

## Cardmember Agreement: Part 1 of 2

As of: 12/31/2021

Morgan Stanley Platinum Card  
 Issuer: American Express National Bank

### Rates and Fees Table

Interest Rates	
<b>Annual Percentage Rate (APR) for Pay Over Time Feature</b>	<b>Prime Rate + 12.74% to Prime Rate + 19.74%</b> This is a variable APR. See <i>Explanation of Variable Rates</i> below.
<b>APR for Cash Advances</b>	<b>Prime Rate + 21.99%</b> This is a variable APR. See <i>Explanation of Variable Rates</i> below.
<b>Penalty APR and When it Applies</b>	<b>Prime Rate + 26.74%</b> This is a variable APR. See <i>Explanation of Variable Rates</i> below. This APR will apply to your Account if you: <ol style="list-style-type: none"> <li>1) make one or more late payments; or</li> <li>2) make a payment that is returned by your bank.</li> </ol> We may also consider your creditworthiness in determining whether or not to apply the penalty APR to the Pay Over Time balance(s) on your Account.  <b>How Long Will the Penalty APR Apply?</b> If the penalty APR is applied, it will apply for at least 6 months. We will review your Account every 6 months after the penalty APR is applied. The penalty APR will continue to apply until you have made timely payments with no returned payments during the 6 months being reviewed.
<b>Paying Interest</b>	Your due date is at least 25 days after the close of each billing period. We will not charge you interest on charges automatically added to a Pay Over Time balance if each month you pay your Account Total New Balance on your billing statement (or, if you have a Plan balance, your Adjusted Balance on your billing statement) by the due date. If you have Cash Advance on your Account, we will begin charging interest on cash advances on the transaction date.  If you are enrolled in Pay Over Time Select: we will begin charging interest on purchases added to a Pay Over Time Select balance at your request on the date that they are added to your Pay Over Time Select balance.
<b>Plan Fee (Fixed Finance Charge)</b>	For purchase amounts in a Pay Over Time balance: A monthly fee up to <b>1.33%</b> of each purchase amount moved into a plan based on the plan duration, the APR that would otherwise apply to the purchase amount, and other factors. For purchase amounts in a Pay In Full balance: A monthly fee up to <b>1.33%</b> of each purchase amount moved into a plan based on the plan duration, the APR that applies to the Pay Over Time feature at the time you create the plan, and other factors.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	<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>Annual Membership Fee</b>	<b>\$695</b>
<b>Transaction Fees</b>	
<ul style="list-style-type: none"> <li>• Cash Advance</li> <li>• Foreign Transaction</li> </ul>	Either <b>\$10</b> or <b>5%</b> of the amount of each cash advance, whichever is greater. <b>None.</b>
<b>Penalty Fees</b>	
<ul style="list-style-type: none"> <li>• Late Payment</li> <li>• Returned Payment</li> </ul>	Up to <b>\$40</b> Up to <b>\$40</b>

**How we calculate interest:** We use the Average Daily Balance method (including new transactions). See the *How we calculate interest* section in Part 2.

**Explanation of Variable Rates:** If the Prime Rate increases, variable APRs (and corresponding DPRs) will increase. In that case, you may pay more interest and may have a higher Minimum Payment Due. When the Prime Rate changes, the resulting changes to variable APRs take effect as of the first day of the billing period. The Daily Periodic Rate (DPR) is 1/365th of the APR, rounded to the nearest one ten-thousandth of a percentage point. The variable penalty APR will not exceed 29.99%.

## How Rates and Fees Work

### Rates for Pay Over Time and/or Cash Advance balance(s)

<p><b>Penalty APR for new transactions</b></p>	<p>The penalty APR may apply to new transactions if:</p> <ul style="list-style-type: none"> <li>• you do not pay at least the Minimum Payment Due by the Payment Due Date on one or more occasions; or</li> <li>• your payment is returned by your bank.</li> </ul> <p>We may also consider your creditworthiness in determining whether or not to apply the penalty APR to the Pay Over Time balance(s) on your Account.</p>	<p>If the penalty APR applies to a balance, it will apply to charges added to that balance 15 or more days after we send you notice.</p> <p>We will review your Account every 6 months after the penalty APR is applied. The penalty APR will continue to apply until you have made timely payments with no returned payments during the 6 months being reviewed.</p>
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### Fees

<p><b>Annual Membership</b></p>	<p>This fee is on the <i>Rates and Fees Table</i> on page 1 of Part 1. We will not charge for 1 additional Platinum Card, we will charge \$175 for up to 3 more after the 1st additional Platinum Card, then we will charge \$175 for each additional Platinum Card after the 4th card, and \$0 for additional Gold Cards.</p>
<p><b>Plan Fee</b></p>	<p>For purchase amounts in a Pay Over Time balance: Up to 1.33% of each purchase amount moved into a plan based on the plan duration, the APR that would otherwise apply to the purchase amount, and other factors. For purchase amounts in a Pay In Full balance: Up to 1.33% of each purchase amount moved into a plan based on the plan duration, the APR that applies to the Pay Over Time feature at the time you create the plan, and other factors. This fee is a fixed finance charge that will be charged each month that a plan is active. The dollar amount of your plan fee will be disclosed before you set up a plan. For more information, see <i>About the Plan It</i> feature in Part 2.</p>
<p><b>Late Payment</b></p>	<p>Up to \$40. If we do not receive the Amount Due (or Minimum Payment Due, if applicable) by the Payment Due Date, the fee is \$29. If this happens again within the next 6 billing periods, the fee is \$40. However, the late fee will not exceed the Amount Due (or Minimum Payment Due, if applicable). Paying late may also result in a penalty APR for new transactions in a Pay Over Time balance. See <i>Penalty APR for new transactions</i> above.</p>
<p><b>Returned Payment</b></p>	<p>Up to \$40. If you make a payment that is returned unpaid the first time we present it to your bank, the fee is \$29. If you do this again within the same billing period or the next 6 billing periods, the fee is \$40. However, the returned payment fee will not exceed the Amount Due (or Minimum Payment Due, if applicable). A returned payment may also result in a penalty APR for new transactions in a Pay Over Time balance. See <i>Penalty APR for new transactions</i> above.</p>
<p><b>Returned Check</b></p>	<p>\$38 if you use your card to cash a check at one of our approved locations and the check is returned unpaid. We will also charge you the unpaid amount.</p>
<p><b>Account Re-opening</b></p>	<p>\$25 if your Account is cancelled, you ask us to re-open it, and we do so.</p>
<p><b>Cash Advance</b></p>	<p>5% of an ATM cash advance (including any fee charged by the ATM operator) or other cash advance, with a minimum of \$10. We will add this fee to the Cash Advance balance.</p>
<p><b>Foreign Transaction</b></p>	<p>None</p>

