for all unauthorised charges until you did notify us.

If you and the business did not comply with this agreement, or if you and the business contributed to, were involved in, or benefited from the loss, theft or misuse, you and the business are liable for any charges for example, if you gave your Card and/or codes to another person to use.

You and the business agree to cooperate with us, including giving us a statutory declaration, affidavit and/or a copy of an official police report, if we ask. You and the business also agree that we may provide information to regulatory authorities.

## **CHANGES**

We may change any provision of this agreement at any time, including fees, liquidated damages, commissions, how we apply payments and benefits and services associated with the account and changes affecting your payment obligations. We will inform you in accordance with the "Communicating With You" section of this agreement and as required by law. We will give you at least 20 days advance written notice, except where the change reduces what you have to pay or the change happens automatically under this agreement. If you are dissatisfied with any change to this agreement, you may cancel your agreement as set out under the "You May Close Your Account" section of this agreement. We will give you a pro-rated refund of any annual fee if you cancel this agreement as a result of a change that we have made to your detriment and such cancellation is communicated to us within 30 days of our notifying you of that change. If we have made a major change or a lot of minor changes in any one year, we may give you an updated copy of this agreement or a summary of the changes.

## **ASSIGNMENT**

We may assign, transfer or sell our rights, benefits or obligations under this agreement at any time to any of our related bodies corporate or to a third party and you consent to this without us having to notify you. If we do so, or intend to do so, you and the business agree that we can give information about you and the business and your account to the third party or related party. Your statutory rights will not be affected.

## **SEVERABILITY**

If any provision of this agreement conflicts with any applicable law or regulation, that provision will be deemed to be modified or deleted so as to be consistent with law or regulation. This will not affect the parties' obligations which will continue as amended.

## **SUSPENSION**

We may on reasonable grounds immediately stop you from using the Card or we may refuse to authorise a charge. For example, we may do so where the available credit balance has been exceeded, or where we suspect that a charge is fraudulent, or does not comply with law or this agreement, or where we reasonably believe that you will be unable to comply with your obligations

under this agreement. We will notify you as soon as reasonably practicable of such a suspension. This agreement will continue if we take either of these actions and you will still be responsible for all charges on your account.

## **DEFAULT/CLOSING YOUR ACCOUNT**

### **Default**

We may treat your account as being in default at any time in the event that you or the business fails to comply with your obligations under this agreement, such as failure to make any payment when it is due or if any form of payment is returned or not honoured in full.

We may also consider your account to be in default at any time if any statement made by you or the business to us in connection with your account was false or misleading, you or the business breach any other agreement that you may have with us or with any of our related bodies corporate, or if bankruptcy or other creditor proceedings are threatened or initiated against you or the business or we have any reason to believe that you may not be creditworthy.

The inclusion of previously billed charges and/or any portion of dishonoured payments shown on a statement will not constitute a waiver by us of any default.

In the event of any default, you and the business will also be responsible for all reasonable costs incurred by us or our agents including collection, collection agency, and legal advisor fees and costs, in recovering any amounts unpaid and in protecting ourselves from any harm we may suffer as a result of the default.

### **You May Close Your Account**

You or the business may end this agreement at any time by paying off all amounts owing on your account, destroying all cards issued on your account, stopping use of your account and requesting the closure of your account.

We will only close your account when you have paid off all amounts you owe us. All fees continue to accrue if outstanding balances exist on a cancelled card.

### **We May Close Your Account or Cancel Any Card**

We can end this agreement or cancel any or all cards or loans if you or the business are in default, or at any time with or without a reason. If we take such action, you and the business will still be obligated to pay all amounts owing on your account.

If we end this agreement you and the business must pay all money you owe us immediately, including unbilled charges that may not be shown on your last statement. We will only close your account when you have paid off all amounts you owe us.

If your card is cancelled for any reason, all other cards issued on your account will be cancelled at the same time. You and the business will continue to be responsible for all charges made using your account, including recurring charges until your account is no longer used and any recurring charges are stopped.

## **COMMUNICATING WITH YOU**

We may communicate with you by any commonly used method of communication including by mail or otherwise delivered to you at the address which is maintained in our records for your account, telephone, mobile phone, email, SMS, facsimile, posting on an American Express website (including [www.americanexpress.com.au](http://www.americanexpress.com.au) or within your online account on such a website, through links provided on a statement or other notice, using other electronic communication channels or any combination of these. To access communications provided through your online account, you must register and

select a User ID and Password. Our communications with you may include account servicing messages, statements, disclosures, notices (which include changes to this agreement and collection notices), alerts, information about products and services and other communications.

