

## Spruce Spending Account Agreement

This Spending Account Agreement sets forth the terms and conditions that govern your Spruce Spending Account. Please review it carefully and keep it for your records. This document contains an Arbitration Agreement in [Section 23](#) that applies broadly, including to disputes that arise out of or relate to this Spending Account Agreement, your Spruce Spending Account, and to any Spruce-related products and services. The Fee Schedule can be found in [Section 11](#).

1. **Definitions.** For purposes of this Spending Account Agreement (except as otherwise provided in the Arbitration Agreement), these terms have the following meanings:
  - **“Access Device”** means your Card, PIN, password, and any other code or device that we make available to access your Spruce Accounts.
  - **“ACH”** means the Automated Clearing House network, a funds transfer system that provides funds transfer services to participating financial institutions.
  - **“Actual Balance”** has the meaning in Section 4(d).
  - **“ATM”** means Automated Teller Machine.
  - **“Available Balance”** has the meaning described in Section 4(d).
  - **“Business Day”** means any day of the week that is not a Saturday, Sunday, or federal holiday. Any references to “days” means calendar days unless indicated otherwise. Days that are not Business Days are considered part of the following Business Day.
  - **“Card”** or **“Spruce Card”** means the Spruce debit card issued by MetaBank that may be used to access the funds in your Spending Account.
  - **“Customer Service”** means the services you can contact through the sources provided in Section 17.
  - **“Emerald Financial Services”** means Emerald Financial Services, LLC, and its successors, affiliates, assigns and service providers, as applicable.
  - **“FDIC”** means the Federal Deposit Insurance Corporation.
  - **“Fee Schedule”** has the meaning described in Section 11.
  - **“Funds Availability Policy”** means the general funds availability policy set forth in Section 6(d).
  - **“MetaBank,” “we,” “us,” and “our”** means MetaBank®, National Association, a federally chartered bank, Member FDIC, its successors, affiliates, assigns and service providers, as applicable.
  - **“PIN”** means a personal identification number used in connection with your Card to conduct Spending Account transactions.
  - **“Program Bank”** means the FDIC-insured bank selected by MetaBank, as custodian, to hold the funds in your Spruce Spending Account.
  - **“Savings Account”** or **“Spruce Savings Account”** means the Spruce-branded savings account established for you at MetaBank.
  - **“Savings Account Agreement”** means the Savings Account Agreement that governs your Spruce Savings Account.
  - **“Spruce Accounts”** means your Spruce Spending Account and Spruce Savings Account.
  - **“Spending Account”** or **“Spruce Spending Account”** means the Spruce-branded demand deposit checking account established for you at MetaBank.
  - **“Spending Account Agreement”** means this Spending Account Agreement that governs your Spruce Spending Account.
  - **“Spruce Electronic Account”** means your way of accessing information about and managing your Spruce Accounts by logging in at [www.SpruceMoney.com](http://www.SpruceMoney.com) or the Spruce app.
  - **“You”** and **“Your”** means the accountholder of the Spruce Accounts.
2. **Your Spending Account Agreement.** By opening your Spruce Spending Account, you agree to the terms and conditions in this Spending Account Agreement. In addition, there may be other agreements that pertain to your Spending Account. For example, functionality available within your Spruce Electronic Account, such as mobile check deposit, will also be subject to the separate terms and conditions provided in the Spruce Online and Mobile Services Agreement. In the event of a conflict with any other agreement pertaining to your Spruce

Spending Account, this Spending Account Agreement controls as to your Spending Account. Please note that the Privacy Notices found at [www.SpruceMoney.com](http://www.SpruceMoney.com) may also govern your accounts.

### 3. Your Spruce Spending Account.

- a. **Nature of Account.** Your Spruce Spending Account is a demand deposit checking account established at MetaBank, which means that transfers to or from the account may be made electronically or through checks issued by us. The Spending Account is not a prepaid account or a credit product.
- b. **Account Opening.** All Spending Accounts are opened in our sole discretion.
  - i. **Important information for Opening an Account:** To help the federal government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions and their third parties to obtain, verify, and record information that identifies each person who opens an account. **What this means for you:** When you open an account, we will ask for your name, street address, date of birth, and other information that will allow us to identify you. We may also ask to see a copy of your driver's license or other documents at any time.
  - ii. **Identity Verification.** Accounts are opened subject to our ability to verify your identity by requiring acceptable types of identification. We may validate the information you provide to us to ensure we have a reasonable belief of your identity. If we are not able to verify your identity to our satisfaction, we will not open your Spruce Accounts, or we may close your Spruce Accounts. You represent that the personal information you provided us when opening your Spruce Accounts is true and complete.
  - iii. **Eligibility:** To be eligible for a Spruce Spending Account, you must be a citizen and resident of the United States and at least 18 years of age (or 19 in Alabama or Nebraska, and 21 in Puerto Rico). If your address changes to a non-US address, we may close your Spending Account and return funds to you in accordance with the terms of this Spending Account Agreement. No minimum balance is required to open your Spending Account.
- c. **Account Ownership.** A Spending Account may only be owned and titled in the name of one individual. Account ownership is nontransferable. Your Spending Account must be owned and entitled in your name only; it cannot be owned or titled jointly, by an organization, as "Payable on Death," "In Trust For," or in any other manner that is not in your name alone. You agree to inform us by calling Customer Service if you are subject to any IRS-mandated backup withholding at the time you open your Spruce Accounts, or at such time that you become subject to backup withholding, if this occurs on a later date.
- d. **Use of your Account.** You may not permit another person to have access to your Card or your Spending Account. If you do this, you are liable for all transactions conducted by that person. You may not use your Account for any illegal transaction (including illegal gambling) or any activity prohibited by this Spending Account Agreement. Your Spending Account is not designated for business use, and we may close it if we determine that it is being used for business purposes. We may close your Spending Account or refuse to process any transaction that we believe may violate the terms of this Spending Account Agreement or if we believe there may be illegal or fraudulent activity on any Spruce Account.
- e. **Account Closure.** You may close your Spending Account by calling 855-977-7823. We may close your Spending Account at any time for any reason, in our sole and absolute discretion. We reserve the right to close your Spending Account if you breach this Spending Account Agreement or if we determine the Spending Account is dormant, as described in Section 20. We are not obligated to notify you of the closure unless required by law. If we close your Spending Account, we will send you a check for your final balance, if any, minus any applicable fees and charges, unless otherwise required by law. If your balance is