### How Pay Over Time Works

<p><b>About the Pay Over Time feature</b></p> <p>See <i>More About Pay Over Time</i> in Part 2 of this Agreement for important additional information about the Pay Over Time feature.</p>	<ul style="list-style-type: none"> <li>• We may offer you Pay Over Time, which allows you to pay eligible charges over time, with interest. Pay Over Time has two settings: on and off. When on, we will automatically add new eligible charges to your Pay Over Time balance. When off, no new charges will be automatically added to your Pay Over Time balance. You can change your setting at any time, but your setting at 8 p.m. EST will determine whether a charge made that day is automatically added to your Pay Over Time balance. To view or change your Pay Over Time setting, visit your online account or call the number on the back of your Card. If you transfer to a new Card with the same Account number, your Pay Over Time setting at time of transfer will remain in effect on your new Card.</li> <li>• If you have the Pay Over Time Select feature on your Account: you can request to add eligible purchases not already in a Pay Over Time balance from the current or preceding billing period to your Pay Over Time Select balance. If we approve your request, we will add the purchase to your Pay Over Time Select balance. If we decline your request, you must pay the purchase in full by the Payment Due Date.</li> <li>• If you have the Pay Over Time Travel feature on your Account: we will automatically add eligible travel-related purchases to your Pay Over Time Travel balance regardless of whether your Pay Over Time setting is on or off. If you request to cancel your Pay Over Time Travel feature, you will not be able to re-enroll.</li> </ul>
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**Part 1, Part 2 and any supplements or amendments make up your Cardmember Agreement.**

## Supplement to the Cardmember Agreement

### How the Reward Program Works

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#### Platinum Card<sup>®</sup> from American Express exclusively for Morgan Stanley

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##### Program Eligibility

The Platinum Card from American Express exclusively for Morgan Stanley is only available to you if you have an eligible account with Morgan Stanley Smith Barney LLC (*Morgan Stanley*).

An *eligible account* is a brokerage account with Morgan Stanley (i) held in your name, (ii) held by a trust where you are both the grantor and trustee of such trust, or (iii) held as a beneficial owner of a personal holding company, a non-operating limited liability company, a non-operating limited partnership, or a similar legal entity.

American Express will only issue the Platinum Card from American Express exclusively for Morgan Stanley to (1) an eligible Morgan Stanley client who is an individual; and (2) an individual associated with an eligible Morgan Stanley client (if the eligible Morgan Stanley client itself is not an individual).

Eligibility is subject to change. American Express may cancel your Card Account and participation in this program if you do not maintain an eligible account.

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## How Your American Express Account Works

### Introduction

<b>About your Cardmember Agreement</b>	This document together with Part 1 make up the Cardmember Agreement ( <i>Agreement</i> ) for the <i>Account</i> identified on page 1 of Part 1. Any supplements or	amendments are also part of the Agreement. When you use the Account (or you sign or keep the card), you agree to the terms of the Agreement.
<b>Changing the Agreement</b>	We may change this Agreement, subject to applicable law. We may do this in response to the business, legal or competitive environment. This written Agreement is a final expression of the agreement governing the Account. The written Agreement may not be contradicted by any alleged oral agreement.	We cannot increase the interest rate on existing balances except in limited circumstances. Changes to some terms may require 45 days advance notice, and we will tell you in the notice if you have the right to reject a change. We cannot change certain terms during the first year of your Cardmembership.
<b>Words we use in the Agreement</b>	<p><b>We, us,</b> and <b>our</b> mean the issuer shown on page 1 of Part 1. <b>You</b> and <b>your</b> mean the person who applied for this Account and for whom we opened the Account. You and your also mean anyone who agrees to pay for this Account. You are the <b>Basic Cardmember</b>. You may request a card for an <b>Additional Cardmember</b> (see <i>About Additional Cardmembers</i> in Part 2).</p> <p><b>Card</b> means any card or other device that we issue to access your Account. A <b>charge</b> is any amount added to your Account, such as purchases, cash advances, fees and interest charges. A <b>purchase</b> is a charge for goods, services, or person-to-person transactions.</p>	<p>A <b>cash advance</b> is a charge to get cash or cash equivalents, including travelers cheques, gift cheques, foreign currency, money orders, digital currency, casino gaming chips, race track wagers, and similar offline and online betting transactions. A <b>person-to-person transaction</b> is a charge for funds sent to another person or a charge to add funds to your Amex Send™ Account. A <b>plan</b> is a portion of your account balance that you have selected to pay through a set number of monthly payments using Plan It.</p> <p>To <b>pay</b> by a certain date means to send your payment so that we receive it and credit it to your Account by that date (see <i>About your payments</i> in Part 2).</p>

