

# OPENSKY® VISA® GOLD CREDIT CARD AGREEMENT

This Credit Card Agreement (the “Agreement”) consists of information about the costs of the OpenSky Visa Gold Credit Card, issued by Capital Bank, N.A. and a cardholder agreement.

<b>INTEREST RATES AND INTEREST CHARGES</b>	
<b>Annual Percentage Rate (APR) for Purchases</b>	<b>23.90%</b> This is a fixed rate APR.
<b>APR for Cash Advances</b>	<b>23.90%</b> This is a fixed rate APR.
<b>How to Avoid Paying Interest on Purchases</b>	Your due date is at least 25 days after the close of each billing cycle. We will not charge you interest on new purchases, provided you have paid your previous balance in full by the due date each month. We will begin charging interest on cash advances on the transaction date.
<b>Minimum Interest Charge</b>	If you are charged interest, the charge will be no less than \$1.00.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="https://www.consumerfinance.gov/learnmore">https://www.consumerfinance.gov/learnmore</a> .
<b>FEES</b>	
<b>Annual Fee</b>	<b>\$59</b>
<b>Transaction Fees</b>	
<ul style="list-style-type: none"> <li>Cash Advance</li> <li>Foreign Transaction</li> </ul>	<p>Either <b>\$10</b> or <b>3%</b> of the amount of each cash advance, whichever is greater.</p> <p><b>3%</b> of each Transaction in U.S. dollars.</p>
<b>Penalty Fees</b>	
Late Payment	<b>Up to \$40</b>
Returned Payment	<b>Up to \$40</b>

**How We Will Calculate Your Balance:** We use a method called “average daily balance (including new Transactions).” Please see Section 5 (c) of this Agreement for further details.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in the section titled “**Your Billing Rights**” at the end of this Agreement.

**MILITARY LENDING ACT NOTICE:** Federal law provides important protections to members of the Armed Forces and their dependents related to extension 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 charged (other than certain participation fees for a credit card account). To receive this information and a description of your payment obligation verbally, please call us toll free at 855-763-6736.

**SECTION 17 OF THIS AGREEMENT IS AN ARBITRATION PROVISION. UNLESS YOU ARE A COVERED BORROWER UNDER THE MILITARY LENDING ACT OR ACT PROMPTLY TO REJECT THE ARBITRATION PROVISION, IT WILL HAVE A**

**SUBSTANTIAL EFFECT ON YOUR RIGHTS IN THE EVENT OF A DISPUTE. FOR EXAMPLE, YOU WILL NOT BE ABLE TO BRING OR PARTICIPATE IN ANY CLASS PROCEEDING SUBJECT TO ARBITRATION.**

## Card Agreement Definitions

**Account:** your OpenSky Gold credit card account

**Account Statement:** a record of all completed transactions that occurred on your Account during one Billing Cycle

**Annual Percentage Rate (APR):** the yearly interest rate we will charge on any balance that remains at the end of a given Billing Cycle calculated by multiplying that balance amount by the percentage interest rate.

**Authorized User:** any person the **Cardholder** authorizes to use the Card/Account, but is not responsible for the repayment of the Account

**Authorized Third Party:** any person the **Cardholder** authorizes to discuss the Account with OpenSky; no account changes or requests can be made by third party.

**Available Credit:** how much of your **Credit Limit** you have available to spend (Your Credit Limit – Your Current Balance = Your Available Credit).

**Bank (“We”, “Our”, “Us”):** OpenSky is a credit card division of Capital Bank, N.A., which is nationally chartered, and FDIC insured. OpenSky is headquartered in Reston, VA.

**Billing Cycle:** the time period between your last received **Account Statement** and current **Account Statement** (generally about one month of time)

**Business Day:** weekdays from Monday to Friday, excluding Federal Reserve observed holidays.

**Cash Advance:** lets you withdraw cash from your Account by borrowing against your **Credit Limit**.

**Card:** the physical credit card associated with the Gold credit card account. This includes all renewals and substitutions. It also means any other access device for your Account we give you that allows you to obtain credit, including any Account number.

**Cardholder (“You”, “Your”):** the person responsible for the Account, who accepted this Agreement.

**Credit Limit:** the maximum amount of funds you are able to borrow when using your Card/Account to make a Purchase. We may also refer to your **Credit Limit** as your **Credit Line**.

**Daily Periodic Rate:** the interest rate applied to the amount owed at the end of each day, calculated by dividing the APR by number of days in a year.

**Fees:** a charge to your Account for a specific service or transaction you place not based on the APR.

**Interest:** a charge to your Account based on the application of the APR on the amount you borrow.

**New Balance:** the outstanding balance at the end of a Billing Cycle.

**Payment Address:** address where a check, money order, or other physical Account payment may be sent, as shown on the first page of the Account Statement.

**Pending Transactions:** authorized Transactions that are not yet reflected in your Account balance.

**Purchase:** a Transaction where you buy or lease goods or services using your Card/Account.

**Statement Check:** a check issued from another creditor for the purpose of balance transfer or pay-off.

**Transaction:** the purchase of goods and/or services; benefits or reservations for lodging, transportation, or other accommodations; receiving Cash Advances by use of the Card or Account; any other security by use of the Card or Account that would otherwise require monetary payment.

If you have any questions about this Agreement or your Card, please contact Customer Service at the phone number on your Account Statement or on the back of your Card.

**You should keep and carefully review this entire Agreement and sign your Card before using it. Intending to be legally bound, you and we agree to the following:**

### 1. Accepting this Agreement

You accept and agree to the terms and conditions of this Agreement when your application is approved, and we have created your **Account/Card**.