insufficient to pay applicable fees and charges owed to us, you will continue to be liable to us for the unpaid amount until it is paid in full. All of our rights and your obligations for transactions you conduct prior to closure, including your obligation to pay any negative balance, will survive the closure of the Spending Account.

#### 4. Your Funds.

- a. **No Interest.** You will not receive any interest on the funds in your Spending Account.
- b. **FDIC insurance.** Account funds are insured by the FDIC, subject to applicable limitations and restrictions of such insurance, only once we receive the funds. For how FDIC insurance works with Program Banks, see Section 4(c). Transfers from third parties will not be FDIC insured until we receive the funds, even if we make the funds available to you prior to receipt.
- c. **Appointment of MetaBank as Custodian.** We will act as custodian of your funds upon our receipt of your funds. Once you fund your Spruce Accounts, you will be able to provide us, as custodian, with instructions about the funds accessible through your Spruce Accounts. Your funding or use of your Spruce Accounts authorizes us to hold your funds at MetaBank or act as custodian to place your funds at one or more Program Banks. Visit [www.metabank.com/programbanks](http://www.metabank.com/programbanks) to find the most up-to-date list of Program Banks. If you do not agree to us placing your funds as custodian at other Program Banks, please immediately transfer or spend all the funds in your Spruce Accounts, or call 855-977-7823 to contact Customer Service to close your Spruce Accounts and request your funds be sent to you at no charge.

Your funds are eligible for deposit insurance up to the applicable limits by the FDIC. In the event the FDIC were to be appointed as a receiver for MetaBank or a Program Bank, your funds, aggregated with any other funds you have on deposit at such institution, would be eligible to be insured up to \$250,000 for each legal category of account ownership, subject to compliance with FDIC deposit insurance requirements. You are responsible for monitoring the total amount of all direct or indirect deposits held by you or for you with MetaBank and the Program Banks for purposes of monitoring the amount of your funds eligible for coverage by FDIC insurance. To assist with calculating your FDIC deposit insurance coverage, the FDIC has an Electronic Deposit Insurance Estimator available at <https://edie.fdic.gov>.

- d. **Actual Balances and Available Balance.** Your Actual Balance and Available Balance may differ. Your “Actual Balance” is the aggregate amount of funds in your Spending Account according to our records, and includes electronic credits and all deposits. Your “Available Balance” is the amount of funds in your Spending Account available for withdrawal and the authorization of transactions. Your Available Balance is reduced by: (1) the amount of pending transactions, such as a point-of-sale transaction; (2) funds on hold in accordance with our Funds Availability Policy; (3) the amount of transactions that we have been notified will be presented or returned; and (4) any legal process relating to your Spending Account.

#### 5. Your Spruce Debit Card.

- a. **Card and Card Activation.** You are requesting that we issue you a Card to facilitate your access to your Spending Account funds. The card is issued pursuant to license by Mastercard International Incorporated. Mastercard and the circles design are registered trademarks of Mastercard International Incorporated. You agree to activate your Card to facilitate your access to your Spending Account funds once it is in your possession. To activate your Card, you must call 855-977-7823 or log in to your Spruce Electronic Account. You agree to sign your Card immediately upon receipt. Your Spruce Card is our property, and we may revoke the Card at any time. For security reasons, we may limit the amount or number of transactions you can make with the Card.

