

Cardmember Agreement: Part 1 of 2

As of: 04/01/2020

Business GoldCard

Issuer: American Express National Bank

Rates and Fees Table

Interest Rates on Pay Over Time Balance	
Annual Percentage Rate (APR)	Prime Rate + 10.99% - Prime + 18.99% This is a variable APR. See <i>Explanation of Variable Rates</i> below.
Penalty APR and When it Applies	Prime Rate + 25.99% This is a variable APR. See <i>Explanation of Variable Rates</i> below. This APR will apply to all balances on your account if you: 1) make a payment that is returned; 2) make 2 late payments in 12 months; or 3) any minimum amount due remains unpaid for 2 billing periods in a row. How Long Will the Penalty APR Apply? If the penalty APR is applied for any of these reasons, it will apply, subject to applicable law, for at least 12 billing periods in a row. In addition, the penalty APR will continue to apply until after you have made timely payments with no returned payments for 12 billing periods in a row.
How to Avoid Paying Interest	Your due date is at least 25 days after the close of each billing period. For transactions added automatically to a Pay Over Time balance, we will charge interest beginning on the date of each transaction. We will not charge you interest if you pay your entire balance by the due date each month.
Fees	
Annual Membership Fee	\$295
Transaction Fees	
• Foreign Transaction	None
Penalty Fees	
• Late Payment	\$39 or 2.99% of any past due Pay in Full amount, whichever is greater.
• Returned Payment	\$39

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 balances		See More about Pay Over Time in Part 2 of this Agreement
When the penalty APR will apply	The penalty APR applies to Pay Over Time balances if: • you do not pay at least the Minimum Payment Due by the Closing Date of the billing period in which it is due 2 times in 12 billing periods, • you do not pay at least the Minimum Payment Due by the Closing Date of the billing period in which it is due and you still do not pay it by the Closing Date of the next billing period, or • your payment is returned by your bank.	
How long the penalty APR will apply	The penalty APR will apply until after you have made timely payments, with no returned payments for 12 billing periods in a row.	
Fees		
Annual Membership	This fee is on the <i>Rates and Fees Table</i> on page 1 of Part 1. We will charge \$50 for the first Additional Business Gold Card and no annual membership fee for each Additional Business Gold Card thereafter. The maximum number of Additional Cards on an Account is 99.	
Late Payment	\$39 if you do not pay the Amount Due (Minimum Payment Due if you have a Pay Over Time balance) on a billing statement before the next Closing Date. For each following Closing Date that an amount past due remains unpaid, we may charge a fee of the greater of \$39 or 2.99% of any past due Pay In Full amounts. Your late fee will not exceed the Amount Due or any limit established by applicable law. Paying late may also result in a penalty APR. See <i>When the penalty APR will apply</i> above.	
Returned Payment	\$39 if your payment is returned unpaid the first time we present it to your bank. A returned payment may also result in a penalty APR for Pay Over Time balances. See <i>When the penalty APR will apply</i> above.	
Returned Check	\$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.	
Foreign Transaction	None	
How Pay Over Time Works		
About Pay Over Time	Pay Over Time allows you to pay eligible charges on your Account over time, with interest. At Account opening, the Pay Over Time feature on your Account is set to On. That means we will automatically place eligible purchases into your Pay Over Time balance. The feature allows you to alternate between On and Off settings. When turned Off, no new charges will be included in your Pay Over Time balance. You can change this setting by calling the number on the back of your Card.	
See More About Pay Over Time in Part 2 of this Agreement for important additional information about the Pay Over Time feature.	If you transfer to a new Card product with the same Account number at any time, you will remain eligible for Pay Over Time, and your current setting at the time of transfer will remain in effect on your new Card.	

Part 1, Part 2 and any supplements or amendments make up your Cardmember Agreement.