Statements, changes to this agreement, regulatory disclosures and notices, and other communications will generally be sent to you electronically. You and the business agree that we may communicate to you by electronic means and that these communications have been provided in writing and it is your responsibility to access and check your electronic communications regularly for statements and other communications.

All mailed communications that we send to you will be deemed to have been received by you 7 business days after the date of the mailing unless you actually receive it earlier or when received in the case of a communication delivered by hand. All electronic communications that we provide including a statement will be deemed to have been received by you on the day that we send the notification email or SMS, post the electronic communication and/or make the communication available within your online account even if you do not access the electronic communication for any reason, and/or post the electronic communication even if you do not access the electronic communication for any reason.

**You must inform us immediately if you change the address or other contact information (such as postal or email address, telephone or mobile phone number) you have given to us, including any changes to the business details.** If we have been unable to deliver any statements or other communications or these have been returned, we may stop attempting to communicate with you until we receive accurate contact information. We are not responsible for any failure to receive any communication (including a statement) if we send it to the address or in accordance with other contact information for your account appearing in our records or if we do not send the communication because previous communications have been undeliverable. You must inform us if you want an address or other contact information to apply to more than one account with us.

You must also inform us of any changes to other information previously provided to us such as information you provided when you applied for your account. You also agree to give us any additional information and support documentation that we request or as required by law.

## **WHERE THE BUSINESS OPERATES AS A TRUST**

If the business operates as a trust:

- this agreement binds the business personally and as trustee of that trust; and
- you must use the Card for business purposes of the trust only.

You and the business also represent and warrant to us that:

- the trust is validly formed and any relevant trust document is valid and complies with the law;
- the business is properly appointed as sole trustee of the trust;
- the business has always complied, and will comply, with the terms of the trust and its duties and powers as trustee;
- the business has power to enter into this agreement and to perform its obligations as trustee of the trust; and
- the entry by the business into this agreement is for proper trust purposes;

- the business has a full right of indemnity from the trust assets in respect of all charges, liabilities and obligations under this agreement; and
- the business is entitled to use trust assets to meet any of your or the business' obligations under this agreement, ahead of any rights of any of the beneficiaries.

You and the business will be in default if any of the following events happen:

- the trust is held by a court not to have been properly constituted or you or the business concede that the trust has not been properly constituted;
- the trust terminates or the beneficiaries of the trust resolve to terminate the trust;
- the business ceases to hold the trust assets or property in its name or it ceases to be trustee; or
- the business commits a breach of trust which, in our opinion, is material.

You and the business agree to notify us in writing immediately if any of the above events of default occur.

### **DIRECT DEBIT SERVICE AGREEMENT**

This direct debit service agreement authorises us (American Express user ID No. 517) to withdraw money from your nominated account set out in the direct debit request and this agreement. If you have any enquiries relating to this direct debit service agreement you should contact us.

Before you complete the direct debit request, you should confirm with your financial institution that your nominated account can accept direct debits. The nominated account must belong to you or the business.

If we want to change this direct debit service agreement, we will notify you within 14 calendar days in advance of any change. Please notify us in writing if you want to:

- make a change to this direct debit service agreement;
- stop or defer an individual payment; or
- cancel this direct debit service agreement. However, note that we may have to close your account if you cancel this direct debit service agreement.

If you want to dispute a debit that has been made from your nominated account, you should contact us in writing immediately and we will respond to you within seven days.

If the debit date is on a weekend or public holiday in Sydney, we will process your payment on the next business day.

You must make sure that sufficient cleared funds are available in your nominated account on the payment date. If there are insufficient funds and your financial institution dishonours the payment then:

- we will charge you a dishonour fee as outlined in this agreement;
- any charges and tax on those charges incurred by your financial institution may be debited from your account;
- any charges and tax on those charges incurred by us may be debited from your account; and
- the amount of the dishonoured debit will be debited to your account.

We also reserve the right to cancel the direct debit request if any debit is returned unpaid by your financial institution.