- b. Account Balance.** Each time you use your Card or otherwise access funds in your Spending Account, the Available Balance will be reduced by the amount of the transaction and applicable fees. If you use your Card number without presenting your Card (such as for an internet transaction, a mail order, or a telephone purchase), the legal effect will be the same as if you used the Card itself. You are responsible for keeping track of the balance in your Spending Account, and you should always know the exact dollar amount available in your Spending Account before using your Card, as merchants may not have access to determine the balance.
- c. Virtual Card.** In addition to a physical card, you will receive a virtual version of the Card in your Spruce Electronic Account. A virtual card is a digital representation of a Card that you can use instead of your physical Card for certain types of transactions, such as to make online purchases or to add your Spruce Card to a digital wallet. You may not use your virtual card to add funds to your Spending Account or to access an ATM.
- d. PIN.** You must set your PIN when you activate your Card. You should not write your PIN on your Card, or keep your PIN with your Card. Never share your PIN with anyone and do not enter your PIN into any terminal that appears to be modified or suspicious. If you believe that anyone has gained unauthorized access to your PIN, you should advise us immediately, following the procedures in Section 10. You can set or change your PIN logging in to your Spruce Electronic Account or by calling 855-977-7823.
- e. How to Find your Account Balance.** You may find your Spending Account balance in your Spruce Electronic Account, or by calling Customer Service. You may also obtain your balance by using your Card and PIN at certain ATMs. If you conduct a balance inquiry at an ATM, please note that the balance information provided may not reflect recent transactions and may include funds that are not available for immediate withdrawal. While we do not charge a fee for an ATM balance inquiry, an ATM owner at an out-of-network ATM may charge you a fee for the use of their ATM.
- f. Card Replacement and Expiration.** We may issue a new Card in our discretion, including if we determine there is a risk to the security of your Spending Account or Card. If you need to replace your Card, please call 855-977-7823. You may also order one in your Spruce Electronic Account. You may be required to provide personal information so we can verify your identity. There is no fee for a replacement card, but there is a fee if you request expedited shipping, see the Fee Schedule in Section 11. You may not use a Card that has expired, that we have canceled, or that is otherwise restricted for security or other purposes.

## 6. Depositing Money.

- a. Ways to Fund your Spruce Spending Account.** You may only deposit or otherwise add funds to your Spending Account in the form and manner we permit. We may refuse to accept any deposit in our sole and absolute discretion. You may add funds to your Spending Account by ACH, including direct deposit from your employer or benefits provider and an ACH credit from another bank account; by ACH transfer from your external bank account using functionality provided in your Spruce Electronic Account; by internal transfer from your Spruce Savings Account or from certain other accounts you may have with us; by cash transfers through third-party funds transfer service providers; by mobile check deposit (but only after your Spending Account has been open for 30 days), and by other sources that we approve.

Only electronic deposits are permitted, We will not accept any checks (except those deposited electronically using mobile check deposit), money orders or cash mailed or otherwise provided to us for deposit, or any inbound wire transfers to your Spending Account. We are not liable for, or obligated to honor or accept, any checks, money orders or cash mailed to us.

- b. Limits.** The following limits apply to deposits and transfers to your Spending Account:

Deposit Method	Limit	Frequency
ACH Credits (e.g., direct deposits or external ACH transfer)	We may enforce limits on the dollar amount and frequency of transactions in order to protect the security and integrity of the Spruce Accounts.	
Transfers from your external bank account in your Spruce Electronic Account	\$1,500	Daily
	\$2,500	Weekly
	\$3,500	Monthly
Cash transfers through third-party funds transfer providers	\$1,000	Daily
	\$9,500	Monthly
Mobile Check Deposit	\$2,000	Daily
	\$5,000	Monthly
Third-parties involved in transfers to your account, such as money transmitters or your other financial institution, may impose additional limits on such transfers.		

Limits on type, frequency, and amount may be changed in our sole discretion, including without notice, in order to protect the security and integrity of the Spruce Accounts, subject to applicable law.

- c. **Returns and Mistakes.** If an item you deposit is returned unpaid, or if we return any direct deposit or ACH credit transaction for any reason, or if we make a deposit available to you early and the funds are not settled as expected, we will debit your Spending Account for the amount previously added to your Spending Account. Similarly, if funds are deposited or transferred into your Spending Account by mistake or other error, we may deduct the amount of the deposit. These deductions may be made without prior notice to you. If your Spending Account has insufficient funds to debit, it may create a negative balance in your account, and we will have the right of set off and other rights as set forth in this Spending Account Agreement to collect the negative balance from you. You agree to pay us the amount of any returned item or negative balance and reimburse us for any other loss we incur.
- d. **Funds Availability Policy.** Our policy is to make funds from your electronic deposits available on the Business Day we receive the deposit or earlier as described in this Spending Account Agreement. But we reserve the right to delay the availability of deposits funded by ACH debit of an external bank account to allow us time to verify the external account and receive payment on collected funds. Once the funds are available, you can withdraw them in cash, or we will use them to pay Card transactions and other transactions permitted on the Spending Account. We reserve the right to refuse any deposit.

You may arrange to have funds transferred by ACH to your Spending Account by your employer, benefits provider, or other appropriate payer, by providing that entity our routing number and your Spending Account number. In case of transmission error, or transfer irregularity, your ability to withdraw funds may be delayed. If this occurs, then funds will generally be available within 5 Business Days after we receive the deposit. Note that after we make funds available to you, and you have spent, sent or withdrawn all or a portion of the funds, you are still responsible for any problems involving your deposit.