### 2. Use of the Account and the Card

This Account and Card may only be used for personal, family or household purposes. Use for unlawful purposes or engagement in or facilitation of Internet gambling is strictly prohibited. Your breach of this Agreement will not affect or limit your liability to us with respect to any Transactions or Balance Type.

### 3. Authorized User(s)

You are responsible for all use of your Account, including Transactions by an **Authorized User**, even if not expressly intended by you. It is your responsibility to get any Cards, checks, or any other means of access to your Account from the Authorized User and destroy them or return them to us upon request.

#### **4. Credit Limit; Transaction Limits; Available Credit.**

(a) Your initial Credit Limit is disclosed on the card carrier used to deliver the Card to you. Your initial Credit Limit is based on your creditworthiness and assigned as part of the OpenSky graduation program. However, we will charge your \$59.00 Annual Fee to your Account, which will reduce your Available Credit by that amount. (See (b) below.)

(b) Available Credit is the amount by which your Credit Limit exceeds the sum of: (i) your outstanding Account balance (including principal, Fees and Interest Charges); (ii) the dollar amount of all Pending Transactions; and (iii) funds you have sent us that under Section 10 (e) have not yet been credited for purposes of determining your "Available Credit." We are not required to approve any Transaction if the amount of the Transaction exceeds your Available Credit. However, we may authorize and pay any such Transaction in our absolute discretion. Whenever the outstanding balance of the Account exceeds your Credit Limit, you agree to pay us the difference on demand.

(c) (i) Subject to applicable law, we may from time to time and in our sole discretion increase your Credit Limit to any level of our choice. We may also decrease your Credit Limit in our sole discretion, as low as \$0. Additionally, we may at any time and for any reason permitted by law close your Account even if you are not in default or limit the number or amount of Transactions that can be charged to your Account based on an evaluation of various factors. We will give you notice of any such changes as required by law.

(ii) If we close your Account without cause or if we take any action described in Section 4 (c)(i) without cause and you give us written notice within thirty (30) days that you are closing your Account, we will disregard any reduction in your Credit Limit for purposes of determining your APR. Also, if we reduce your Credit Limit without cause, we will not demand immediate payment of any excess of the Account Balance over the reduced Credit Limit until such time as the reduced Credit Limit first equals or exceeds the outstanding Account Balance.

#### **5. Interest Charges**

##### *(a) General.*

Each **Billing Cycle**, we separately determine the **Interest Charges on Purchases** and the Interest Charges on Cash Advances. Both for Purchases and Cash Advances (each, a "Balance Type"), we determine Interest Charges each Billing Cycle by multiplying the Balance Subject to Interest Charges (see 6(c) below) by the daily Periodic Rate and by then multiplying the result by the number of days in the Billing Cycle. For each Balance Type, the Balance Subject to Interest Charges is the Average Daily Balance (including new Transactions), as calculated pursuant to Section 6(c) below. To get the total Interest Charges each Billing Cycle, we add together the Interest Charges for Purchases and the Interest Charges for Cash Advances.

##### *(b) Interest Rates.*

(i) For each Balance Type, the Daily Periodic Rate and APR will be determined based on a fixed APR of 23.90%. The Daily Periodic Rate will be 1/365th of the APR rounded to the nearest 1/100,000th of 1%. The Daily Periodic Rate in effect at any time is disclosed on the monthly statement under "Interest Charge Calculation". The Daily Periodic Rate for your Purchase and Cash APR is currently 0.06548% (23.90% divided by 365, rounded to the nearest 1/100,000th of 1%). Notwithstanding the foregoing, the Daily Periodic Rate and APR will never exceed the maximum rates permitted by applicable law.

##### *(c) Balances Subject to Interest Charges.*

(i) For each Balance Type, the Balance Subject to Interest Charges is the Average Daily Balance for such Balance Type. The Average Daily Balance for a Billing Cycle equals the sum of the daily Purchases or Cash Advances balances, as applicable, for each day of the Billing Cycle, divided by the number of days in the Billing Cycle.

(ii) The Purchases balance for each day in the Billing Cycle is computed as follows:

(A) For each day (including the first day of the Billing Cycle), we start with the prior day's closing balance of Purchases, if any.

(B) For the first day of the Billing cycle, we add any unpaid Interest Charges on Purchases that accrued during the prior Billing Cycle. (This results in the monthly compounding of Interest Charges.)

(C) For each day in the Billing Cycle (including the first day of the Billing Cycle), we add any new Purchases posted to your Account and subtract any payments or credits applied to Purchases. However, we do not subtract a second time any payments or credits that have already been subtracted in step (B) above.

(D) We treat any negative daily balance as \$0.

(iii) To get the daily balance of Cash Advances each day: (i) we take the previous day's balance of Cash Advances (if any); (ii) we add any new Cash Advances; and (iii) we subtract any new payments or credits applied to Cash Advances. For the first day of each Billing Cycle, we also add any unpaid Interest Charges on Cash Advances that accrued during the prior Billing Cycle. (This results in the monthly compounding of Interest Charges.) If a Cash Advance obtained in a Billing Cycle is not posted in that Billing Cycle, we add the Cash Advance to the daily balance on the first day of the next Billing Cycle instead of the day it was obtained. We treat any negative daily balance as \$0.

(d) *Interest Accrual Periods.*

We charge Interest Charges over the following periods:

(i) On each Cash Advance, we charge Interest Charges from the later of the Cash Advance transaction or the first day of the Billing Cycle in which it is posted to your Account until it is repaid in full.

(ii) On each Purchase, we charge Interest Charges from the day the Purchase is posted to the Account through the Interest End Date.