### About using your card

<b>Using the card</b>	<p>You may use the card to make purchases. At our discretion, we may permit you to make cash advances.</p> <p>We decide whether to approve a charge, including cash advances subject to <i>Limits on Cash Advances</i> and person-to-person transactions subject to <i>Limits on person-to-person transactions</i> below, based on how you spend and pay on this Account and other accounts you have with us and our Affiliates. We also consider your credit history and your personal resources that we know about.</p> <p>You may arrange for certain merchants and third parties to store your card number and expiration date, so that, for example:</p>	<ul style="list-style-type: none"> <li>• the merchant may charge your account at regular intervals; or</li> <li>• you may make charges using that stored card information.</li> </ul> <p>We may (but are not required to) tell these merchants and third parties if your expiration date or card number changes or if your account status is updated, including if your account is cancelled. If you do not want us to share your updated account information, please contact us using the number on the back of your card.</p> <p>Keep your card safe and don't let anyone else use it. If your card is lost or stolen or your Account is being used without your permission, contact us right away. You may not use your Account for illegal activities.</p>
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<b>Promise to pay</b>	<p>You promise to pay all charges, including:</p> <ul style="list-style-type: none"> <li>• charges you make, even if you do not present your card or sign for the transaction,</li> <li>• charges that other people make if you let them use your Account, and</li> <li>• charges that Additional Cardmembers make or permit others to make.</li> </ul>
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<b>Pay Over Time Limit</b>	<p>If you have Pay Over Time, we assign a Pay Over Time Limit to your Account. The Pay Over Time Limit applies to the total of your Pay Over Time, Cash Advance, and Plan balances. Your Pay Over Time balance cannot exceed your Pay Over Time Limit. When there is a delay in posting cash advances or plans to your Account, the total of your Pay Over Time, Cash Advance, and Plan balances may exceed your Pay Over Time Limit. We may approve or decline a charge regardless of whether your Card account balance exceeds or does not exceed your Pay Over Time Limit. If you have Pay Over Time on your Account, your Pay Over Time Limit is shown on page 1 of Part 1 and on each billing statement. We may increase or reduce your Pay Over Time Limit at any time, including when you change the Pay Over Time setting from off to on. We may do so even if you pay on time and your Account is not in default. We will tell you if we change your Pay Over Time Limit. You must pay in full, by the Payment Due Date, all charges that are not added to a Pay Over Time, Cash Advance, or Plan balance.</p>
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<b>Limits on Cash Advances</b>	<p>Your Cash Advance balance may not exceed:</p> <p><b>Zync Card® \$3,000</b>  <b>Green Card \$3,000</b>  <b>Gold Card \$6,000</b>  <b>Platinum Card® \$8,000</b>  <b>Centurion® Card \$10,000</b></p> <p>There may also be a limit on the amount of cash and number of times you can obtain cash from ATMs in a given period.</p>	<p>You agree to manage your Account so that your Cash Advance balance (including fees and interest) is not more than the Limit on Cash Advances.</p> <p>For purposes of the Limits on Cash Advances, your Cash Advance balance will be determined by adding new cash advance transactions to the ending Cash Advance balance of the prior day.</p> <p>In addition, we may not approve a cash advance transaction if it would cause the total of your Pay Over Time and/or Cash Advance balance and Plan balance to go over your Pay Over Time Limit.</p>
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**Limits on person-to-person transaction**

Your person-to-person transactions may not exceed the following limits within any 30-day period:

**One from American Express® \$2,000**

**Zync Card® \$2,000**

**Green Card \$2,000**

**Gold Card \$2,000**

**Platinum Card® \$4,000**

**Centurion® Card \$5,000**

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You agree to manage your Account so that the total of your person-to-person transactions in any 30-day period do not exceed the limit on person-to-person transactions.

We may not approve a person-to-person transaction if it would cause your Account to exceed the applicable person-to-person transaction limit.

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**Declined transactions**

We may decline to authorize a charge. Reasons we may do this include suspected fraud and our assessment of your creditworthiness. This may occur even if your Account is not in default.

We are not responsible for any losses you incur if we do not authorize a charge. And we are not responsible if any merchant refuses to accept the card.

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**More About Pay Over Time**

With Pay Over Time, you have the option to pay eligible charges over time with interest (see *When we charge interest* in Part 2). You can choose to pay your Account Total New Balance in full each month, the Minimum Payment Due, or any amount in between (see *When you must pay* in Part 2).

We automatically add eligible charges, including Annual Membership Fees, to your Pay Over Time balance if the Pay Over Time feature is on at 8 p.m. Eastern Time on the transaction date provided by the merchant or on the date when an eligible Annual Membership Fee is charged to your Account. The transaction date provided by the merchant may differ from the date you made the purchase if, for example, there is a delay in the merchant submitting the transaction to us or if the merchant uses the shipping date as the transaction date.

Certain charges are not eligible for Pay Over Time, such as cash and similar transactions. We may change the charges that are eligible to be added to your Pay Over Time balance. We may suspend your Pay Over Time feature at any time based on our assessment of your creditworthiness, the status of your Account, and your enrollment in a payment program. In addition, if your Account is past due, you will not be able to change your Pay Over Time setting from off to on.

The Pay Over Time Limit applies to the total of your Pay Over Time, Cash Advance, and Plan balances. Your Pay Over Time balance cannot exceed your Pay Over Time Limit. When there is a delay in posting cash advances or plans to your Account, the total of your Pay Over Time, Cash Advance, and Plan balances may exceed your Pay Over Time Limit. You must pay in full, by the Payment Due Date, all charges that are not added to a Pay Over Time, Cash Advance, or Plan balance.

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**About the Plan It feature**

We may offer you Plan It, which allows you to create a payment plan for qualifying purchases or a qualifying amount, subject to a plan fee. This fee is a fixed finance charge that will be charged each month that a plan is active.

You may use this feature by selecting qualifying purchases or a qualifying amount and a plan duration. You will be able to view the monthly plan payments, including the plan fee, for your selection. Each plan fee will be disclosed before you create the applicable plan. If you create a plan for a purchase or an amount in your Pay Over Time balance, the purchase or amount will be moved to a plan balance and will be subject to a plan fee instead of the APR that would otherwise apply to the purchase amount. If you create a plan for a purchase or amount that is in your Pay In Full balance, the purchase or amount will be moved to a plan balance and will be subject to a plan fee based on the APR that applies to the Pay Over Time feature at the time you create the plan.

A *qualifying purchase* for Plan It is a purchase of at least a specified dollar amount. A *qualifying amount* for Plan It is a specified portion of your balance. The following are not qualifying purchases or amounts: cash or cash equivalents, purchases subject to Foreign Transaction Fees, or any fees owed to us, including Annual Membership Fees.

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Your ability to create plans will be based on a variety of factors such as your creditworthiness and your Pay Over Time Limit. You may not be able to create a plan if it would cause you to exceed your Pay Over Time Limit. You will not be able to create plans if your Pay Over Time feature is suspended or your Account is cancelled. You will also not be able to create plans if one or more of your American Express accounts is enrolled in a payment program, has a payment that is returned unpaid, or is past due. We will tell you the number of active plans you may have, and we may change this number at any time. The plan durations offered to you, and your ability to include multiple qualifying purchases or a qualifying amount in a single plan, will be at our discretion and will be based on a variety of factors such as your creditworthiness, the purchase amount(s), and your Account history.

Plans cannot be cancelled after they have been created, but you can choose to pay them early by paying the Account Total New Balance shown on your most recent billing statement in full. If you pay a plan off early, you will not incur any future plan fees on that plan.

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**About your payments****When you must pay**

You must pay the Amount Due, or Minimum Payment Due, if applicable, no later than the Payment Due Date shown on your billing statement to avoid a late payment fee. Each billing statement also states the time and manner by which you must make your payment for it to be credited as of the same day it is received. For your payment to be considered on time, we must receive it in such time and manner by the Payment Due Date shown on your billing statement.

Each billing statement also shows a Closing Date. The Closing Date is the last day of the billing period covered by the billing statement. Each Closing Date is about 30 days after the previous billing statement's Closing Date.