- e. **Preauthorized Credits.** If you have arranged to have direct deposits made to your Spending Account at least once every 60 days from the same person or company, you can call 855-977-7823 to find out whether or not the deposit has been made.

- f. Transaction Processing Order.** Generally, your deposits and withdrawals in your Spending Account are processed as follows:

Unless manual review is needed or as otherwise stated, direct deposits and other ACH credits are added to your Available Balance when those funds become available as stated in this Spending Account Agreement. Direct deposits and other ACH credits that become available on the day we receive them are added to your Available Balance at the time we receive and process the applicable file, in the order in which the ACH credit appears in the file.

ACH debits are deducted from your Available Balance at the time we receive and process the applicable file by the order in which the ACH debit appears in the file, regardless of dollar amount.

Transactions received real-time during the day are processed as they occur. Debit transactions, such as ATM and other Card transactions, received during the day are debited from your Spending Account at the time the merchant payee or processor processes the transaction, so long as there is a sufficient Available Balance to pay them. Please note that your Available Balance may not reflect every transaction you have initiated or previously authorized (e.g., preauthorized debit transaction holds that are later released).

Check transactions are processed in batches at the time we receive the check file. Check transactions are deducted from your Available Balance in the order of lowest to highest dollar amount, if multiple checks are processed at one time.

Fees for services we provide that have not already been debited are deducted from your Available Balance after other transactions have been processed. Even if we provisionally post items during the day, we may treat them as if we received all of them at the end of the day.

- g. Third-Party Fund Transfers.** Funds sent to us through third parties such as money transmittal services will be available to you when we receive the funds from the third-party service provider and have had a reasonable time to process the funds for deposit. Please note that these services are provided by third parties that we do not control, and are governed by their terms of service, including eligibility for transactions and processing and transmission timing. We may also enter into an arrangement with a third-party provider which permits us to make the funds you deposit available to you prior to the time we actually receive the funds, because the third-party provider has informed us that the money is in the process of transmittal to us. Making funds available early is always in our sole discretion.
- h. Get Paid Early.** We may choose to make certain deposits available to you on the day we receive the payment instruction rather than the typical banking practice of making the funds available on the date of settlement. This practice may result in a particular deposit being made available to you up to 2 days earlier than the payer's scheduled date. For example, if the payment instruction is sent to us from your employer on Wednesday for settlement on Friday, and you meet the criteria for this feature, we may make the funds available to you on Wednesday. Early availability to funds is dependent on the timing of the payer's payment instruction; therefore, if your payer sends your deposit the same day as settlement, it will not be available early. If we make funds available to you early, the date of availability will be shown in your transaction history in your Spruce Electronic Account and on your periodic statement. If early availability of funds is not available, the funds will be made available to you in accordance with our Funds Availability Policy set forth above. For initial eligibility, you must receive at least \$200 in ACH credits to your Spending Account, including direct deposits from your employer or benefits provider (excluding tax refund deposits) over the preceding 35 days. For ongoing eligibility, we may choose to consider additional sources of deposits other than ACH credits, in our sole discretion, to determine whether you meet the

requirement to have at least \$200 in qualifying deposits in the relevant 35-day period. Early funding is only available for certain deposits, such as your recurring payroll deposits from your employer. Early availability of funds is subject to certain fraud prevention and risk management measures in our discretion. If we choose to make a particular deposit available to you early and it does not settle as expected or is reversed, we will debit your Spending Account for this amount as described in Section 6(c). We may decide to no longer offer early availability of funds at any time in our sole discretion without notice to you.

- i. **Other Types of Deposits.** Funds availability for other types of deposits (such as mobile check deposits) will be disclosed to you at the time those other deposit options are offered to you.

**7. Accessing Your Funds.**

- a. **Ways to Access Funds in your Spruce Spending Account.** You may access funds in your Spending Account by using your Card or other permitted methods as described in this Section, and other ways we authorize in our sole discretion. We may refuse to process any transaction that we believe may violate the terms of this Spending Account Agreement. Generally, you may not exceed the Available Balance in your Spending Account, except as provided with Courtesy Coverage as described in Section 12 below. If any transaction exceeds your Available Balance, you are liable to us for the amount of that transaction as provided in Section 13 below.

- b. **Electronic Fund Transfers.** The following types of electronic fund transfers are permitted on your Spending Account:

- i. **ACH Debits.** You may provide another party the ability to initiate transfers from your Spending Account (on a one-time or recurring basis) through an ACH transaction. If you authorize the party initiating the withdrawal with advance authorization to make recurring ACH transfers to or from your Spending Account, the transfers are referred to as “preauthorized transfers.”
- ii. **ATM or Point-of-Sale Cash Withdrawals.** You may use your PIN to obtain money from ATMs with the Debit Mastercard® mark or at a point-of-sale device, as permitted by the merchant. ATM transactions are treated as cash withdrawal transactions.
- iii. **Cash Withdrawals at a Participating Financial Institution.** You may use your Card to obtain cash through an over-the-counter transaction at a participating financial institution.
- iv. **Card Purchases.** You may use your Card to purchase goods and services from merchants that accept Debit Mastercard® as a method of payment.
- v. **Account Transfers.** You may authorize an internal transfer to your Spruce Savings Account within your Spruce Electronic Account.
- vi. **ACH Transfers.** You may authorize a one-time (non-recurring) ACH transaction of funds out of your Spending Account to an external account by calling Customer Service, including when you close your Spending Account.
- vii. **Electronic Checks.** A merchant or other payee may create an electronic transfer from your paper check. The merchant may keep your check or return it to you.