(e) *Classification of Fees as Purchases or Cash Advances.*

For purposes of computing Interest Charges, Cash Advance Fees are treated as Cash Advances and all other Fees are treated as Purchases.

(f) *Avoid Interest Charges on Purchases.*

We will not charge you Interest on Purchases if you pay the entire **New Balance** by the payment due date each billing cycle. This is known as the grace period. If you do not pay the entire New Balance by the payment due date in a Billing Cycle, you will pay Interest on Purchases from the date they are posted to your Account.

**6. Fees**

Subject to applicable law, including the federal Truth in Lending Act and Regulation Z, you paid or agree to pay the following Fees:

<b>Fee</b>	<b>Amount</b>	<b>About the Fee</b>
Annual Fee	\$59	When we open your Account and each year following the anniversary date of your Account opening, we will charge you an annual fee.
Late Fee	Up to \$40	We have the right to charge you a late fee if we do not receive a payment from you in at least the amount of your Minimum Payment Due within one (1) day after the Payment Due Date shown on your monthly statement. The late fee is \$29 for the first Late Payment. If you make a second late payment within the next six (6) Billing Cycles, the late fee is \$40
Returned Payment Fee	Up to \$40	If a check, instrument, or other payment on your Account is returned to us unpaid for any reason or we must return any check or instrument you send us because it is not signed or is otherwise incomplete, we will charge you a fee. This fee is \$29 if you were not charged a returned payment fee during any of the prior six billing cycles. Otherwise, the fee is \$40.
Transaction Fee for Cash Advances	The greater of \$10 or 3% of the dollar amount of the Cash Advance	Each time you obtain a Cash Advance, we will charge a fee.
Expedited Card Fee	\$50	If you request us to expedite shipping of your Card, there is a one-time, non-refundable fee.
Expedited Pay-by-Phone Fee	\$10	Each time you arrange for an expedited payment by calling us and obtaining the assistance of a live representative or agent of ours, you will be charged a fee. Your payment will be credited to your Account the same day, if received on or before 5:00 p.m. Eastern Time on a Business Day and otherwise on the next Business Day.

Document Retrieval Fee	\$5	Each time you request, and we provide you with a copy of any monthly Account Statement, sales draft or payment instrument previously provided you, unless the request is made in connection with a written notice of a billing error, we will charge you a fee.
Paper Statement Fee	\$3	If you request to have your Account Statements delivered to you in paper through the U.S. Postal Service rather than accessing them online, which is free, we will charge you a fee for each mailed statement. For more details about delivery of your Account Statements, please refer to Section 9 below.
Foreign Currency Transaction Fee	3% of the gross amount of the Transaction in U.S. Dollars	If you make a Purchase or Cash Advance in foreign currency, we will charge you a fee.
Card Replacement Fee	\$10	We will charge you a Card Replacement Fee of \$10.00 each time you request a replacement of your Card through the lifetime of your Account, after a one-time complimentary replacement in a rolling 12-month period.

We may charge additional fees for separate services we provide you in accordance with applicable law.

### 7. Limits on Interest Charges and Fees

If any Interest Charge or Fee assessed under this Agreement is finally determined to be in excess of that permitted by applicable law, the excess amount will be applied to reduce the outstanding balance in your Account or, if there is no outstanding balance, will be refunded to you.

### 8. Account Statements

We will send or make available an Account Statement shortly after the end of each Billing Cycle, including transaction, interest, balance, and payment information. However, we are not obligated to send you an Account Statement if we deem your Account to be uncollectible or applicable law does not require us to send you an Account Statement for other reasons. Consenting to receive communication under the E-SIGN Disclosure and Consent Statement will not automatically enroll you in our paperless statement program. You will be required to complete a separate online enrollment to stop receiving paper statements. Your Account Statements are available online and can be accessed securely online at MyAccount or, on the OpenSky Mobile App.

At any time, you may notify us that you withdraw your consent to receive electronic statements and we will deliver your Account Statements to you in paper through the U.S. Postal Service. However, we will charge you a \$3.00 Paper Statement Fee for each Account Statement we deliver to you in paper.

### 9. Payments

(a) Each month, you must pay at least the Minimum Payment Due shown on your Account Statement by the "Cut-Off Time" on the Payment Due Date shown on your Account Statement, which will be at least twenty-five (25) days after the date of the Account Statement, typically on the same day of each calendar month. However, if the Payment Due Date falls on a day we do not receive mail ("non-business day"), we will not treat your payment as late for any purpose if we receive it by the Cut-Off Time on the next day we receive mail (a "business day"). The "Cut-Off Time" is 5:00 p.m. local time at the payment address specified on the Account Statement.

(b) If the total outstanding balance under your Account at the end of a Billing Cycle, as shown on your Account Statement (the "New Balance"), is less than \$25.00, the Minimum Payment Due equals the New Balance. Otherwise, the Minimum Payment Due equals the sum of: (i) any amount past due; plus (ii) any amount by which the New Balance exceeds your Credit Limit; and (iii) the greatest of: (A) the sum of the Interest Charges and Fees reflected on your Account Statement; (B) two percent (2%) of the New Balance; or (C) \$25.00.

(c) You agree to make all payments by check or other negotiable instrument drawn on a financial institution located in the U.S. or by money order. Payments must be made in U.S. dollars. All payments, except disputed payments, must be mailed or delivered to us at the **Payment Address**. Any payments received after the Cut-Off Time on a business day will be credited on the next business day. However, credit to your Account may be delayed for up to five (5) days if we accept a payment that is: (i) not received by mail or messenger service at the Payment Address or in-person at one of our branches; (ii) not made in U.S. dollars by a check or other negotiable instrument drawn on a financial institution located in the U.S. or by money order; or (iii) not accompanied by the top portion of your Account Statement. Delayed crediting may cause you to incur additional Fees and Interest Charges, subject to applicable law.

