Cardmember Agreement: Part 1 of 2

As of: 9/30/2012

Delta SkyMiles® Credit Card
Issuer: American Express Bank, FSB

Rates and Fees Table

Interest Rates	
Annual Percentage Rate (APR) for Purchases	**Prime Rate + 11.99% to Prime Rate + 15.99%** This is a variable APR. *See Explanation of Variable Rates below.*
APR for Balance Transfers	**Prime Rate + 11.99% to Prime Rate + 15.99%** for any balance transfer requests we may accept. This is a variable APR. *See Explanation of Variable Rates below.*
APR for Cash Advances	**Prime Rate + 21.99**% This is a variable APR. *See Explanation of Variable Rates below.*
Penalty APR and When it Applies	**Prime Rate + 23.99%** This is a variable APR. *See Explanation of Variable Rates below.* This APR will apply to your account if you: 1) make one or more late payments; or 2) make a payment that is returned. **How Long Will the Penalty APR Apply?** 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.
Paying Interest	Your due date is at least 25 days after the close of each billing period. We will not charge you interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
For Credit Card Tips from the Consumer Financial Protection Bureau	**To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore**
Fees	
Annual Membership Fee	**$55**
Transaction Fees • Balance Transfer • Cash Advance • Foreign Transaction	 Either **$5** or **3%** of the amount of each transfer, whichever is greater. Either **$5** or **3%** of the amount of each cash advance, whichever is greater. **2.7%** of each transaction after conversion to US dollars.
Penalty Fees • Late Payment • Returned Payment • Overlimit	 Up to **$35** Up to **$35** **None**

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.

How Rates and Fees Work

Rates		
Penalty APR for new transactions	The penalty APR applies to new transactions if: • you do not pay at least the Minimum Payment Due by the Closing Date of the billing period in which it is due, • you do not pay at least the Minimum Payment Due by the Payment Due Date 2 times in 12 billing periods, or • your payment is returned by your bank.	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. 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.
Penalty APR for existing balances	If you do not pay at least the Minimum Payment Due within 60 days after its Payment Due Date, we can apply the penalty APR to those balances it does not already apply to. After you pay on time for 6 billing periods in a row, the penalty APR will no longer apply to those balances (but it may still apply to other balances as described above).	

Fees	
We add fees to a purchase balance, unless we tell you otherwise.	
Annual Membership	This fee is on the *Rates and Fees Table* on page 1 of Part 1.
Late Payment	Up to $35. If we do not receive the Minimum Payment Due by its Payment Due Date, the fee is $25. If this happens again within the next 6 billing periods, the fee is $35. However, the late fee will not exceed the Minimum Payment Due. Paying late may also result in a Penalty APR. See *Penalty APR for new transactions* and *Penalty APR for existing balances* above.
Returned Payment	Up to $35. If you make a payment that is returned unpaid the first time we present it to your bank, the fee is $25. If you do this again within the same billing period or the next 6 billing periods, the fee is $35. However, the returned payment fee will not exceed the applicable Minimum Payment Due. A returned payment may also result in a Penalty APR. See *Penalty APR for new transactions* 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.
Overlimit	None. See *Credit limit and cash advance limit* in Part 2.
Statement Copy	$5 for each statement you request, except for the 3 most recent billing periods.
Account Re-opening	$25 if your Account is cancelled, you ask us to re-open it, and we do so.
Balance Transfer	3% of the transaction, with a minimum of $5. A different fee may apply if stated in a promotional offer or at the time of a transaction. This fee is a finance charge. We will add it to the same balance as the balance transfer.
Cash Advance	3% of the withdrawal and other services you obtain (including any fee charged by the ATM operator), with a minimum of $5. We will add this fee to the cash advance balance.
Foreign Transaction	2.7% of the converted U.S. dollar amount. This fee is a finance charge. See Part 2 for *Converting charges made in a foreign currency.*