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## How to make payments

Make payments to us in U.S. dollars with:

- a single check drawn on a U.S. bank, or
- a single negotiable instrument clearable through the U.S. banking system, for example a money order, or
- an electronic payment that can be cleared through the U.S. banking system.

When making a payment by mail:

- make a separate payment for each account,
- mail your payment to the address shown on the payment coupon on your billing statement, and
- write your Account number on your check or negotiable instrument and include the payment coupon.

If your payment meets the above requirements, we will credit it to your Account as of the day we receive it, as long as we receive it by the time disclosed in

your billing statement. If we receive it after that time, we will credit the payment on the day after we receive it.

If your payment does not meet the above requirements, there may be a delay in crediting your Account. This may result in late fees and additional interest charges (see the *Rates and Fees Table* and *How Rates, Fees and Pay Over Time Work* in Part 1).

We will not accept a payment made in a foreign currency or a payment drawn on an account at a bank located outside of the U.S.

If we process a late payment, a partial payment, or a payment marked with any restrictive language, that will have no effect on our rights and will not change this Agreement.

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## How we apply payments and credits

If your statement includes a Pay Over Time and/or Cash Advance New Balance or Plan Balance, it will show a Minimum Payment Due. The Minimum Payment Due includes the Pay in Full New Balance plus the Pay Over Time and/or Cash Advance Minimum Due and the Plan Payment Due. Your Account may have balances with different interest rates. For example, a Pay Over Time balance may have a lower interest rate than a Cash Advance balance. Your Account may also have Plan balances which are assessed plan fees. Below is how we generally apply payments in a billing period:

- We apply your payments – up to the Minimum Payment Due – first to the Pay in Full New Balance and then to any plan amounts included in your Minimum Payment Due, then to the Pay Over Time and/or Cash Advance New Balance. When applying a payment to the Pay Over Time and/or Cash Advance balances, we apply it first to the balance with the lowest interest rate and then to balances with higher interest rates.

- After the Minimum Payment Due has been paid, we apply payments first to the Pay Over Time and/or Cash Advance balances with the highest interest rate and then to balances with lower interest rates, and then to any Plan balances.

In most cases, we apply a credit to the same balance as the related charge. We may apply payments and credits within balances, and among balances with the same interest rate, in any order we choose. If you receive a credit for a purchase added to a plan, you must call us at the number on the back of your card to have the credit applied to the plan balance.

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## About your Minimum Payment Due

### How we calculate your Minimum Payment Due

The Minimum Payment Due is the sum of the following on your billing statement:

- A. The Pay In Full New Balance
- B. Any Pay Over Time and/or Cash Advance Minimum Due
- C. Any Plan Payment Due

Above amounts include any past due amounts.

Your Pay Over Time and/or Cash Advance Minimum Due is the highest of:

- (1) \$40
- (2) 2% of the Pay Over Time and/or Cash Advance New Balance
- (3) The total calculated by following these steps: Use the Pay Over Time and/or Cash Advance New Balance minus the Interest charged on the billing statement as the *Amount* to calculate the sum of (a) through (c) below:
  - (a) 1% of the Amount from \$0 through \$20,000
  - (b) 2% of the Amount from \$20,000.01 through \$35,000
  - (c) 5% of the Amount above \$35,000Then continue with the following steps:
  - (d) Divide the sum from steps (a) through (c) by the Amount and round to four decimals
  - (e) Multiply by the Amount
  - (f) Add the Interest charged on the billing statement

Plus any Pay Over Time and/or Cash Advance amount past due.

Your Pay Over Time and/or Cash Advance Minimum Due will not exceed your Pay Over Time and/or Cash Advance New Balance. You may pay more than the Minimum Payment Due, up to your entire outstanding balance, at any time.

**EXAMPLE:** You have: a Pay In Full New Balance of \$200 and a Pay Over Time and/or Cash Advance New Balance of \$30,300, which includes Interest of \$300

- (1) **\$40**
- (2) 2% multiplied by \$30,300 equals **\$606**
- (3) \$30,300 minus \$300 equals \$30,000
  - (a) 1% multiplied by \$20,000 equals \$200
  - (b) 2% multiplied by (\$30,000 minus \$20,000) equals \$200
  - (d) (\$200 plus \$200) divided by \$30,000 equals 0.0133
  - (e) \$30,000 multiplied by 0.0133 equals \$399
  - (f) \$399 plus \$300 equals **\$699**

The highest of (1), (2) or (3) is \$699. The Pay Over Time and/or Cash Advance Minimum Due of \$699 plus the Pay in Full New Balance of \$200 together make up the Minimum Payment Due of **\$899**.

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## About interest charges on Pay Over Time and Cash Advance balances

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### When we charge interest

We charge interest on Pay Over Time Balances as described below. For cash advances, we charge interest from the transaction date. You cannot avoid paying interest on cash advances.

For charges added automatically to a Pay Over Time balance, we charge interest from the transaction date until they are paid. However, we will not charge interest on these charges in a billing period if:

- your Pay Over Time Previous Balance for the billing period is zero, your Account is not past due, and you pay your Amount Due (or Minimum Payment Due if applicable) by the Payment Due Date; or
- you paid the Account Total New Balance on your billing statement (if any) or Adjusted Balance (if you have an active plan created through Plan It) for each of the previous two billing periods in full by the Payment Due Date shown on each of those billing statements.

If you have or had Pay Over Time Select on your account: you are charged interest on purchases added to a Pay Over Time Select balance at your request from the date they are added to a Pay Over Time Select balance until they are paid.

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### How we calculate interest

We calculate interest for a billing period by first figuring the interest on each balance. Balances within the Pay Over Time feature and Cash Advance balances may have different interest rates.

We use the **Average Daily Balance method (including new transactions)** to figure interest charges for each balance. The total interest charged for a billing period is the sum of the interest charged on each balance.

#### Interest

The interest charged for a balance in a billing period, except for variations caused by rounding, equals:

- (1) Average Daily Balance (*ADB*) multiplied by
- (2) Daily Periodic Rate (*DPR*) multiplied by
- (3) number of days the DPR was in effect.

#### ADB

To get the ADB for a balance, we add up its *daily balances*. Then we divide the result by the number of days the DPR for that balance was in effect. If the daily balance is negative, we treat it as zero.

#### DPR

A DPR is 1/365th of an APR, rounded to one ten-thousandth of a percentage point. Your DPRs are shown in *How Rates and Fees Work* in Part 1.