- c. **Limits.** The following limits apply to transactions on your Spruce Spending Account:

Transaction Type	Limit	Frequency
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Use of your Card at Point-of-Sale	\$5,000	Daily
Use of your Card for Cash Withdrawal at a Financial Institution (Over-the-Counter Withdrawals)	\$1,000	Daily
ATM Cash Withdrawal	\$500	Transaction
	\$1,000	Daily
	6 transactions	Daily
Aggregate Cash Withdrawal (ATM, Over-the-Counter, and Cash Back at Point-of-Sale)	\$1,000	Daily
If you allow a third party to make preauthorized debits, limits may be imposed by that third party. Any cash withdrawn through an ATM, point-of-sale device, or through a participating bank may be subject to any additional limits set by the third party. For example, ATM owners may set limits for use of their ATM.		

Limits on type, frequency and amount may be changed in our sole discretion, including without notice, in order to protect the security and integrity of the Spruce Accounts, subject to applicable law.

**d. Checks.**

- i. Availability of Checks.** Your Spending Account can be used to write checks ordered through us. You can order checks by calling 855-977-7823. An order of 25 checks costs \$15. We reserve the right to reject a check ordered through a third party. Your checks must meet our standards, including paper stock, dimensions, and other industry standards. Your checks must include our name and address and the routing and account number we provide to you. We reserve the right to reject checks that do not meet these standards or cannot be processed or imaged using our equipment. We are not responsible for losses that result from your failure to follow our check standards.
- ii. Check Legends.** You agree not to write a check that is incomplete or tries to limit the time or method of payment with a condition, such as “void after 90 days” or “not valid for over \$100.” We are not obligated to discover, observe, or comply with such conditions.
- iii. Stale Items.** We may choose to pay or not pay a check that is dated more than six months before it is presented. If we pay it, you will be responsible for the check.
- iv. No Post-Dated Checks.** You agree not to date any check later than the date you write it. If you do post-date a check, you hereby authorize us to pay any such check, upon receipt, even if you have given us notice that the item is post-dated.
- v. Stop Payment Requests.** If you do not want us to pay a check written on your Spending Account, you may request us to stop payment by providing us your Spending Account number; the check number, date and amount of the check; the payee’s name; and the reason you are requesting the stop payment. We will honor a stop payment for any check drawn on your Spending Account that has not yet been processed. The request becomes effective when we record it on your Spending Account, and you agree that we have a reasonable amount of time to do so. If you tell us orally, we may require that you send us written confirmation within 14 days. Unless renewed, a stop payment request is effective for six months only.



- vi. Insufficient Funds Checks.** We reserve the right to close your Spending Account should you attempt to authorize checks when you do not have enough funds in your Spending Account to cover the transaction.
- e. Foreign Transactions.** If you make a purchase or obtain cash using your Card in a currency other than US Dollars or a country other than the US, the amount deducted from your Spending Account will be converted by the network or card association that processes the transaction into an amount in US Dollars. The rate they choose is either: (1) selected from the range of rates available in wholesale currency markets (which may vary from the rate the association itself receives), or (2) the government-mandated rate in effect for the applicable central processing date.
- f. Preauthorized Transfers.**

  - i. Right to Stop Payment and Procedure for Doing So.** If you have told us in advance to make regular payments out of your Spending Account, you can stop any of these payments. Here's how: Contact Customer Service in time for us to receive your request at least 3 Business Days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. To stop a recurring payment to a merchant you have preauthorized to debit your Spending Account, you may also contact the merchant to request that the recurring payment be canceled.
  - ii. Notice of Varying Amounts.** If these regular payments may vary in amount, the person you are going to pay is required to tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.
  - iii. Liability for Failure to Stop Payment of Preauthorized Transfer.** If you order us to stop one of these payments three Business Days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.
- g. Our Liability for Failure to Complete Transactions.** If we do not complete a transaction to or from your Spruce Accounts on time or in the correct amount according to our agreements with you, we will be liable for your losses and damages. However, there are some exceptions. We will not be liable, for instance:

  - 1. If, through no fault of ours, you do not have enough funds available in your Spruce Account to complete the transaction;
  - 2. If a merchant refuses to accept your Card;
  - 3. If an ATM where you are making a cash withdrawal does not have enough cash;
  - 4. If an electronic terminal where you are making a transaction does not operate properly and you knew about the problem when you initiated the transaction;
  - 5. If access to your Spruce Account has been blocked after you reported your Card, PIN or Access Device lost or stolen;
  - 6. If there is a hold or your funds are subject to legal process or other encumbrance restricting their use;
  - 7. If we have reason to believe the requested transaction is unauthorized;
  - 8. If circumstances beyond our control (such as fire, flood or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken;
  - 9. In the case of pre-authorized credits, the data from the third party is not received, is incomplete or erroneous; or
  - 10. For any other exception stated in our agreements with you.