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

Supplement to the Cardmember Agreement

How Your Reward Program Works

Delta SkyMiles®

Types of Card Accounts	You can receive Delta SkyMiles *(miles)* when you make purchases with your Classic or Gold Delta SkyMiles Credit Card from American Express *(Card Account)*.	
How you receive miles	You receive 1 mile for each $1 of eligible purchases on your Card Account. *Eligible purchases* are purchases for goods and services minus returns and other credits.	Eligible purchases do NOT include: • fees or interest charges, • balance transfers, • cash advances, • purchases of traveler's checks, • purchases or reloading of prepaid cards, or • purchases of any cash equivalents.
How you receive additional miles	You receive 1 additional mile for each $1 of eligible purchases on your Card Account for the following purchases submitted to us using a Delta merchant code: • air travel on a Delta flight. • air travel on a Delta partner flight with a DL flight code.	• Delta vacation packages. • other Delta services. You will NOT receive additional miles for: • purchases of air travel on a Delta flight that are part of all-inclusive air or sea tour packages.
When we transfer miles	We transfer the miles you receive to your Delta SkyMiles account after the end of the billing period in which you received them.	
When you will forfeit miles	If the Minimum Payment Due is not paid by the Closing Date of the billing period in which it is due, you will forfeit the miles you received for eligible purchases during that billing period. You may reinstate those miles within the next 24 billing periods if your Card Account is not past due and you pay a $35 fee.	
Restriction on Welcome Bonus Miles	You may receive Welcome Bonus Miles for opening a Card Account. If you open another Card Account with a higher Welcome Bonus Miles award, you will only get the difference between the first and second awards.	
Other things you should know about this program	You will receive miles only for eligible purchases intended for personal, family or household use. We may change the terms of this reward program at our discretion. If you violate or abuse this reward program, you may forfeit some or all of your miles. We are not responsible for miles after they are credited to your SkyMiles account. We are also not responsible for the actions of Delta on your SkyMiles account.	Miles are subject to the Delta SkyMiles Membership Guide and Program Rules. You should refer to that document for details on: • how to redeem your miles, • Delta's right to change its program terms, and • other conditions that may apply to Delta's program.

Cardmember Agreement: Part 2 of 2

How Your American Express Account Works

Introduction

About your Cardmember Agreement

This document together with Part 1 make up the Cardmember Agreement *(Agreement)* for the *Account* 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.

Changing the Agreement

We may change this Agreement, subject to applicable law. We may do this in response to the business, legal or competitive environment.

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.

Words we use in the Agreement

We, ***us***, and ***our*** mean the issuer shown on page 1 of Part 1. ***You*** and ***your*** 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 ***Basic Cardmember***. You may request a card for an ***Additional Cardmember*** (see *About Additional Cardmembers* on page 4 of Part 2).

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, cash advances, balance transfers, fees and interest charges. A ***purchase*** is a charge for goods or services. A ***cash advance*** is a charge to get cash or cash equivalents. A ***balance transfer*** is a charge to pay an amount you owe on another credit card account.

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 *About your payments* on page 2 of Part 2).

About using your card

Using the card

You may use the card to make purchases. At our discretion, we may permit you to make cash advances or balance transfers. You cannot transfer balances from any other account issued by us or our affiliates.

You may arrange for certain merchants to charge your Account at regular intervals. We may (but are not required to) tell these merchants about your Account status or changes to your card number or expiration date. You must notify the merchants directly if you want them to stop charging your Account.

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 if you let them use your Account, and
- charges that Additional Cardmembers make or permit others to make.

Credit limit and cash advance limit

We assign a *Credit Limit* to your Account. We may make part of your Credit Limit available for cash advances (*Cash Advance Limit).* There may also be a limit on the amount you can withdraw from ATMs in a given period. The Credit Limit and Cash Advance Limit are shown on page 1 of Part 1 and on each billing statement.

We may increase or reduce your Credit Limit and Cash Advance Limit. We may do so even if you pay on time and your Account is not in default.

You agree to manage your Account so that:

- your Account balance (including fees and interest) is not more than your Credit Limit, and
- your cash advance balance (including fees and interest) is not more than your Cash Advance Limit.