#### **EXAMPLE: Calculating Interest**

Assume that you have a single interest rate of 15.99%, your ADB is \$2,250 and there are 30 days in the billing period.

The *DPR* is 15.99% divided by 365 days = 0.0438%

The *Interest* is \$2,250 multiplied by 0.0438% multiplied by 30 days = \$29.57

#### Daily Balance

For each day a DPR is in effect, we figure the daily balance for each balance by:

- taking the *beginning balance* for the day,
- adding any new charges,
- subtracting any payments or credits; and
- making any appropriate adjustments.

We add a new charge to a daily balance as of its transaction date.

#### Beginning balance

For the first day of a billing period, the beginning balance is the ending balance for the prior billing period, including unpaid interest. For the rest of the billing period, the beginning balance is the previous day's daily balance *plus an amount of interest equal to the previous day's daily balance multiplied by the DPR for that balance*. This method of figuring the beginning balance results in daily compounding of interest.

When an interest rate changes, the new DPR may come into effect during—not just at the beginning of—the billing period. When this happens, we will create a new balance and apply the new DPR to it. To get the beginning balance on the first day for this new balance, we multiply the previous day's daily balance by the old DPR and add the result to that day's daily balance.

#### Other methods

To figure the ADB and interest charges, we may use other formulas or methods that produce equivalent results. Also, we may choose not to charge interest on certain types of charges.

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### Determining the Prime Rate

We use the Prime Rate from the rates section of *The Wall Street Journal*. The Prime Rate for each billing period is the Prime Rate published in *The Wall Street Journal* on the Closing Date of the billing period.

*The Wall Street Journal* may not publish the Prime Rate on that day. If it does not, we will use the Prime Rate from the previous day it was published. If *The Wall Street Journal* is no longer published, we may use the Prime Rate from any other newspaper of general circulation in New York, New York. Or we may choose to use a similar published rate.

If the Prime Rate increases, variable APRs (and corresponding DPRs) will increase. In that case, you may pay more interest and may have a higher Minimum Payment Due. When the Prime Rate changes, the resulting changes to variable APRs take effect as of the first day of the billing period.

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### Other important information

#### Military Lending Act

Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: the costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee (other than certain participation fees for a credit card account).

To listen to this statement, as well as a description of your payment obligation for this Account, call us at **855-531-0379**.

If you are a covered borrower, the Claims Resolution section of this Agreement will not apply to you in connection with this Account. Instead, the *Claims Resolution for Covered Borrowers* section will apply.

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<b>About Additional Cardmembers</b>	<p>At your request, we may issue cards to Additional Cardmembers. They do not have accounts with us but they can use your Account subject to the terms of this Agreement. We may report an Additional Cardmember's use of your Account to credit reporting agencies.</p> <p>You are responsible for all use of your Account by Additional Cardmembers and anyone they allow to use your Account. You must pay for all charges they make.</p> <p>You authorize us to give Additional Cardmembers information about your Account and to discuss it with them.</p>	<p>If you want to cancel an Additional Cardmember's right to use your Account (and cancel their card) you must tell us.</p> <p>If an Annual Membership fee applies for an Additional Card, please refer to the refund policy disclosed in the <i>Closing your Account</i> sub-section of your Cardmember Agreement. If a single Annual Membership fee applies for a group of Additional Cards on your Account, this policy will apply when you cancel the Additional Card on which the fee was assessed. If an Annual Membership fee applies to Additional Cards on your Account, it is shown on page 2 of Part 1 of the Cardmember Agreement.</p>
<b>Converting charges made in a foreign currency</b>	<p>If you make a charge in a foreign currency, AE Exposure Management Ltd. ("AEEML") will convert it into U.S. dollars on the date we or our agents process it, so that we bill you for the charge in U.S. dollars based upon this conversion. Unless a particular rate is required by law, AEEML will choose a conversion rate that is acceptable to us for that date. The rate AEEML uses is no more than the highest official rate published by a government agency or the highest interbank rate AEEML identifies from customary banking sources on the conversion date or the prior business day. This rate may differ from rates that are in effect on the date of your charge. We will bill charges converted by establishments (such as airlines) at the rates they use.</p>	
<b>Changing your billing address</b>	<p>You must notify us immediately if you change the:</p> <ul style="list-style-type: none"> <li>• mailing address where we send billing statements; or</li> <li>• e-mail address to which we send notice that your billing statement is available online.</li> </ul>	<p>If you have more than one account, you need to notify us separately for each account.</p> <p>We may update your billing address if we receive information that it has changed or is incorrect.</p>
<b>Closing your Account</b>	<p>You may close your Account by calling us or writing to us.</p> <p>If an Annual Membership fee applies, we will refund this fee if you notify us that you are voluntarily closing your Account within 30 days of the Closing Date of the billing statement on which that fee appears. For cancellations after this 30 day period, the Annual Membership fee is non-refundable. If an Annual Membership fee applies to your Account, it is shown on page 1 and page 2 of Part 1 of the Cardmember Agreement.</p> <p>If your billing address is in the Commonwealth of Massachusetts at the time you close your account, this policy will not apply to you.</p>	
<b>Cancelling or suspending your Account</b>	<p>We may:</p> <ul style="list-style-type: none"> <li>• cancel your Account,</li> <li>• suspend the ability to make charges,</li> <li>• cancel or suspend any feature on your Account, and</li> <li>• notify merchants that your Account has been cancelled or suspended.</li> </ul> <p>If we do any of these, you must still pay us for all charges under the terms of this Agreement.</p>	<p>We may do any of these things at our discretion, even if you pay on time and your Account is not in default.</p> <p>If your Account is cancelled, you must destroy your cards.</p> <p>We may agree to reinstate your Account after a cancellation. If we do this, we may:</p> <ul style="list-style-type: none"> <li>• reinstate any additional cards issued on your Account,</li> <li>• charge you any applicable annual fees, and</li> <li>• charge you a fee for reinstating the Account.</li> </ul>
<b>About default</b>	<p>We may consider your Account to be in default if:</p> <ul style="list-style-type: none"> <li>• you violate a provision of this Agreement,</li> <li>• you give us false information,</li> <li>• you file for bankruptcy,</li> <li>• you default under another agreement you have with us or an affiliate,</li> <li>• you become incapacitated or die, or</li> <li>• we believe you are unable or unwilling to pay your debts when due.</li> </ul>	<p>If we consider your Account in default, we may, to the extent permitted by federal and applicable state law:</p> <ul style="list-style-type: none"> <li>• suspend your ability to make charges,</li> <li>• cancel or suspend any feature on your Account,</li> <li>• require you to pay more than your Minimum Payment Due immediately, and</li> <li>• require you to pay your Account balance immediately.</li> </ul>
<b>Collection costs</b>	<p>You agree to pay all reasonable costs, including attorneys' fees, that we incur to collect amounts you owe.</p>	
<b>Credit reports</b>	<p>You agree that we will obtain credit reports about you, investigate your ability to pay, and obtain information about you from other sources including information to verify and re-verify your employment and income. And you agree that we will use such information for any purposes (for example, marketing to you or evaluating you for a new account), subject to applicable law.</p> <p>You agree that we will give information about the Account to credit reporting agencies. We will tell a credit reporting agency if you fail to comply with any term of this Agreement. This may have a negative impact on your credit report.</p> <p>If you believe information we have given to a credit reporting agency is incorrect, write to us at: American Express Credit Bureau Unit, P.O. Box 981537, El Paso, TX 79998-1537. When you write to us, tell us the specific information you believe is incorrect.</p>	
<b>Sending you notices</b>	<p>We mail you notices through the U.S. mail, postage prepaid, and address them to you at the latest billing address on our records. Any notice that we send you this way is deemed to be given when deposited in the U.S. mail.</p>	