We will keep your financial institution account details confidential. However, we will disclose these details:

- if you consent; or
- to the extent required by law, for example, if a court order requires disclosure; or
- for the purposes of this direct debit service agreement, for example, to settle a dispute.

You indemnify and keep us indemnified against all losses, costs, damages and liability that we suffer as a result of you giving us incorrect or false information in your direct debit request. Your indemnity:

- extends and covers all changes you make to your direct debit request; and
- continues after this direct debit service agreement is ended.

### **NO WAIVER OF OUR RIGHTS**

If we fail to exercise any of our rights under this agreement, this will not be a waiver of our rights and will not prevent us from exercising them later.

### **SET OFF**

You and the business each agree that we may set off any amount that you or the business owe to us against any amounts that we owe to you and/or the business under any agreement.

### **COMPLAINTS AND PROBLEMS WITH GOODS OR SERVICES PURCHASED**

If you have a complaint or problem with the merchant or any goods and services charged to your account, you must still pay all charges on your account and settle the dispute directly with the merchant.

### **ASSIGNMENT OF CLAIMS**

Although we may have no obligation to do so, if we credit your account in relation to your claim against a third party such as the merchant, you and the business are automatically deemed to have assigned and transferred to us, any rights and claims (excluding tort claims) that you and the business have, had or may have against any third party for an amount equal to the amount we credited to your account. After we credit your account, you and the business agree not to pursue any claim against or reimbursement from any third party for the amount that we credited to your account. You and the business also agree to cooperate with us if we decide to pursue a third party for the amount credited. Cooperation includes signing any documents and providing any information that we require. Crediting your account on any occasion does not obligate us to do so again.

### **EXAMPLES**

When we provide examples in this agreement, they do not limit the provisions of this agreement. The terms "*includes*", "*such as*" and "*for example*" mean, respectively, "*includes without limitation*", "*such as but without limitation*" and "*for example but without limitation*".

### **GOVERNING LAW**

This agreement is governed by the laws of the State or Territory of Australia as stated on your billing address or if your billing address is overseas, as stated on your last known Australian billing address and the courts of that State or Territory shall have jurisdiction over all parties to the agreement.

## **TAXES, DUTIES AND EXCHANGE CONTROL**

You and the business must pay any government tax, duty or other amount imposed by law in any country in respect of the card, any charge on your account or any use of the account by you.

## **LIMITATION OF OUR LIABILITY**

We are not responsible or liable to you or the business for:

- any delay or failure by the merchant to accept the card;
- our refusal to authorise a charge;
- goods and services you charge to your account, including any dispute with the merchant about goods and services charged to your account;
- any costs, damages or expenses arising out of our failure to carry out our obligations under this agreement if that failure is caused by a third party or because of a systems failure, data processing failure, industrial dispute or other action outside our control; and
- loss of profits or any incidental, indirect, consequential, punitive or special damages regardless of how they arise.

For example, we will not be liable to you or the business for any malfunction or failure of the card or refusal by the merchant to accept the card.

## **COMPLAINTS**

### **What you should do**

If calling within Australia you can call us 24 hours a day on the contact number set out in this agreement. If the problem cannot be resolved immediately to your and our satisfaction we will advise you in writing of our procedures for investigation and resolution of the complaint.

You also agree that when requested you shall provide all the reasonable assistance and relevant information, including written statements, to us and/or the Police in relation to your claim of unauthorised charges.

By reporting the existence of unauthorised charges, you agree to allow us to release any information that you have provided which is subject of an investigation of unauthorised charges to the Police and any other investigative or statutory authority.

# AMERICAN EXPRESS

## PRIVACY STATEMENT

Please note that our complaint procedures will not be available for complaints which are the subject of arbitration or small claims court proceedings.

### **Investigating Complaints**

Unless we advise you in writing of any exceptional circumstances, our investigation of a complaint should be completed within 45 days of receiving details from you. We will advise you of the outcome of the investigation and the reasons for the outcome.

If the outcome is that there has been an incorrect debit or credit to the account, we will adjust your account accordingly and advise you of the adjustment.

If you are not satisfied with the outcome of our investigation you may either pursue your complaint with Arbitration (see the section "Arbitration").

### **ARBITRATION**

Notwithstanding anything to the contrary in this Arbitration section, you will have the right to pursue any claim with a small claims court, without resort to arbitration, so long as the claim is commenced by an individual.