We may approve charges that cause your Account balance to go over your Credit Limit. If we do this, we will not charge an overlimit fee. If we ask you to promptly pay the amount of your Account balance above your Credit Limit, you agree to do so.

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 the charge would not cause you to go over your Credit Limit and 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.

About your payments

When you must pay

You must pay at least the Minimum Payment Due by the Payment Due Date. The Minimum Payment Due and Payment Due Date are shown on each billing statement.

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. For your payment to be considered on time, we must receive at least the Minimum Payment Due in such time and manner by the Payment Due Date shown on your billing statement.

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.

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 *How Rates and Fees Work* 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

Your Account may have balances with different interest rates. For example, purchases may have a lower interest rate than cash advances. If your Account has balances with different interest rates, here is how we generally apply payments in a billing period:

- We apply your payments, up to the Minimum Payment Due, 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 your payments 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. For example, we apply a credit for a purchase to the purchase balance. 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

To calculate the Minimum Payment Due for each statement, we start with the *higher* of:

(1) interest charged on the statement plus 1% of the New Balance (excluding any overlimit amount, penalty fees and interest on the statement); or
(2) $35.

Then we add any penalty fees shown on the statement and 1/24th of any overlimit amount, round to the nearest dollar, and add any amount past due.

Your Minimum Payment Due may also include any additional amount specified in a promotional offer. Your Minimum Payment Due will not exceed your New Balance. You may pay more than the Minimum Payment Due, up to your New Balance, at any time.

EXAMPLE: *Assume that your New Balance is $3,000, interest is $29.57, and you have no overlimit amount, penalty fees, or amounts past due.*

(1)*$29.57 + 1% x ($3,000 - $29.57) = $59.27*
(2) *$35*

The higher of (1) or (2) is $59.27, which rounds to $59.00.

About interest charges

When we charge interest

We charge interest beginning on the date of each transaction. You can avoid paying interest on purchases as described below. However, you cannot avoid paying interest on cash advances and balance transfers.

If you pay the New Balance on every statement by the Payment Due Date, we will not charge interest on purchases.

If you pay the New Balance on a statement by the Payment Due Date and then you pay less than the New Balance on the following statement by the Payment Due Date, we will not charge interest on the portion of the purchase balance that we apply that payment to. But we will charge interest on unpaid purchases.

If you do not pay the New Balance on a statement by the Payment Due Date and then:

- you pay the New Balance on the next statement by the Payment Due Date, we will not charge interest on purchases from the date of your payment to the Closing Date of the billing period in which you made that payment. But we will charge interest on purchases from the beginning of that billing period until the date of your payment.
- you pay the New Balance on each of the next two statements by their Payment Due Dates, we will not charge interest on purchases on the following statement.

Also, we will not charge interest on purchases on a statement if the Previous Balance on that statement is zero or a credit balance.

How we calculate interest

We calculate interest for a billing period by first figuring the interest on each balance. Different categories of transactions such as purchases and cash advances-may have different interest rates. Balances within each category may also 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:

- Average Daily Balance (*ADB*) ***x***
- Daily Periodic Rate (*DPR*) ***x***
- 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 and Fees 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% ÷ 365 days = 0.0438%*

*The **Interest** is $2,250 x 0.0438% x 30 days = $29.57*

Daily Balance

For each day a DPR is in effect, we figure the daily 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.

Determining the Prime Rate

We use the Prime Rate from the Money Rates section (or successor section) of *The Wall Street Journal.* The Prime Rate for each billing period is the Prime Rate published in *The Wall Street Journal* 2 days before 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.