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**We may contact you****Servicing and Collections**

If we need to contact you to service your account or to collect amounts you owe, you authorize us (and our affiliates, agents and contractors, such as debt collection agencies and service providers) to contact you at any phone number or email address you provide, from which you contact us, or at which we believe we can reach you. We may contact you in any way, such as calling, texting, emailing, sending mobile application push notifications or using any other method of communication permitted by law. We may contact you using an automated dialer or prerecorded messages. We may contact you on a mobile, wireless or similar device, even if you are charged for it.

**Call monitoring**

We may monitor and record any calls between you and us.

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**About insurance products**

We or our affiliates may tell you about insurance and non-insurance products, services or features that may have a fee. One of our affiliates may act on behalf of a provider of these products. The affiliate may be compensated for this. The insurance products are not offered or sold by us or on our behalf. Our affiliates may get additional compensation when AMEX Assurance Company or another affiliate is the insurer or reinsurer. Compensation may influence what products and providers we or our affiliates tell you about.

We may share information about you with our affiliates so they can identify products that may interest you. We may be compensated for this information.

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**How we handle electronic debits from your checking account**

When you pay us by check, you authorize us to electronically deduct the amount from your bank or other asset account. We may process the check electronically by transmitting to your financial institution:

- the amount,
- the routing number,
- the account number, and
- the check serial number.

If we do this, your payment may be deducted from your bank or other asset account on the same day we receive your check. Also, you will not receive that cancelled check with your bank or asset account billing statement.

If we cannot collect the funds electronically, we may issue a draft against your bank or other asset account for the amount of the check.

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**Privacy Act of 1974 notice**

Some federal agencies may accept the card under authority of statute. When you make charges at these agencies, we collect certain charge information. That information may be put to routine uses such as processing, billing and collections. It may also be aggregated for reporting, analysis and marketing use. Other routine uses by agencies may be published in the Federal Register.

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**Changing benefits**

We have the right to add, modify or delete any benefit or service of your Account at our discretion.

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**Assigning the Agreement**

We may sell, transfer or assign this Agreement and your Account. We may do so at any time without notifying you. You may not sell, assign or transfer your Account or any of your obligations under this Agreement.

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**Assigning claims**

If you dispute a charge with a merchant, we may credit the Account for all or part of the disputed charge. If we do so, you assign and transfer to us all rights and claims (excluding tort claims) against the merchant.

You agree that you will not pursue any claim against the merchant for the credited amount. And you must cooperate with us if we decide to do so.

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**We do not waive our rights**

We may choose to delay enforcing or to not exercise rights under this Agreement. If we do this, we do not waive our rights to exercise or enforce them on any other occasion.

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**Governing law**

Utah law and federal law govern this Agreement and your Account. They govern without regard to internal principles of conflicts of law. We are located in Utah. We hold your Account in Utah. We entered into this Agreement with you in Utah.

In addition, if your billing address is in the State of Maryland, to the extent, if any, that Maryland law applies to your account, we elect to offer your card account pursuant to Title 12, Subtitle 9 of the Maryland Commercial Law Article.

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**Notice to Oregon Residents**

Service charges not in excess of those permitted by law will be charged on the outstanding balances from month to month. You may pay more than the Minimum Payment Due, up to your entire outstanding balance, at any time.

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**Notice for residents of Washington State**

In accordance with the Revised Code of Washington Statutes, Section 63.14.167, you are not responsible for payment of interest charges that result solely from a merchant's failure to transmit to us within seven working days a credit for goods or services accepted for return or forgiven if you have notified us of the merchant's delay in posting such credit, or our failure to post such credit to your account within three working days of our receipt of the credit.

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**Claims Resolution**

Most customer concerns can be resolved by calling our Customer Service Department at the number listed on the back of your card. In the event Customer Service is unable to resolve a complaint to your satisfaction, this section explains how claims can be resolved through mediation, arbitration or litigation. It includes an arbitration provision. **You may reject the arbitration provision by sending us written notice within 45 days after your first card purchase. See *Your Right to Reject Arbitration* below.**

For this section, **you** and **us** includes any corporate parents, subsidiaries, affiliates or related persons or entities. **Claim** means any current or future claim, dispute or controversy

relating to your Account(s), this Agreement, or any agreement or relationship you have or had with us, except for the validity, enforceability or scope of the Arbitration provision. **Claim** includes but is not limited to: (1) initial claims, counterclaims, crossclaims and third-party claims; (2) claims based upon contract, tort, fraud, statute, regulation, common law and equity; (3) claims by or against any third party using or providing any product, service or benefit in connection with any account; and (4) claims that arise from or relate to (a) any account created under any of the agreements, or any balances on any such account, (b) advertisements, promotions or statements related to any accounts, goods or services

financed under any accounts or terms of financing, (c) benefits and services related to card membership (including fee-based or free benefit programs, enrollment services and rewards programs) and (d) your application for any account. You may not sell, assign or transfer a claim.

**Sending a Claim Notice**

Before beginning a lawsuit, mediation or arbitration, you and we agree to send a written notice (a **claim notice**) to each party against whom a claim is asserted, in order to provide an opportunity to resolve the claim informally or through mediation. Go to [americanexpress.com/claim](http://americanexpress.com/claim) for a sample claim notice. The claim notice must describe the

claim and state the specific relief demanded. Notice to you may be provided by your billing statement or sent to your billing address. Notice to us must include your name, address and Account number and be sent to American Express ADR c/o CT Corporation System, 28 Liberty Street, New York, New York 10005. If the claim proceeds to arbitration, the amount of any relief demanded in a claim notice will not be disclosed to the arbitrator until after the arbitrator rules.