### **Definitions**

As used in this Arbitration section only, the words you or your mean you and the business, the words we, our and us mean us and our related bodies corporate and the term claim means any claim, dispute or controversy between you and us, whether contractual, extra-contractual, tortious or statutory, arising from or relating to your account, this agreement, and any other agreement that you have or may have had with us, or the relationships resulting from any of these agreements (called, in this section only, agreements), including the validity, enforceability or scope of this Arbitration section or the agreements. The term "claim" also includes any claim, dispute or controversy that arises from or relates to (a) any of your accounts created under any of the agreements, or any balances on any such accounts, (b) advertisements, promotions or oral or written statements related to any such accounts, goods or services financed under any of your accounts or the terms of financing, (c) the benefits and services related to your cardholding (including fee-based or included benefit programs and any rewards programs), and (d) your application for any account.

### **Initiation of Arbitration Proceeding/Selection of Administrator**

Except as otherwise provided in this Arbitration section, any claim will be resolved exclusively by arbitration pursuant to this Arbitration section and the Institute of Arbitrators and Mediators Australia Fast Track Arbitration Rules (the "rules") of the Institute of Arbitrators and Mediators Australia (the "administrator") or its successors or a replacement administrator. For a copy of the rules, to file a claim or for other information about the administrator, contact them at: Level 1, 190 Queen Street, Melbourne, Victoria, 3000. Prior to the initiation of any claim we have the right to change or replace the administrator and the rules at our sole discretion. Unless the parties agree upon an arbitrator, either party may request a nomination from either the President or the Chapter Chairman of the Chapter where the claim arises.

## **Consolidation**

All claims will be arbitrated on an individual basis. The parties agree that individual arbitration provides a more efficient and cost effective method of resolving claims than court litigation. However, claims brought by you against us, or by us against you, may be joined, heard one after the other or consolidated, as the arbitrator will direct, in arbitration with claims brought by or against someone other than you, if agreed to in writing by all party card members. The parties further agree that the arbitrator will have no jurisdiction or authority to consider any claim brought on a class action or representative party basis.

## **Arbitration Procedures and Appeal**

The arbitrator will take reasonable steps to preserve the privacy of individuals and of business matters. Where the claim being arbitrated is for an amount less than \$100, there will be no oral discoveries or oral hearing subject to the discretion of the arbitrator to direct otherwise. The arbitrator's decision will be final and binding. However, where an appeal is not prohibited by statute, any party can appeal the award to an appeal panel administered by the administrator, which will consider anew any aspect of the initial award objected to by the appealing party. Where the award under appeal is for \$100 or less, the appeal will be to a single appeal arbitrator and where the award under appeal is for more than \$100 the appeal will be to a three-member appeal panel. The appealing party will have 30 days from the date of entry of the written arbitration award to notify the administrator that it is exercising the right of appeal. The administrator will then notify the other party that the award has been appealed. The administrator will appoint the appeal panel that will conduct an arbitration pursuant to the rules and issue its decision within 120 days of the date of the appealing party's written notice. The decision of the three member appeal panel will be by majority vote. The appeal decision will be final and binding and there will be no further appeal. The appeal decision will be considered as a final award.

## **Location of Arbitration/Payment of Fees**

Any arbitration hearing that you attend will take place in the State or Territory of your residence. We will be responsible for paying the arbitrator and arbitration administration fees (including filing, administrative, hearing and/or other fees) unless the arbitrator or appeal panel determines that your claim was frivolous or vexatious, in which case, the fees will be in the discretion of the arbitrator or appeal panel. Awards of legal costs will be in the discretion of the arbitrator or appeal panel but in the event you are unsuccessful in the arbitration, or appeal where applicable, you will not be responsible for our legal costs unless the arbitrator or appeal panel determines that your claim was frivolous or vexatious.

Please note: If you do not agree to the matters set out in this notice, we will be unable to provide certain benefits associated with your account and we may close your account. Our collection, use and disclosure of information is subject to the Privacy Act.

## **Collection, use and disclosure of credit information**

We may obtain both consumer and commercial credit reports about you from a credit reporting agency to assess this application, to collect overdue payments from you, or for any other use in connection with your account as permitted under the Privacy Act 1988.