How Your American Express Account Works

Introduction

About your Cardmember Agreement	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 or an Additional Cardmember, as defined below, use the Account (or sign or keep a card), you agree to the terms of the Agreement.
Words we use in the Agreement	We, us, and our mean the issuer shown on page 1 of Part 1. Except as provided below, Basic Cardmember means the person who applied for this Account or to whom we address billing statements. Company means the business for which the Account is established. You and your mean the Basic Cardmember and the Company. You agree, jointly and severally, to be bound by the terms of this Agreement.	Card means any card or other device that we issue to access your Account. A charge is any amount added to your Account, such as purchases and fees. A purchase is a charge for goods or services. To pay 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).
Additional Cardmembers	At your request, we may issue cards to <i>Additional Cardmembers</i> . They do not have accounts with us but they can use your Account subject to the terms of this Agreement. You are responsible for all use of the Account by Additional Cardmembers and anyone they allow to use the Account. You must pay for all charges they make. You must share this agreement with all Additional Cardmembers. You must tell Additional Cardmembers that: • we may obtain, provide and use information about them. • their use of the Account is subject to this Agreement.	You authorize us to give Additional Cardmembers information about the Account and to discuss it with them. If you want to cancel an Additional Cardmember's right to use your Account (and cancel their card) you must tell us. We may refer to <i>Additional Card(s)</i> and <i>Additional Cardmember(s)</i> as <i>Employee Card(s)</i> and <i>Employee Cardmember(s)</i> . All terms and conditions that apply to Additional Cards also apply to Employee Cards.
Replacement Basic Cardmember	You must tell us if the Basic Cardmember is no longer an employee or officer of the Company or does not want to be the Basic Cardmember. In that case, you must either close the Account, or propose another person to replace the Basic Cardmember. If you propose another person to replace the Basic Cardmember, that person must agree to assume the	obligations and liabilities of the Basic Cardmember under this Agreement, as of the date that such person replaces the Basic Cardmember. That person is subject to our approval. You agree that the Basic Cardmember remains the Basic Cardmember until we approve a replacement or the Account is closed.
About using your card		
Using the card	You may use the card to make purchases. You may also use the card at an ATM to get cash from a checking account you designate. Each Cardmember acknowledges and agrees that cards are intended to be used for the Company's commercial or business purposes. We decide whether to approve a charge 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. You may arrange for certain merchants and third parties to store your card number and expiration date, so that, for example:	• the merchant may charge your account at regular intervals; or • you may make charges using that stored card information. 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. 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.
Promise to pay	You promise to pay all charges, including: • charges you make, even if you do not present your card or sign for the transaction, • charges that other people make, whether or not you or an Additional Cardmember intend to let them use the Account, subject to applicable law, and • charges that Additional Cardmembers make or permit others to make.	

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.
More about Pay Over Time	The Pay Over Time option enables you to pay eligible purchases of \$100 or more over time, with interest. Certain charges are not eligible for Pay Over Time, such as cash and similar transactions. We may change which charges are eligible to be placed into your Pay Over Time balance. On each statement, your Account Summary will show your Pay Over Time New Balance, which is the amount that is eligible to be paid over time (see When you must pay in Part 2). We apply charges to your Pay Over Time balance in accordance with the On/Off setting in effect at 8 p.m. Eastern Time on the transaction date provided by the merchant. The transaction date provided by the merchant may differ from the date you made the charge 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. We assign a Pay Over Time limit to your Account. We will not place any charge into your Pay Over Time balance if it would cause your Pay Over Time balance to go over your Pay Over Time Limit. Your Pay Over Time Limit is shown on page 1 of Part 1 and on each statement. We may increase or reduce your Pay Over Time Limit. We may do so even if you pay on time and your Account is not in default. We will tell you if we change that amount. You must pay in full all charges that are not placed into a Pay Over Time balance.	
About your payments		
When you must pay	Payment of the New Balance is due upon receipt of your statement. If a statement includes a Pay Over Time balance, it will show a Minimum Payment Due. In this case, you must pay at least the Minimum Payment Due by the Payment Due Date. Each 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.	Each statement also shows a Closing Date. The Closing Date is the last day of the billing period covered by the statement. Each Closing Date is about 30 days after the previous statement's Closing Date. Each statement also shows a Next Closing Date.
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 the billing statement, and • write the 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 the Account as of the day we receive it, as long as we receive it by the time disclosed in	the 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 the Account. This may result in late fees and additional interest charges (see <i>How Rates and Fees Work</i> on page 2 of Part 1). If we decide to accept a payment made in a foreign currency, we will choose a rate to convert your payment into U.S. dollars, unless the law requires us to use a particular rate. 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.
How we apply payments and credits	If a statement includes a Pay Over Time balance, it will show a Minimum Payment Due. The Minimum Payment Due is the Pay In Full New Balance plus the Pay Over Time Minimum Due. If you have a Pay Over Time balance, we generally apply payments--up to the Minimum Payment Due--first to the Pay Over Time Minimum Due and then to the Pay In Full New Balance. When applying a payment to the Pay Over Time Minimum Due, 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 to the remaining Pay Over Time balance. When we do this, we apply payments first to the balance with the highest interest rate and then to balances with lower interest rates. 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.	