**h. Authorization Holds.** With certain types of purchases (such as those made at restaurants, hotels, or similar purchases), your Spending Account may be “preauthorized” for an amount greater than the transaction amount to cover gratuity or incidental expenses. Any preauthorization amount will place a “hold” on your available funds until the merchant sends us the final payment amount of your purchase. Once the final payment amount is received, the preauthorization amount on hold will be removed. During this time, you will not have access to preauthorized amounts. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold for that amount of funds. You do not have the right to stop payment on an authorized purchase transaction, except as otherwise provided herein. If you use your Card at an automated fuel dispenser (sometimes called “pay at the pump”), the merchant may preauthorize the transaction amount up to \$100 or more. If your Card is declined, even though you have sufficient funds available, you should pay for your purchase inside with the cashier.

**8. Confidentiality.** We may disclose information to third parties about your Spruce Accounts or the transactions you make:

1. Where it is necessary for completing transactions;
2. In order to verify the existence and condition of your Spruce Accounts for a third party, such as a merchant;
3. In order to comply with government agency or court orders, or other legal reporting requirements;
4. If you give us your written permission;
5. To our service providers, as well as the employees, auditors, affiliates, successors, assigns, or attorneys of us or our service providers, or the franchisees of any of them, as needed; or
6. As otherwise necessary to fulfill our obligations under our agreements.

**9. Documentation.**

**a. Statements.** You will be able to review your transactions and statements through your Spruce Electronic Account, accessible via the Spruce app or by logging in at [www.SpruceMoney.com](http://www.SpruceMoney.com). You will get a monthly account statement, which may be a combined statement for your Spending and your Savings Account. Your statement will be deemed delivered on the date it is made available to you in your Spruce Electronic Account.

**b. Receipts.** You can get a receipt at the time you make any transfer of at least \$15 to or from your Spending Account using an ATM or point-of-sale terminal. You may need a receipt in order to verify a transaction with us or the merchant.

**10. Lost or Stolen Cards; Unauthorized Transactions.**

**a. Contact Customer Service Immediately.** If you believe your Card or Access Device has been lost or stolen, call: 855-977-7823, or write: Customer Service, PO Box 10170, Kansas City, MO 64171. You should also call the number or write to the address above if you believe a transfer has been made without your permission.

**b. Your Liability for Unauthorized Transfers.** Tell us AT ONCE if you believe your Card or Access Device has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission. Calling is the best way of keeping your possible losses down. You could lose all the money in your Spruce Accounts. If you tell us within 2 Business Days after you learn of the loss or theft of your Card or Access Device, you can lose no more than \$50 if someone used your Card, Spruce Account, or Access Device without your permission. If you do NOT tell us within 2 Business Days after you learn of the loss or theft of your Card or Access Device, and we can prove we could have stopped someone from using your Card, Spruce Account, or Access Device without your permission if you had told us, you could lose as much

as \$500. If your Card or Access Device has been lost or stolen, we will deactivate your Card or Access Device, as applicable, and issue you a new one to keep losses down.

Also, if your statement shows transfers that you did not make, including those made by your Card or other means, tell us at once. If you do not tell us within 60 days after the statement was delivered to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods for a reasonable period.

- c. In Case of Errors or Questions about your Electronic Transfers.** Telephone us at 855-977-7823, or write us at Customer Service, PO Box 10170, Kansas City, MO 64171 as soon as you can if you think an error has occurred in your Spruce Accounts. You must contact us no later than 60 days after we have made available to you the FIRST statement on which the problem or error appeared. You will need to tell us:
1. Your name and Card or Spruce Account number;
  2. A description of the error or the transaction you are unsure about;
  3. An explanation of why you believe it is an error or why you need more information; and
  4. The dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 Business Days. We will determine whether an error occurred within 10 Business Days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 Business Days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 Business Days, we may not credit your account. For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 Business Days to credit your account for the amount you think is in error. We will tell you the results within three Business Days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents we used in our investigation. If you have any further questions regarding our error resolution procedures, please call 855-977-7823.

- d. Your Liability for Unauthorized Mastercard Transactions.** Under Mastercard’s Zero Liability Policy, your liability for unauthorized transactions using your Card is \$0 if you notify us promptly upon becoming aware of the loss or theft, and you exercise reasonable care in safeguarding your Card from loss, theft, or unauthorized use. These provisions limiting your liability do not apply to debit transactions not processed by Mastercard.