We may disclose information about you to credit reporting agencies before, during or after credit is provided to you. This includes:

- the fact that you have applied for a Card and the credit limit, and that American Express is a credit provider to you;
- advice about Card payments that are at least 60 days overdue and in collection (and advice that payments are no longer overdue);
- advice that cheque(s) drawn by you, or Direct Debit requests to your financial institution account which you have authorised American Express to make, which are more than \$100 have been dishonoured more than once;
- American Express' opinion that you do not intend to meet your credit obligations or that you have committed some other serious credit infringement; and
- that credit provided to you has been paid or otherwise discharged.

We may exchange information about you with credit providers named in your application or in a credit report issued by a credit reporting agency. Among other things, this is to:

- assess your credit worthiness as to this and future applications by you for credit;
- notify other credit providers of a default by you;
- exchange information about your account when you are in default with other credit providers;
- complete any approval process as to any transactions you wish to make on your account; and
- administer your account.
- We may also exchange information about you, including from credit reports, with any person considering whether to act as a guarantor in relation to this and future applications by you for credit.

### **Collection, use and disclosure of personal information**

We collect personal information about you in a number of ways, including from:

- you, including in your credit application and when you use your account (e.g. when you make a purchase using your account) or one of our websites;
- people named in your credit application (e.g. your employer); and
- service providers which service your account or provide services to us (e.g. marketing agencies, mail houses and collection agents).

Your personal information is collected, used and disclosed for purposes that include:

- assessing your application and administering and managing your account;
- providing you with special offers or benefits and marketing our products and services;
- planning, product development and research;
- modelling and assessing risks and preventing or investigating fraud and other crime; and
- complying with legislative and regulatory requirements, including for identity verification purposes.

For the purposes set out in this notice, we may share your personal information with:

- persons (e.g. additional Cardholders) you authorise to use or access your account;
- persons named in your application (e.g. to confirm employment and income details);
- service providers who provide services related to your account (e.g. Card manufacturers, collection agents and mail houses); and
- other organisations, including government and regulatory bodies, for identity verification purposes or as required or authorised by law
- organisations whose name, logo or trademark appears on the application for the account or on the Card for marketing, planning, product development and research purposes and seek from and exchange with such organisations personal information about you
- our related companies for the purposes set out in this notice; and
- the provider of any payment service you use to make payments to American Express.

We may also monitor and record your telephone conversations with us for staff training and service quality control purposes.

We may transfer your personal information to the United States or other countries for data processing and servicing.

### **How we store your personal information**

We store personal information in a combination of secure computer storage facilities and paper based files and other records. We have taken a number of steps to protect the personal information we hold from misuse, loss and unauthorised access, modification or disclosure. We use generally accepted technology and security so that we are satisfied that your information is transmitted safely to us through the internet or other electronic means. We will take reasonable steps to securely destroy or permanently de-identify personal information when we no longer need it.

### **Further Information**

For more information about our privacy policy, to arrange access to your personal information, to advise us if you think your personal information is inaccurate, incomplete or out of date or to enquire generally about privacy matters, contact:

The Privacy Officer  
American Express Australia Limited  
GPO Box 1582  
Sydney NSW 2001  
Phone: 1300 132 639

## **Information about other persons**

If you provide personal information about someone else to us, you must make sure that the individual has seen, understood and agreed to:

- their personal information being collected, used and disclosed in accordance with this notice;
- their ability to access that information in accordance with the Privacy Act 1998 and to advise us if they think the information is inaccurate, incomplete or out of date; and
- the contact details of our privacy officer.

## **Your invitation (or your opt-out)**

You invite us, our agents and our preferred alliance organisations (including insurance companies) to use your personal information to inform you of and offer products or services from us or a related company, or any third party providing products marketed jointly with us. We may contact you by phone, mail or electronically to do this. If you wish to withdraw this invitation and remove your name from the American Express marketing list, call us on 1300 132 639. This invitation will remain in place until you withdraw it or until twelve months after you cease being an American Express Card Member.

**American Express Australia Limited**

Card Member Services  
GPO Box 1582  
Sydney NSW 2001

**Lost or Stolen Cards**

In Australia  
Telephone 1300 366 549

**Overseas**

Report your loss or theft  
to the nearest American Express  
Travel Service location

**Account Enquiries**

In Australia  
Telephone 1300 366 549

Please have your Card number ready  
and key in when prompted

[americanexpress.com.au/business](http://americanexpress.com.au/business)



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