#### **Mediation**

In mediation, a neutral mediator helps parties resolve a claim. The mediator does not decide the claim but helps parties reach agreement. Before beginning mediation, you or we must first send a claim notice. Within 30 days after sending or receiving a claim notice, you or we may submit the claim to JAMS (1-800-352-5267, [jamsadr.com](http://jamsadr.com)) or the American Arbitration Association ("AAA") (1-800-778-7879, [adr.org](http://adr.org)) for mediation. We will pay the fees of the mediator.

All mediation-related communications are confidential, inadmissible in court and not subject to discovery.

All applicable statutes of limitation will be tolled from the date you or we send the claim notice until termination of the mediation. Either you or we may terminate the mediation at any time. The submission or failure to submit a claim to mediation will not affect your or our right to elect arbitration.

#### **Arbitration**

You or we may elect to resolve any claim by individual arbitration. Claims are decided by a neutral arbitrator.

**If arbitration is chosen by any party, neither you nor we will have the right to litigate that claim in court or have a jury trial on that claim. Further, you and we will not have the right to participate in a representative capacity or as a member of any class pertaining to any claim subject to arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's authority is limited to claims between you and us alone. Claims may not be joined or consolidated unless you and we agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights you or we would have in court may also not be available in arbitration.**

#### **Initiating Arbitration**

Before beginning arbitration, you or we must first send a claim notice. Claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect when the claim is filed, except where those rules conflict with this Agreement. If we choose the organization, you may select the other within 30 days after receiving notice of our selection.

Contact JAMS or AAA to begin an arbitration or for other information. Claims also may be referred to another arbitration organization if you and we agree in writing or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. sec. 1-16 (**FAA**).

We will not elect arbitration for any claim you file in small claims court, so long as the claim is individual and pending only in that court.

You or we may otherwise elect to arbitrate any claim at any time unless it has been filed in court and trial has begun or final judgment has been entered. Either you or we may delay enforcing or not exercise rights under this Arbitration provision, including the right to arbitrate a claim, without waiving the right to exercise or enforce those rights.

#### **Limitations on Arbitration**

**If either party elects to resolve a claim by arbitration, that claim will be arbitrated on an individual basis. There will be no right or authority for any claims to be arbitrated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of the general public, other cardmembers or other persons similarly situated.**

Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

#### **Arbitration Procedures**

This Arbitration provision is governed by the FAA. The arbitrator will apply applicable substantive law, statutes of limitations and privileges. The arbitrator will not apply any federal or state rules of civil procedure or evidence in matters relating to evidence or discovery. Subject to the *Limitations on Arbitration*, the arbitrator may otherwise award any relief available in court. You and we agree that the arbitration will be confidential. You and we agree that we will not disclose the content of the arbitration proceeding or its outcome to anyone, but you or we may notify any government authority of the claim as permitted or required by law. If your claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents, through a telephonic hearing, or by an in-person hearing. At any party's request, the arbitrator will provide a brief written explanation of the award. The arbitrator's award will be final and binding, subject to each party's right to appeal as stated in this section and/or to challenge or appeal an arbitration award pursuant to the FAA. To initiate an appeal, a party must notify the arbitration organization and all parties in writing within 35 days after the arbitrator's award is issued. The arbitration organization will appoint a three-arbitrator panel to decide anew, by majority vote based on written submissions, any aspect of the decision objected to. The appeal will otherwise proceed

pursuant to the arbitration organization's appellate rules. Judgment upon any award may be entered in any court having jurisdiction. At your election, arbitration hearings will take place in the federal judicial district of your residence.

#### **Arbitration Fees and Costs**

You will be responsible for paying your share of any **arbitration fees** (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a claim in court. We will be responsible for any additional arbitration fees. At your written request, we will consider in good faith making a temporary advance of your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

#### **Additional Arbitration Awards**

If the arbitrator rules in your favor for an amount greater than any final offer we made before the final hearing in arbitration, the arbitrator's award will include:

(1) any money to which you are entitled, but in no case less than \$5,000; and (2) any reasonable attorneys' fees, costs and expert and other witness fees.

#### **Your Right to Reject Arbitration**

You may reject this Arbitration provision by sending a written **rejection notice** to us at: American Express, P.O. Box 981556, El Paso, TX 79998. Go to [americanexpress.com/reject](http://americanexpress.com/reject) for a sample rejection notice. Your rejection notice must be mailed within 45 days after your first card purchase. Your rejection notice must state that you reject the Arbitration provision and include your name, address, Account number and personal signature. No one else may sign the rejection notice. If your rejection notice complies with these requirements, this Arbitration provision and any other arbitration provisions in the cardmember agreements for any other currently open American Express accounts you have will not apply to you, except for Corporate Card accounts and any claims subject to pending litigation or arbitration at the time you send your rejection notice. Rejection of this Arbitration provision will not affect your other rights or responsibilities under this Claims Resolution section or the Agreement. Rejecting this Arbitration provision will not affect your ability to use your card or any other benefit, product or service you may have with your Account.

#### **Continuation**

This section will survive termination of your Account, voluntary payment of your Account balance, any legal proceeding to collect a debt, any bankruptcy and any sale of your Account (in the case of a sale, its terms will apply to the buyer of your Account). If any portion of this Claims Resolution section, except as otherwise provided in the *Limitations on Arbitration* subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Claims Resolution section.



# Claims Resolution for Covered Borrowers

Most customer concerns can be resolved by calling our Customer Service Department at the number listed on the back of your Card. In the event Customer Service is unable to resolve a complaint to your satisfaction, this section explains how claims can be resolved through litigation, non-binding mediation or, at your election, arbitration. You are not required to resolve any claims by mediation and arbitration. For this section, **you** and **us** includes any corporate parents, subsidiaries, affiliates or related persons or entities. **Claim** means any current or future claim, dispute or controversy relating to your Card account, this Agreement, or any agreement or relationship you have or had with us, except for the validity, enforceability or scope of the Arbitration provision. **Claim** includes but is not limited to: (1) initial claims, counterclaims, cross-claims and third-party claims; (2) claims based upon contract, tort, fraud, statute, regulation, common law and equity; (3) claims by or against any third party using or providing any product, service or benefit in connection with any account; and (4) claims that arise from or relate to (a) any account created under any of the agreements or any balances on any such account, (b) advertisements, promotions or statements related to any accounts, goods or services financed under any accounts or terms of financing, (c) benefits and services related to Card membership (including fee-based or free benefit programs, enrollment services and rewards programs) and (d) your application for any account. You may not sell, assign or transfer a claim.