**11. Fees.** You agree to pay all fees as incurred. The following fees apply to your Spruce Spending Account:

<b>FEE SCHEDULE</b>		
<b>All fees</b>	<b>Amount</b>	<b>Details</b>
<b>Deposits</b>		
Transfers from Third-Party Funds Transfer Providers	\$4.95	This is a third-party fee and not our fee. Fees of up to \$4.95 may apply when transferring funds from authorized funds transfer providers. These fees are per transaction, and vary based on location and are assessed by the funds transfer provider. Fees are subject to change without notice. Locations may be found at <a href="http://www.SpruceMoney.com">www.SpruceMoney.com</a> .

<b>Get Cash</b>		
ATM Withdrawal (in-network)	\$0	“In-network” refers to the AllPoint® ATM Network. Locations can be found at <a href="http://www.SpruceMoney.com">www.SpruceMoney.com</a> .
ATM Withdrawal (out-of-network)	\$3	This is our fee, per transaction. “Out-of-network” refers to all the ATMs outside of the AllPoint ATM Network, whether domestic or international.*
Bank Teller Cash Withdrawal (Over-the-Counter Withdrawal)	\$4.95	This is our fee for each over-the-counter withdrawal at a financial institution using your Card.
<b>Using Checks</b>		
Check Orders	\$15	Per package of 25 checks ordered through us.
<b>Other</b>		
Express Card Delivery	\$15	There is no fee to replace your Spruce debit card, but there is a \$15 fee for expedited shipping. Expedited delivery usually takes 2-3 Business Days. Regular delivery varies by mail time, but usually takes 5-7 Business Days.
* When you use an out-of-network ATM, you may be charged a fee by the ATM operator or any network used to complete the transaction, even for transactions like balance inquiries for which we do not charge a fee.		

## 12. Courtesy Coverage.

- a. **Nature of Courtesy Coverage.** You do not generally have the right to make transactions in amounts that exceed the available balance of your Spending Account. Courtesy Coverage is a special feature, offered to certain accountholders who qualify, under which we may authorize certain purchase and withdrawal transactions initiated using your Spruce Card, up to a \$20 negative available balance in your Spending Account (sometimes referred to as overdraft). Courtesy Coverage is not a loan or extension of credit. There is no fee for your use of Courtesy Coverage, although fees for related services continue to apply as described in the Fee Schedule, such as the out-of-network ATM withdrawal fee. When we disclose your account balance to you, it will not include the amount of any Courtesy Coverage available to you.
- b. **Accountholder Eligibility.**
  - i. **Initial Eligibility.** Courtesy Coverage is an optional feature available to you if you have received at least \$200 in ACH credits to your Spending Account, including direct deposits from your employer or benefits provider (excluding tax refund deposits) over the past 35 days, and you have a positive balance. If you meet our initial eligibility requirements, you must also opt in to Courtesy Coverage in your Spruce Electronic Account.
  - ii. **Ongoing Eligibility.** Once you have opted in to Courtesy Coverage, the Courtesy Coverage feature may continue to be available for you as long as you continue to meet the eligibility criteria in each period of 35 days after initial activation and your Spending Account remains in good standing. However, we may choose to consider additional sources of deposits other than ACH credits, in our sole discretion, to determine whether you meet the requirement to have at least \$200 in qualifying deposits in the relevant 35-day period.

- c. **Eligible Transactions and Item Processing.** Courtesy Coverage is available only for debit card purchase transactions, ATM withdrawals, and bank teller withdrawals (sometimes called over-the-counter withdrawals) using your Spruce Card. It is not available for any other type of transaction, including ACH transactions, check transactions, or transfers to your Spruce Savings Account. Items will generally be processed in the manner described in Section 6(f) above.
- d. **Agreement to Pay.** If you use Courtesy Coverage so that it creates or increases a negative balance in your Spending Account, you agree you will add sufficient funds to your Spending Account within 30 days so that your Spending Account has at least a zero balance. If after 30 days you have not added sufficient funds to cover your negative balance, your ability to use Courtesy Coverage may be suspended or terminated. For more information on negative balances, please see Section 13 below.
- e. **Discretionary Feature.** Courtesy Coverage is always provided in our sole and absolute discretion. Even if you meet all qualifications, we always reserve the right to decline any transaction if the available funds in your Spending Account are insufficient to cover the transaction plus any applicable fees. We have no obligation to notify you before we authorize or decline a transaction that would result in a negative balance in your Spending Account. We may suspend or terminate the availability of Courtesy Coverage at any time. Transactions exceeding the \$20 Courtesy Coverage maximum will be declined.
- f. **Cancellation.** If you wish to turn off Courtesy Coverage, you may turn it off in your Spruce Electronic Account. However, you will still be liable to pay any negative balances on your Spending Account, such as those already incurred through your use of Courtesy Coverage, or those resulting from other types of transactions. We may suspend or cancel your Courtesy Coverage if (i) you have a negative balance for more than 30 consecutive days or (ii) your cumulative qualifying deposits in your Spending Account over the relevant 35-day measurement period are less than \$200.