About your Minimum Payment Due

How we calculate Your Minimum Payment Due

The Minimum Payment Due is the Pay in Full New Balance plus any Pay Over Time Minimum Due. To calculate the Pay Over Time Minimum Due for each statement, we take the *higher* of (1) or (2) below, then we round that number to the nearest dollar and add any Pay Over Time amount past due:

- (1) \$35, or
- (2) The amount calculated using the following steps;
 - I. Subtract the interest charged on the statement from the Pay Over Time New Balance. This gives you a Modified Pay Over Time Balance.
 - II. Add the following together:
 - 1% of the portion of the Modified Pay Over Time Balance less than or equal to \$50,000) and
 - 5% of the portion of the Modified Pay Over Time Balance greater than \$50,000 and less than or equal to \$100,000 and
 - 10% of the portion of the Modified Pay Over Time Balance greater than \$100,000
 - III. Divide the sum from step II by the Modified Pay Over Time Balance and round to four decimals (ex 0.1234)
 - IV. Multiply the result from step III and the Modified Pay Over Time Balance.
 - V. Add the interest charged on the statement to the result from step IV.

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

EXAMPLE: Assume that you have a Pay Over Time New Balance of \$75,000, interest of \$749.59, no amounts past due and a \$1,000 Pay In Full New Balance.

- (1) \$35, or
- (2) Calculate the following:
 - I. $\$75,000 - \$749.59 = \$74,250.41$
 - II. Add the following together:
 - 1% multiplied by \$50,000 = \$500
 - 5% multiplied by $(\$74,250.41 - \$50,000) = \$1,212.52$ $\$500 + \$1,212.52 = \$1,712.52$
 - III. $\$1,712.52 \text{ divided by } \$74,250.41 = 0.02306411$
Round to four decimals = 0.0231
 - IV. $0.0231 \text{ multiplied by } \$74,250.41 = \$1,715.18$
 - V. $\$749.59 + \$1,715.18 = \$2,464.77$

The higher of (1) or (2) is \$2,464.77, which rounds to \$2,465.00. The Pay Over Time Minimum Payment Due of \$2,465.00 plus the Pay in Full New Balance of \$1,000 together make up the Minimum Payment Due of \$3,465.00.

About interest charges on Pay Over Time balances

When we charge interest

We charge interest on transactions placed in the Pay Over Time Balance beginning on their transaction date until they are paid. However, we will not charge interest on these transactions during a billing period if:

- your *Pay Over Time Previous Balance* for the billing period is zero; or
- you paid the *Account Total Previous Balance* for each of the previous two billing periods in full by the closing date shown on their respective statements.

How we calculate interest

We calculate interest for a billing period by first calculating interest on each Pay Over Time balance. Pay Over Time balances may have different interest rates.