## **Sending a Claim Notice**

Before beginning a lawsuit, arbitration or non-binding mediation, you may send a written notice (a **claim notice**) to us. Go to [americanexpress.com/claim](http://americanexpress.com/claim) for a sample claim notice. The claim notice should describe the claim and state the specific relief demanded. We may also request that we resolve a claim by mediation or arbitration, but you are not required to accept our request. We may include our request with your billing statement or mail it to your home address. Notice to us must include your name, address and Account number and be sent to American Express ADR c/o CT Corporation System, 28 Liberty Street, New York, New York 10005. If the claim proceeds to litigation, mediation or arbitration, the amount of any relief demanded in a claim notice will not be disclosed. **You are not required to resolve your claim through mediation or arbitration. You may decline our request to resolve a claim through mediation or arbitration. You may elect to resolve your claim through litigation.**

## **Mediation**

If you elect to resolve your claim through mediation, a neutral mediator will help resolve the claim. The mediator does not decide the claim but helps parties reach agreement. Before beginning mediation, you or we must first send a claim notice. Within 30 days after sending or receiving a claim notice, you or we may submit the claim to JAMS (1-800-352-5267, [jamsadr.com](http://jamsadr.com)) or the American Arbitration Association ("AAA") (1-800-778-7879, [adr.org](http://adr.org)) for mediation. We will pay the fees of the mediator. All mediation-related communications are confidential, inadmissible in court and not subject to discovery. All applicable

statutes of limitation will be tolled from the date you or we send the claim notice until termination of the mediation. Either you or we may terminate the mediation at any time. The submission or failure to submit a claim to mediation will not affect your or our right to elect litigation or arbitration. **The outcome of mediation proceedings is non-binding. You may proceed to litigation or arbitration regardless of the outcome of mediation.**

## **Arbitration**

You may elect, but are not required, to resolve any claim by individual arbitration. We may also request to resolve any claim by individual arbitration, but you are not required to accept our request. Claims are decided by a neutral arbitrator.

**If you elect or agree to resolve a claim through arbitration, your or our right to litigate that claim in court or have a jury trial on that claim may be limited. Further, you and we may not have the right to participate in a representative capacity or as a member of any class pertaining to any claim subject to arbitration. Arbitration procedures are generally simpler than the rules that apply in court, and discovery is more limited. The arbitrator's authority is limited to claims between you and us alone. Claims may not be joined or consolidated unless you and we agree in writing. An arbitration award and any judgment confirming it will apply only to the specific case and cannot be used in any other case except to enforce the award. The arbitrator's decisions are as enforceable as any court order and are subject to very limited review by a court. Except as set forth below, the arbitrator's decision will be final and binding. Other rights you or we would have in court may also not be available in arbitration.**

## **Initiating Arbitration**

If you and we agree to proceed to arbitration, claims will be referred to either JAMS or AAA, as selected by the party electing arbitration. Claims will be resolved pursuant to this Arbitration provision and the selected organization's rules in effect when the claim is filed, except where those rules conflict with this Agreement. If we choose the organization, you may select the other within 30 days after receiving notice of our selection. Contact JAMS or AAA to begin an arbitration or for other information.

Claims also may be referred to another arbitration organization if you and we agree in writing or to an arbitrator appointed pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. sec. 1-16 (**FAA**). We will not request arbitration for any claim you file in small claims court, so long as the claim is individual and pending only in that court. You may otherwise elect to arbitrate any claim at any time unless it has been filed in court and trial has begun or final judgment has been entered.

## **Limitations on Arbitration**

**If the parties agree to resolve a claim by arbitration, that claim will be arbitrated on an individual basis pursuant to that agreement, and the agreement would not allow claims to be arbitrated on a class**

**action basis or on bases involving claims brought in a purported representative capacity on behalf of the general public, other Cardmembers, or other persons similarly situated.**

Notwithstanding any other provision and without waiving the right to appeal such decision, if any portion of these *Limitations on Arbitration* provisions is deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) will not apply.

## **Arbitration Procedures**

This Arbitration provision is governed by the FAA. The arbitrator will apply applicable substantive law, statutes of limitations and privileges. The arbitrator will not apply any federal or state rules of civil procedure or evidence in matters relating to evidence or discovery. Subject to the *Limitations on Arbitration* provisions, the arbitrator may otherwise award any relief available in court. You and we agree that the arbitration will be confidential. You and we agree that we will not disclose the content of the arbitration proceeding or its outcome to anyone, but you or we may notify any government authority of the claim as permitted or required by law.

If your claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents, through a telephonic hearing, or by an in person hearing. At any party's request, the arbitrator will provide a brief written explanation of the award. The arbitrator's award will be final and binding, subject to each party's right to appeal as stated in this section and/or to challenge or appeal an arbitration award pursuant to the FAA. To initiate an appeal, a party must notify the arbitration organization and all parties in writing within 35 days after the arbitrator's award is issued. The arbitration organization will appoint a three-arbitrator panel to decide anew, by majority vote based on written submissions, any aspect of the decision objected to. The appeal will otherwise proceed pursuant to the arbitration organization's appellate rules. Judgment upon any award may be entered in any court having jurisdiction. At your election, arbitration hearings will take place in the federal judicial district of your residence.

## **Arbitration Fees and Costs**

You will be responsible for paying your share of any **arbitration fees** (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a claim in court. We will be responsible for any additional arbitration fees. At your written request, we will consider in good faith making a temporary advance of your share of any arbitration fees, or paying for the reasonable fees of an expert appointed by the arbitrator for good cause.

## **Additional Arbitration Awards**

If the arbitrator rules in your favor for an amount greater than any final offer we made before the final hearing in arbitration, the arbitrator's award will include:

- (1) any money to which you are entitled, but in no case less than \$5,000; and
- (2) any reasonable attorneys' fees, costs and expert and other witness fees.

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**Continuation**

This section will survive termination of your Account, voluntary payment of your Account balance, any legal proceeding to collect a debt, any bankruptcy and any sale of your Account

(in the case of a sale, its terms will apply to the buyer of your Account). If any portion of this Claims Resolution section, except as otherwise provided in the *Limitations on Arbitration*

subsection, is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Claims Resolution section.

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