(d) **You may not use a Statement Check to pay any amount you owe under this Agreement or any other amount you owe us. None of the following will constitute a payment made by you: (i) a credit posting from a merchant; or (ii) a reversal of Interest Charges or Fees by us.**

(e) Subject to applicable law, we may apply payments and other credits to your Account in any manner we choose in our sole discretion. For payments up to the Minimum Payment Due, we typically apply payments based on the APR of different balances, first to the lowest APR, next to the next-lowest APR and so on. For payments in excess of the Minimum Payment Due, we apply payments in the reverse order, first to balances with the highest APR.

(f) All credits for payments to your Card are subject to final payment by the institution on which the item of payment was drawn. Your Available Credit may not be restored for up to twenty (20) days after we receive your payment.

(g) At any time, you may pay all or any part of your outstanding Account balance. Payment of more than the Minimum Payment Due in one Billing Cycle will not relieve you of the obligation to pay the entire Minimum Payment Due in subsequent Billing Cycles.

(h) You may use your telephone to make a same day payment on your Account through our telephone payment system by calling (800) 859-6412. By using this system to make a payment, you are authorizing us to initiate via the Automated Clearing House payment network, a single debit entry to your depository bank account in the amount specified during the call. For verification purposes, the last four digits of your social security number will be utilized as your PIN.

## **10. Termination**

Subject to applicable law, we may terminate your right to credit under the Account at any time in our absolute discretion. You may also terminate your right to credit under the Account by calling Customer Service or writing to the OpenSky Card Services, P.O. Box 9224, Old Bethpage, NY 11804-9224. Any request to terminate your credit privileges will be effective only after we have had a reasonable opportunity to act on such request. Except as provided above, termination of credit privileges, whether initiated by us or by you, will not affect any of your or our rights and obligations under this Agreement, including without limitation, your obligation to repay any amounts you owe us according to the terms of this Agreement. On our demand or upon termination of credit privileges, you agree to surrender to us or destroy the Card. You agree that, if you attempt to use the Card after the termination of credit privileges (whether or not we have provided notice of such termination), the Card may be retained by a merchant, ATM or financial institution where you attempt to use the Card.

## **11. Default**

Subject to applicable law, we may declare you to be in default under this Agreement if any one or more of the following events occurs:

- (a) you fail to pay any Minimum Payment Due on or before your Payment Due Date;
- (b) you exceed your Credit Limit
- (c) you use a check, ACH or instrument for payment which is dishonored;
- (d) you die or are declared legally incompetent;
- (e) any other creditor tries by legal process to take money of yours;
- (f) a petition is filed or other proceeding is commenced by or against you under the Federal Bankruptcy Code or any other applicable federal or state insolvency laws;
- (g) you become generally unable to pay your debts;
- (h) you provide us with any false or misleading information;
- (i) you breach any of your other obligations under this Agreement; or
- (j) you are in default of any other credit agreement you have with us or any of our affiliates.

## **12. Remedies**

In the event of any default under this Agreement, we may, subject to applicable law (including any applicable notice requirement):

- (a) without waiving any rights under subsection (b) allow you to repay your Account balance by paying the Minimum Payment Due each Billing Cycle;
- (b) declare all or any portion of your outstanding Account balance to be immediately due and payable,
- (c) immediately terminate or suspend your Account privileges and/or cancel your Card;

- (d) reduce your Credit Limit or otherwise limit your ability to make Transactions;
- (e) commence an action against you to collect all amounts owed in connection with this Agreement.

We also may charge you court costs and reasonable attorneys' fees that we actually incur, as permitted by applicable law, if your Account is sent for collection to an attorney who is not our salaried employee. We will not be obligated to honor any attempted Transaction if your Card is in default or we have determined to terminate or suspend your Account privileges or limit your ability to make Transactions. Interest Charges will continue to accrue until your total Account balance, including accrued Interest Charges, is paid in full. You understand and agree that, subject to applicable law, if you are in default under this Agreement, we may make collection calls to your home or cell phone and may use an automatic dialer and/or prerecorded messages with respect to such calls, even if the message is left on an answering machine. You agree such calls will not be considered "unsolicited" calls or telemarketing calls for purposes of state or federal law.

### **13. Delay in Enforcement**

We may at any time and in our sole discretion delay or waive enforcing any of our rights or remedies under this Agreement or under applicable law without losing any of those or any other rights or remedies. Even if we do not enforce our rights or remedies at any one time, we may enforce them at a later date. For example, we may accept late payments or payments that are marked "payment in full" or with other restrictive endorsements without losing any of our rights under this Agreement.

### **14. Notice and Cure**

Prior to initiating a lawsuit or arbitration regarding a legal dispute or claim relating in any way to this Agreement or the Account (as more fully defined in Section 18 (b)(iii), a "Claim"), the party asserting the Claim (the "Claimant") shall give the other party (the "Defending Party") written notice of the Claim (a "Claim Notice") and a reasonable opportunity, not less than thirty (30) days, to resolve the Claim on an individual basis. Any Claim Notice to you shall be sent in writing by mail to the address for you maintained in our records. Any Claim Notice to us shall be sent by mail to OpenSky Card Services, P.O. Box 9224, Old Bethpage, NY 11804-9224, attention Legal Claim (or such other address as we subsequently provide you). Any Claim Notice you send must provide your Account Number and telephone number. Any Claim Notice must explain the nature of the Claim and the relief that is demanded. The Claimant must reasonably cooperate in providing any information about the Claim that the Defending Party reasonably requests.