Other important information

About Additional Cardmembers	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. 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.	You authorize us to give Additional Cardmembers information about your 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.
Converting charges made in a foreign currency	If you make a charge in a foreign currency, we will convert it into U.S. dollars on the date we or our agents process it. Unless a particular rate is required by law, we will choose a conversion rate that is acceptable to us for that date. The rate we use is no more than the highest official rate published by a government agency or the highest	interbank rate we identify 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 to which we send billing statements; or ● e-mail address to which we send notice that your billing statement is available online.	If you have more than one account, you need to notify us separately for each account. We may update your billing address if we receive information that it has changed or is incorrect.
Closing your Account	You may close your Account by calling us or writing to us.	
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, to the extent permitted by federal and applicable state law: ● suspend your ability to make charges, ● cancel or suspend any feature on your Account, ● require you to pay more than your Minimum Payment Due immediately, and ● require you to pay your Account balance immediately.
Collection costs	You agree to pay all reasonable costs, including attorneys' fees, that we incur to collect amounts you owe.	
Credit reports	You agree that we may obtain credit reports about you, investigate your ability to pay, and obtain information about you from other sources. And you agree that we may use such information for any purposes, subject to applicable law. You agree that we may give information about your Account to credit reporting agencies. We may 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 record. 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 your Account number and the specific information you believe is incorrect.
Sending you notices	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.	
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) to contact you at any number you provide, from which you call us, or at which we believe we can reach you. We may contact you in any way, such as calling or texting. 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.
ExpressPay	Cards issued on your Account may be equipped with ExpressPay. ExpressPay enables you to make charges without having the card swiped or imprinted. You can call us to deactivate ExpressPay at any time. Also, we may deactivate ExpressPay at any time.	
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.	
Convenience checks	Convenience checks (including balance transfer checks) are checks that we may send you to access your Account. The following terms will apply to use of those checks unless otherwise disclosed with the check. If you use a convenience check, we may decline it. If we decline it, you may have to pay returned check fees or other penalties to whomever you wrote the check. If you use a convenience check and we honor it, we will charge interest beginning as of the date we receive the check. You cannot avoid paying interest on convenience check transactions. We will charge a fee for each convenience check transaction. This fee is 3% of the transaction, with a minimum of $5. This fee is a finance charge. We will add the fee to the same balance that we add the convenience check transaction to. We will charge $29 each time you ask us to stop payment on a convenience check. A convenience check is not a card. You may not use convenience checks to pay this or any other account with us or our affiliates. If you use a convenience check, we will apply the: ● cash advance APR if you make it payable to cash, to you, or to a bank, brokerage or similar asset account, or to a mortgage or insurance provider. ● purchase APR if you make it payable to a merchant. ● balance transfer APR if you use it to transfer a balance from another creditor. ● penalty APR if it applies to your Account.	
Changing benefits	We have the right to add, modify or delete any benefit, service, or feature of your Account at our discretion.	
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.	
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.	
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 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.	

Arbitration

This Arbitration provision sets forth the circumstances and procedures under which claims may be arbitrated instead of litigated in court.

Definitions

As used in this Arbitration provision, the term *claim* means any claim, dispute or controversy between you and us arising from or relating to your Account, this Agreement, the Electronic Funds Transfer Services Agreement, and any other related or prior agreement that you may have had with us, or the relationships resulting from any of the above *agreements*, except for the validity, enforceability or scope of this Arbitration provision. For purposes of this Arbitration provision, *you* and *us* also includes any corporate parent, or wholly or majority owned subsidiaries, affiliates, any licensees, predecessors, successors, assigns, any purchaser of any accounts, all agents, employees, directors and representatives of any of the foregoing, and other persons referred to below in the definition of claims. *Claim* includes claims of every kind and nature, including but not limited to, initial claims, counterclaims, crossclaims and third-party claims and claims based upon contract, tort, fraud and other intentional, torts, statutes, regulations, common law and equity. *Claim* also includes claims by or against any third party using or providing any product, service or benefit in connection with any account (including, but not limited to, credit bureaus, third parties who accept the card, third parties who use, provide or participate in fee-based or free benefit programs, enrollment services and rewards programs, credit insurance companies, debt collectors and all of their agents, employees, directors and representatives) if and only if, such third party is a party in connection with the claim. The term claim is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (a) any of the accounts created under any of the agreements, or any balances on any such accounts, (b) advertisements, promotions or oral or written statements related to any such accounts, goods or services financed under any of the accounts or the terms of financing, (c) the benefits and services related to Cardmembership (including fee-based or free benefit programs, enrollment services and rewards programs), and (d) your application for any account. We shall not elect to use arbitration under this Arbitration provision for any claim that you properly file and pursue in a small claims court of your state or municipality so long as the claim is individual and pending only in that court.