We use the **Average Daily Balance method (including new transactions)** to calculate 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:

- Average Daily Balance (ADB) $\times$
- Daily Periodic Rate (DPR) $\times$
- 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 tenthousandth of a percentage point. Your DPRs are shown in *How Rates, Fees and Pay Over Time Work* on page 2 of 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 $15.99\% \div 365 \text{ days} = 0.0438\%$

The Interest is $\$2,250 \times 0.0438\% \times 30 \text{ days} = \29.57

Daily Balance

For each day a DPR is in effect, we calculate 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 calculating 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 calculate 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.

Determining the Prime Rate	We use the Prime Rate from the rates section of <i>The Wall Street Journal</i> . The Prime Rate for each billing period is the Prime Rate published in <i>The Wall Street Journal</i> on the Closing Date of the billing period. <i>The Wall Street Journal</i> 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 <i>The Wall Street Journal</i> 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.	
Other important information		
Changing the Agreement	We may change the terms of, or add new terms to, this Agreement. We may apply any changed or new terms to any existing and future balances on the Account, subject to applicable law.	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.
Converting charges made in a foreign currency	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.	
Changing your billing address	You must notify us immediately if you change the: • mailing address, email address, telephone numbers, or fax numbers that we use to send you billing statements, notices or other communications. • legal entity of the Company. • tax identification number.	
Closing your Account	You may instruct us to close the Account by calling us or writing to us. The Basic Cardmember agrees to inform the Company prior to instructing us to do so. The Basic Cardmember and the Company remain jointly and severally liable for all Charges made on the Account. 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. If your billing address is in the Commonwealth of Massachusetts at the time you close your account, this policy will not apply to you.
Cancelling or suspending your Account	We may: • cancel your Account, • suspend the ability to make charges, • cancel or suspend any feature on your Account, and • notify merchants that your Account has been cancelled or suspended. If we do any of these, you must still pay us for all charges under the terms of this Agreement.	We may do any of these things at our discretion, even if you pay on time and your Account is not in default. If your Account is cancelled, you must destroy your cards. We may agree to reinstate your Account after a cancellation. If we do this, we may: • reinstate any additional cards issued on your Account, • charge you any applicable annual fees, and • charge you a fee for reinstating the Account.
About default	We may consider your Account to be in default if: • you violate a provision of this Agreement, • you give us false information, • you file for bankruptcy, • you default under another agreement you have with us or an affiliate, • you become incapacitated or die, or • we believe you are unable or unwilling to pay your debts when due.	If we consider your Account in default, we may: • suspend your ability to make charges, • cancel or suspend any feature on your Account, • cancel the Account and require you to pay the Account balance immediately. • require you to pay more than your Minimum Payment Due immediately.
Collection costs	You agree to pay all reasonable costs, including attorneys' fees, that we incur to collect amounts you owe or to protect ourselves from loss, harm or risk relating to default.	

Credit reports	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. 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. 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.	
Sending you notices	We send you notices through the U.S. mail (postage prepaid) or electronically using the information in our records. Any notice we send you is deemed given when deposited in the U.S. mail or when sent electronically. Additionally, we may send notices and information to Additional Cardmembers at their request.	
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.	
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.	
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.
Privacy Act of 1974 notice	Some federal agencies may accept the card under authority of statute. When you or Additional Cardmembers 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.	
Changing the benefits	We have the right to add, modify or delete any benefit, service, or feature of the Account at our discretion.	
Assigning the Agreement	We may sell, transfer or assign this Agreement and the Account. We may do so at any time without notifying you. You may not sell, assign or transfer the Account or any of your obligations under this Agreement.	
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 and any Additional Cardmembers agree not to pursue any claim against the merchant for the credited amount. And you and any Additional Cardmembers must cooperate with us if we decide to do so.	
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.	
Governing law	Utah law and federal law govern this Agreement and the Account. They govern without regard to internal principles of conflicts of law. We are located in Utah. We hold the Account in Utah. We entered into this Agreement with you in Utah.	
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.	
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.	

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 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, 111 8th Ave., NY, NY 10011. 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) or the American Arbitration Association ("AAA") (1-800-778-7879, 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. §§ 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 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.