### **15. Waiver of Right to Trial by Jury**

**YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT BUT MAY BE WAIVED IN CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW. YOU AND WE KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS JURY TRIAL WAIVER SHALL NOT AFFECT OR BE INTERPRETED AS MODIFYING IN ANY FASHION THE ARBITRATION PROVISION SET FORTH IN SECTION 18, IF APPLICABLE, WHICH CONTAINS ITS OWN SEPARATE JURY TRIAL WAIVER.**

### **16. Arbitration Provision**

**Unless you have exercised your right to reject arbitration under subsection (m) below, the following Arbitration Provision will apply:**

(a) *General:* Either you or we may elect to arbitrate - and require the other party to arbitrate - any Claim (as defined below) under the following terms and conditions. If you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) have a court or a jury decide the Claim; (ii) participate in a class action in court or in arbitration, either as a class representative or a class member; (iii) act as a private attorney general in court or in arbitration; or (iv) join or consolidate your Claim(s) with claims of any other person. The right to appeal and the right to pre-arbitration discovery are more limited in arbitration than in court. Other rights that you would have if you went to court may also not be available in arbitration.

(b) *Definitions:* The following definitions apply to this Arbitration Provision, even if terms defined in this Arbitration Provision are defined differently elsewhere in this Agreement:

(i) "We," "us" and "our" mean the Bank, together with any subsequent holder of this Agreement. Also, these terms include the parents, subsidiaries, affiliates and successors of such companies, as well as the officers, directors, agents and employees of any of the foregoing. These terms also include any party named as a co-defendant with us in a Claim asserted by you, such as marketing companies, credit bureaus, credit insurance companies, credit card servicers and debt collectors. "You," "your" and "yours" include each and every person who uses a Card.

(ii) "Administrator" means the American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, www.adr.org, 800-778-7879; JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, www.jamsadr.com, 800-352-5267; or any other company selected by mutual agreement of the parties. If both AAA and

JAMS cannot or will not serve and the parties are unable to select an Administrator by mutual consent, the Administrator will be selected by a court. You get to select the Administrator if you give us written notice of your selection with your notice that you are electing to arbitrate any Claim or within twenty (20) days after we give you notice that we are electing to arbitrate any Claim (or, if you dispute our right to require arbitration of the Claim, within twenty (20) days after that dispute is finally resolved). If you do not select the Administrator on time, we may do it. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any Administrator that has in place a formal or informal policy that is inconsistent with subsection (d) below captioned "No Class Actions" (the "Class Action Waiver").

(iii) "Claim" means any claim, dispute or controversy between you and us that in any way arises from or relates to this Agreement or the Account, including disputes arising from actions or omissions prior to the date of this Agreement. "Claim" has the broadest reasonable meaning, and includes initial claims, counterclaims, cross-claims and third-party claims. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity (including any claim for injunctive or declaratory relief). However, it does not include disputes about the validity, enforceability, coverage or scope of this Arbitration Agreement or any part thereof (including, without limitation, the Class Action Waiver, the final sentence in Section 19.(j) under the caption "Survival, Severability, Primacy" and/or this sentence); all such disputes are for a court and not an arbitrator to decide. However, any dispute or argument that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide.

(c) *Starting Arbitration:* To start an arbitration, you or we must give written notice of an election to arbitrate. This notice may be given after a lawsuit has been filed and may be given in papers or motions in the lawsuit. If such a notice is given, the Claim shall be resolved by arbitration under this Arbitration Provision and the applicable rules of the Administrator then in effect. We will not elect to arbitrate any individual action brought by you in small claims court or your state's equivalent court, when such action is transferred, removed, or appealed to a different court

(d) *No Class Actions:* **Notwithstanding any language herein to the contrary, if you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) participate in a class action in court or in arbitration, either as a class representative, class member or class opponent; (ii) act as a private attorney general in court or in arbitration; or (iii) join or consolidate your Claims with claims of any other person, and the arbitrator shall have no authority to conduct any such class, private attorney general or multiple-party proceeding.**

(e) *Location and Costs:* Any arbitration hearing that you attend will take place in a location that is reasonably convenient for you. If you cannot obtain a waiver of the Administrator's or arbitrator's filing, administrative, hearing and/or other fees, we will consider in good faith any request by you for us to bear such fees. We will pay for our own attorneys, experts and witnesses and will pay the reasonable fees and charges of your attorneys, experts and witnesses if you win the arbitration. We will pay any of the Administrator's or arbitrator's filing, administrative, hearing and/or other fees, and the fees and charges of your attorneys, experts and witnesses, if and to the extent we are required to pay such fees and charges by law or in order to make this Arbitration Provision enforceable.

(f) *Arbitrator Selection:* The arbitrator will be appointed by the Administrator in accordance with the rules of the Administrator. However, unless the parties agree otherwise, the arbitrator must be a retired or former judge or a lawyer with at least ten (10) years of experience.

(g) *Discovery; Getting Information:* In addition to the parties' rights under the Administrator's rules to obtain information prior to the hearing, either party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other party the opportunity to object.

(h) *Effect of Arbitration Award:* Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's award will be final and binding, except for: (1) any appeal right under the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* (the "FAA"); and (2) Claims involving more than \$50,000. For Claims involving more than \$50,000, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider anew any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. The costs of any appeal will be borne in accordance with subsection (e) above captioned "Location and Costs."

(i) *Governing Law:* This Agreement governs transactions involving interstate commerce and accordingly this Arbitration Provision shall be governed by the FAA and not by any state law concerning arbitration. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation and applicable privilege rules, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive and other equitable relief, and attorneys' fees and costs. Upon the timely request of either party, the arbitrator shall write a brief explanation of the basis of his or her award. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and the Administrator's rules.