Initiation of Arbitration

Any claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration provision and the code of procedures of the arbitration organization to which the claim is referred in effect at the time the claim is filed (*code*), except to the extent the code conflicts with this Agreement. Claims shall be referred to either JAMS or the American Arbitration Association (*AAA*), as selected by the party electing to use arbitration. If our selection of either of these organizations is unacceptable to you, you may select the other organization within 30 days after you receive notice of our selection. For a copy of the code, to file a claim or for other information, contact either JAMS (1920 Main St #300, Irvine, CA 92614 or jamsadr.com) or AAA (335 Madison Ave, New York, NY 10017 or adr.org).

In addition to the organizations listed above, claims may be referred to any other arbitration organization that is mutually agreed upon in writing by you and us, or to an arbitration organization or arbitrator(s) appointed pursuant to § 5 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16, as it may be amended (*FAA*), provided that any such organization and arbitrator(s) will enforce the terms of the Restrictions on Arbitration subsection set forth below.

Significance of Arbitration

IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, 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 OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU OR WE WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

Restrictions on Arbitration

IF EITHER PARTY ELECTS TO RESOLVE A CLAIM BY ARBITRATION, THAT CLAIM SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS. THERE SHALL 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. The arbitrator's authority to resolve claims is limited to claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone. Furthermore, claims brought by you against us, or by us against you, may not be joined or consolidated in arbitration with claims brought by or against someone other than you, unless agreed to in writing by all parties. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. Notwithstanding any other provision of this Agreement (including but not limited to the Continuation subsection below) and without waiving either party's right to appeal such decision, should any portion of this Restrictions on Arbitration subsection be deemed invalid or unenforceable, then the entire Arbitration provision (other than this sentence) shall not apply.

Arbitration Procedures

This Arbitration provision is made pursuant to transactions involving interstate commerce and shall be governed by the FAA. The arbitration shall be governed by the applicable code, except that this Agreement shall apply if there are any conflicts. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations, shall honor claims of privilege recognized at law, and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. The arbitration proceeding shall not be governed by any federal or state rules of civil procedure or rules of evidence. Any party may request that the arbitrator expand the scope of discovery by doing so in writing and copying any other parties, who shall have 15 days to make objections. The arbitrator will notify the parties of his/her decision within 20 days of any objecting party's submission. The arbitrator shall take reasonable steps to preserve privacy. The arbitrator's award shall be final and binding, except for any right of appeal provided by the FAA; however, either party shall have 30 days to appeal that decision by notifying the arbitration organization and any other parties in writing. The organization will then appoint a three-arbitrator panel which shall consider anew any aspect of the decision objected to by the appealing party. The panel shall issue its decision, by majority vote, within 120 days of the appealing party's written notice. Judgment upon any award rendered by the arbitrator or panel may be entered in any court having jurisdiction.

Location of Arbitration

Arbitration hearings you attend shall take place in the federal judicial district of your residence.

Payment of Fees

You will be responsible for paying your share, if any, of the arbitration fees (including filing, administrative, hearing and/or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a claim in the state or federal court closest to your billing address that would have had jurisdiction. We will be responsible for any additional arbitration fees. At your written request, we will consider in good faith making a temporary advance of all or part of your share of any arbitration fees. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

Continuation

This Arbitration provision shall survive termination of your Account; voluntary payment of the Account balance in full by you; any legal proceeding by you or us to collect a debt owed by the other; any bankruptcy by you or us; and any sale by us of your Account (in the case of a sale, its terms shall apply to the buyer of your Account). If any portion of this Arbitration provision, except as otherwise provided in the Restrictions on Arbitration subsection, is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this provision.