(j) *Survival, Severability, Primacy*: This Arbitration Provision shall survive the termination of this Agreement, your fulfillment or default of your obligations under this Agreement and/or your or our bankruptcy (to the extent permitted by applicable law). In the event of any conflict or inconsistency between this Arbitration Provision and the Administrator's rules or this Agreement, this Arbitration Provision will govern. If any portion of this Arbitration Provision, other than the Class Action Waiver, is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. If a determination is made that the Class Action Waiver is unenforceable, only this sentence of the Arbitration Provision will remain in force and the remaining provisions shall be null and void, provided that the determination concerning the Class Action Waiver shall be subject to appeal.

(k) *Amendment/Termination*: Notwithstanding any provision of this Agreement to the contrary, we will not amend this Arbitration Provision in a manner that adversely affects your rights or responsibilities in a material manner unless we give you a right to reject the amendment and/or the Arbitration Provision in its entirety.

(l) *Special Payment*: If (i) you submit a Claim Notice on your own behalf (and not on behalf of any other party) in accordance with Section 17., captioned "Notice and Cure" (including the timing requirements thereof); (ii) we refuse to provide you with the relief you request; and (iii) an arbitrator subsequently determines that you were entitled to such relief (or greater relief), the arbitrator shall award you at least \$7,500 and will double the attorneys' fees to which you would otherwise be entitled.

(m) ***RIGHT TO REJECT ARBITRATION***. You may reject this Arbitration Provision by mailing a special rejection notice to OpenSky Card Services, P.O. Box 9224, Old Bethpage, NY 11804-9224, attention Arbitration Rejection, within sixty (60) days after you apply for your Account. Any rejection notice must include your name, address, telephone number, and Account number.

## **17. Changes to this Agreement**

Subject to applicable law, including the Truth in Lending Act and Regulation Z:

(a) You agree that we may, in our sole discretion, from time to time change any of the terms and conditions of, or add new terms and conditions to, this Agreement, including changing the formula used to compute Interest Charges (including terms and conditions increasing margins, switching to a fixed APR, changing the method of computing Balances Subject to Interest Charge), increasing or adding Fees (including annual or other periodic fees) or changing your Credit Limit.

(b) Any such changes will generally be effective immediately unless we are required by applicable law or elect, in our discretion, to provide you with advance written notice of the changes (and/or the reasons for the changes), afford you the right to reject the change and/or obtain your consent to the change (whether by written agreement, through the initiation of a Transaction after a specified date or through some other means). In such instances, those changes will be effective if, when and as stated in such notice.

(c) Any changes may apply to your outstanding Account balance on the effective date of the change and to any future balances created after that date.

(d) No change to any term of this Agreement will excuse your obligation to pay all amounts owing under this Agreement.

## **18. Governing Law**

This Agreement is entered into between you and us in the Commonwealth of Virginia, and your Account and this Agreement are established in Commonwealth of Virginia. Except as set forth to the contrary in the Arbitration Provision, any claim, dispute or controversy arising from or relating to your Account or this Agreement, whether based in contract, tort, fraud or otherwise and regardless of the place of your residence, is governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without regard to the Commonwealth of Virginia's conflict of laws principles, and applicable federal laws and regulations. Notwithstanding the foregoing, this Agreement shall not be governed by Title 6.2, Chapters 3 and 4 of the Code of Virginia, and shall instead be preempted and governed by 12 U.S.C. § 25(b) and other applicable federal law.

## **19. Unauthorized Use of Your Card or Account**

You agree to promptly notify us if you believe that your Card has been lost or stolen or that someone has used or may use your Card or Account without your permission by calling Customer Service or writing to OpenSky Card Services, P.O. Box 9224, Old Bethpage, NY 11804-9224. **TO HELP PROTECT AGAINST THE UNAUTHORIZED USE OF YOUR CARD OR ACCOUNT, YOU SHOULD NEVER WRITE YOUR PERSONAL IDENTIFICATION NUMBER (PIN) ON YOUR CARD OR KEEP ANY WRITTEN RECORD OF IT KEPT WITH YOUR CARD.**

You agree to assist us in determining the facts, circumstances and other pertinent information related to any loss, theft or possible unauthorized use of your Card or Account and to comply with such procedures as we may

reasonably require in connection with our investigation, this may include the filing of one or more reports with the appropriate law enforcement authorities. Subject to applicable law, you acknowledge and agree that we may terminate our investigation if you fail to cooperate to provide us with assistance or to comply with such procedures, and we otherwise have no information or knowledge of facts confirming the unauthorized use of your Card or Account. In such circumstances, we will deem any such use as having been authorized by you and you will be liable for the amount of any Transactions plus Interest Charges and Fees incurred with any such use. Subject to applicable law, you also acknowledge and agree that unauthorized Card or Account use does not include use of your Card or Account by any person to whom you have given authority to use your Card or Account, even if you have attempted to limit the scope of the authority you have granted to any Authorized User and such Authorized User has exceeded his or her authority. You will be liable for all use of the Account or any Card by any such Authorized User, even if that person uses the Account or Card in ways you did not intend.

## **20. New Offers**

We may present you with new offers from time to time, which we believe may interest you or align with your personal credit journey. These new offers may be subject to terms and conditions in addition to or different from those provided in this Agreement, which will be described in our offer. Unless otherwise stated, all terms of this Agreement apply to any offers.

## **21. Re-evaluation of Financial Condition and Credit History and Consumer Report Authorization**

We may re-evaluate your financial condition and investigate any information you provided on your Card application at any time, and in the course of doing so, we may obtain a current credit report and ask you for any additional information about your financial condition by completing a Personal Financial Account Statement or such other form that we request from time to time. You authorize us and give us your permission to obtain any information about you that we believe would be beneficial to facilitate our determination of your eligibility for the Account and the Card, including credit reports from consumer reporting agencies. You also authorize us to obtain your consumer report information from consumer reporting agencies to consider you for other products and services.

## **22. Privacy Notice**

We respect the privacy of information about you and your Account. Please read our Privacy Notice as it is part of this Agreement. We provide our Privacy Notice to all new customers and to current customers on an annual basis. Changes may be made to our Privacy Notice. Our current Privacy Notice is always available at [www.capitalbankmd.com](http://www.capitalbankmd.com).

## **23. Reporting Information to Credit Bureaus; Identity Theft**

We may report information about your Account to credit bureaus. Late payments, missed payments or other defaults on your Account may be reflected in your credit report. You have the right to dispute the accuracy of information we have reported. If you believe that any information about your Account that we have reported to a credit bureau is inaccurate, or if you believe that you have been the victim of identity theft in connection with your Account or in connection with any other loan or extension of credit made by us, write us at: OpenSky Card Services, Attn. Fraud/Dispute Department, P.O. Box 9224, Bethpage, NY 11804- 9224. Please include your name, address, Account number, telephone number and a brief description of the problem. If available, please include a copy of the credit report in question. If you believe that you have been the victim of identity theft, submit an identity theft affidavit or identity theft report and, if applicable, and you have this information; include the number of the other loan or extension of credit made by us.

## **24. Bankruptcy Notification**

All bankruptcy notices and related correspondence to us should be sent to the following address: OpenSky Card Services, Attn. Bankruptcy Department, P.O. Box 9224, Bethpage, NY 11804-9224.

## **25. Change of Address and Other Information**

You must notify us of any changes to your name, mailing or email address, home, cell or business phone number, employment or income within 15 days. You can update your contact information by accessing MyAccount or by writing to OpenSky Card Services, PO Box 9224, Old Bethpage, NY 11804-9224. We will rely on your mail and email addresses as they appear on our records for any and all Account communications we send to you unless and until either you or, in the case of your mailing address, the U.S. Postal Service, notifies us of a change of address and we have had a reasonable opportunity to act on such notice.

## **26. Correspondence and Communication**

To the extent permitted under applicable law, any written or electronic correspondence you send to us will not be effective until we receive and have had a reasonable opportunity to act on such correspondence. Any written or electronic correspondence we send to you will, however, be effective and deemed delivered when mailed to you at your mail address (or your email address if you have authorized electronic communications) as it appears on our records.

Additionally, you authorize us, our successors, assigns, agents, representatives, service providers or any third party acting on our behalf (collectively called "Messaging Parties") to contact you using any lawful means, including automatic telephone dialing systems, artificial or prerecorded voice message systems, text messaging systems, and automated email systems to provide you with information about the Card, the Account, or this Agreement, including information about upcoming payment dates, missed payments, and returned payments. You authorize us to make such contacts using any telephone numbers or email addresses you provide us, including in connection with your application for the Account, our servicing or collection of amounts you owe under this Agreement or any other transaction involving you and us.

You understand that anyone with access to your telephone or email account may listen to or read the messages we leave or send you, and you agree that we will have no liability for any resulting loss of privacy. You also understand that, when you receive a telephone call, text message or email, you may incur a charge from the company that provides you with telecommunications, wireless or Internet services, and you agree that we will have no liability for these charges except to the extent required by applicable law. You agree that this authorization constitutes a bargained for exchange. If any telephone number you have provided us changes, or if you cease to be the owner, subscriber or primary user of any such telephone number, you agree to immediately give us notice of such facts so we can update our records. To the extent you have the right under applicable law to revoke your consent to receive communications by automatic dialer, prerecorded or artificial voice messages, or text messages, to your cell phone, you may exercise this right at any time by contacting the applicable Messaging Party directly or by sending a request to [customercare@openskycc.com](mailto:customercare@openskycc.com) with the subject line "End Communications". Your request must include your name, mailing address, the last four digits of your Account number and the specific cell phone number(s) for which you would like to cancel your consent to be contacted by an automatic dialer or prerecorded or artificial voice message. To stop text messages only, you can respond "STOP" to any text message. To stop emails, you can follow the opt-out instructions included at the bottom of the Messaging Parties' emails.

### **27. Telephone Monitoring and Recording**

You agree that we may monitor, record, retain and reproduce your telephone calls and any other communications you provide to us, regardless of how transmitted to us, for training and quality control purposes and as evidence of your authorization to act in connection with any Transaction or service contemplated by this Agreement. However, we are not under any obligation to monitor, record, retain or reproduce such items, unless required to do so by applicable law.

### **28. Waiver of Rights**

Except as may be prohibited by law or regulation, you agree to waive any right you may have for us to act promptly in bringing any action(s) against you (known as diligence); to demand payments of amounts due (known as presentment); to obtain an official certification of non-payment (known as protest); and to give notice that amounts due have not been paid (known as notice of dishonor or notice of default and non-payment).

### **29. Third-Party Claims or Defenses**

Except as otherwise provided in this Agreement and as required by applicable law, we will not be responsible for any claim or defense you may have against any third party that arises out of or in connection with any Transaction.

### **30. Assignment**

You may not sell, assign or transfer your Account or Card or any of your rights and obligations under this Agreement. We may, however, sell, assign or transfer your Account, or any balance due thereunder, and/or any of our rights and obligations under this Agreement, to another bank or other third party without prior notice to, or consent by, you, which notice or consent is hereby waived. Should we do so, then to the extent of any such sale, assignment or transfer, that bank or third party will take our place in this Agreement.

### **31. Severability**

Except as provided otherwise with respect to the Arbitration Provision, if any provision of this Agreement is deemed to be void or unenforceable by a court of competent jurisdiction or any governmental agency, that provision will continue to be enforceable to the extent permitted by that court or agency, and the remainder of that provision will no longer be considered as part of this Agreement. All other provisions of this Agreement will, however, remain in full force and effect.

### **32. Section Headings**

The Section headings used in this Agreement are for convenience of reference only and do not in any way limit or define your or our rights or obligations hereunder.

### **33. Entire Agreement**

You acknowledge that the terms and conditions set forth in this Agreement and on your card carrier constitute the entire agreement between you and us with respect to the Account, and supersede and may not be contradicted by evidence of any prior or contemporaneous written or oral communications and understandings between you and us concerning the Account or the Card.

## **Your Billing Rights: Keep This Document for Future Use**

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

### **What To Do If You Find A Mistake On Your Account Statement**

If you think there is an error on your statement, write to us at:

OpenSky Card Services  
P.O. Box 9224  
Old Bethpage, NY 11804-9224

In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

### **What Will Happen After We Receive Your Letter**

**When we receive your letter, we must do two things:**

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

**While we investigate whether or not there has been an error:**

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

**After we finish our investigation, one of two things will happen:**

- If we made a mistake: You will not have to pay the amount in question or any interest or other fees related to that amount.
- If we do not believe there was a mistake: You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your

bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

### **Your Rights If You Are Dissatisfied With Your Credit Card Purchases**

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we provided to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid the portion of your account balance associate with the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at:

OpenSky Card Services  
P.O. Box 9224  
Old Bethpage, NY 11804-9224

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will advise you of our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

### **Additional Disclosures**

**CALIFORNIA RESIDENTS:** A married applicant may apply for a separate account.

**CALIFORNIA AND UTAH RESIDENTS:** As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

**DELAWARE AND OREGON RESIDENTS:** Service charges not in excess of those permitted by law will be charged on the outstanding balance from month to month. You may pay more than the minimum payment due, up to your entire balance, at any time.

**FLORIDA RESIDENTS:** You (borrower) agree that, should we obtain a judgment against you, a portion of your disposable earnings may be attached or garnished (paid to us by your employer), as provided by Florida and Federal law.

**IOWA, MISSOURI, NEBRASKA, TEXAS AND WASHINGTON RESIDENTS:** Oral agreements or commitments to loan money, extend credit to forbear from enforcing repayment of debt, including promises to extend or renew such debt, are not enforceable. To protect you and us from any misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

**MASSACHUSETTS RESIDENTS:** Massachusetts law prohibits discrimination based upon marital status or sexual orientation.

**NEW JERSEY RESIDENTS:** Because certain provisions of this Agreement are subject to applicable laws, they may be void, unenforceable or inapplicable in some jurisdictions. None of these provisions, however, are void, unenforceable or inapplicable in New Jersey.

**NEW YORK RESIDENTS:** You may contact the New York State Banking Department at 1-877-226-5697 or <https://www.dfs.ny.gov/> for free information on a comparative listing of all credit card rates, fees and grace periods.

**OHIO RESIDENTS:** The Ohio rules against discrimination require that all creditors make credit equally available to all creditworthy customers and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

**VERMONT, RHODE ISLAND AND NEW YORK RESIDENTS:** A credit report may be requested in connection with

your application. At your request, we will tell you whether or not a credit report was obtained and, if so, the name and address of the consumer reporting agency that furnished the report. We may also request credit reports from time to time in connection with any update, renewal or extension of the credit account, whenever we believe that such action is appropriate. If you are a Vermont resident, you consent to the obtaining of such reports by signing or otherwise submitting a credit application.

**UTAH RESIDENTS:** The written agreement is a final expression of the agreement between the creditor and debtor and may not be contradicted by evidence of any alleged oral agreement.

**MARRIED WISCONSIN RESIDENTS:** No provisions of any marital property agreement, unilateral statement under §766.59 of the Wisconsin Statutes, or court decree under §766.70 will adversely affect a creditor's interest unless, prior to the time credit is granted, the creditor is furnished a copy of the agreement, statement or decree or has actual knowledge of the adverse provision. If an Account is opened for you, you must notify your spouse about the Account before any payment on the Account is due. **YOUR SIGNATURE CONFIRMS THAT CREDIT EXTENDED UNDER THIS ACCOUNT WILL BE INCURRED IN THE INTEREST OF YOUR MARRIAGE OR FAMILY.** Married residents applying for an individual account must give us the name and address for their spouse if the spouse is also Wisconsin resident. Please provide this information to us at: 1-800-859-6412.

### **Customer Identification Program (CIP)**

In accordance with the USA PATRIOT Act, Federal law requires all financial institutions to obtain, verify, and record information that identifies each individual or entity opening an account. This includes all personal and commercial accounts.

#### What This Means to Our Customers

When you open an account, you will be asked for your name, address, social security or tax identification number, date of birth, and other information that will allow us to identify you. You may also be asked to furnish your driver's license or other identifying documents. We are required to follow this procedure each time an account is opened, even if you are a current customer. Thank you for helping us to follow this Federally-mandated procedure.

**You can view a complete copy of the current Account Agreement on our website at [www.openskycc.com](http://www.openskycc.com). For Further Information: Call the Customer Service number shown on your Account Statement or on the back of your Card if you need more information.**