### 13. Negative Balances.

- a. **Your Responsibility for Negative Balances.** If your Spending Account has a negative balance for any reason – such as through your use of Courtesy Coverage or other circumstances, including a force pay transaction – you are responsible to pay all of it. Any credits or deposits to your Spending Account will be first applied to offset any negative balance before bringing your Spending Account positive. You authorize us to automatically debit your Spending Account for the amount of any negative balance when you add funds to your Spending Account. If you have not deposited sufficient funds to your Spending Account to cover the negative balance within 60 days of the creation of the negative balance, we may close your Spruce Accounts.
- b. **Right of Set Off.** If your Spending Account has a negative balance for more than 30 days, we have the right to pursue collection, including the right of set off against your other bank accounts with us – which means that we can use the funds in any other account you have with us (including your Spruce Savings Account) to repay the negative balance in your Spending Account or other amount owed to us, to the maximum extent permitted by applicable law. If you do not ultimately pay the amount owed to us, we reserve all rights to pursue appropriate efforts to collect.

14. **Savings Account.** In addition to your Spruce Spending Account, you are opening a separate Spruce Savings Account. Please refer to your Savings Account Agreement for the terms that govern that Savings Account.

15. **Spruce Rewards.** You can earn Spruce Rewards, powered by Dosh®, on qualifying purchases made when you use your Spruce Card at participating merchants, as well as any other eligible transactions described in the Spruce Rewards Powered by DOSH Terms of Service. Cash back offers and amounts may vary by user, merchant location and offer period. For the current list of participating merchants and offers, please log in to your Spruce Electronic Account. Participating merchants and offer terms may be changed from time to time without notice.

Spruce Rewards will be paid out to your Spruce Savings Account. You do not earn a Spruce Reward until it is deposited into your Spruce Savings Account. If you return, charge back, cancel, dispute, or otherwise request a refund for a qualifying purchase for which you have already received Spruce Rewards, we reserve the right to remove and you authorize us to debit any related Spruce Rewards amount from your Spruce Accounts, or withhold future Spruce Rewards to cover any such amount. To opt-out of the Spruce Rewards program, please call customer service at 855-977-7823. For full Spruce Rewards terms, please review the [Spruce Rewards Powered by DOSH Terms of Service and Privacy Policy](#).

## 16. Electronic Access and Consent.

- a. **Electronic Account.** Your Spruce Accounts are intended to be electronic-only accounts, and require your consent to receive electronic communications from us. If you do not consent or if you withdraw your consent to electronic communications, we may close your Spruce Accounts and terminate your access to them. Your agreement to accept electronic communications includes delivery of all account communications, including statements, end-of-year tax forms, changes in terms, annual privacy notices, and new and updated account agreements. We reserve the right to send paper documents to your address we have in our records, in our sole discretion. Please note that message and data charges may apply from your wireless service provider when using your Spruce Electronic Account.
- b. **Contact Information.** You agree to provide us with accurate information when opening your Spruce Accounts, including your contact information (e.g., name, physical address, mobile telephone number, email address). If your information changes, you agree to immediately provide us with updated information.
- c. **Consent to Electronic Communications.** By providing us with a telephone number and email address when opening your Spruce Accounts, you expressly agree and consent that we (including Emerald Financial Services or any other service provider) may (i) call and/or text you using an automatic telephone dialing system or otherwise, (ii) leave you voice or prerecorded messages, and (iii) send you texts, emails or other electronic messages, to service your Spruce Accounts or for other informational purposes related to Spruce generally. Message and data rates may apply. You agree to pay any service charges assessed by your service provider for communications between you and us. You agree that we may monitor and/or record telephone calls with you to ensure the quality of customer service or as allowed by law. Text message frequency may vary. Reply "STOP" to opt out or "HELP" for help.
- d. **Email and Text Delivery.** We do not accept any responsibility for email or text communications not received by you, or for any delay in the delivery of these communications. If you make your emails or texts available to someone else, you are responsible for the delivery of any information related to your Spruce Accounts to such individual. For the most up-to-date and accurate information about your Spruce Accounts, please refer to your Spruce Electronic Account.

## 17. Customer Service Contact Information. You can reach customer service at:

**Address:**

Emerald Financial Services  
Attn: Back Office Operations  
PO BOX 30674  
Salt Lake City, UT 84130

**Website:** [www.SpruceMoney.com](http://www.SpruceMoney.com)

**Mobile App:** Spruce App

**Phone Number:** 855-977-7823

- 18. Program Manager.** You understand and agree that Emerald Financial Services, an H&R Block company, provides program management and other services to MetaBank in connection with your Spruce Accounts.
- 19. Fraud.** Your Spruce Accounts are subject to fraud prevention restrictions at any time, with or without notice to you. This may include the suspension of your Card or your ability to access the funds in your Spruce Accounts. We may require you to produce documents or other materials evidencing the validity of the activity. We may also temporarily or permanently reduce the limits applicable to, or withdrawals or transfers from, your Spending Account without notice to you, unless required by law. You specifically acknowledge and agree that we may contact you in cases of suspected fraud, including by text message or otherwise. We may also limit the number of Spruce Accounts that you have in our sole discretion and may ultimately close your Spruce Accounts.
- 20. Dormant Accounts; Escheatment.** In our discretion, we may determine your Spending Account is dormant, including if it has not had any activity in 6 months. If we determine your Spending Account is dormant, we may stop posting your account statements in your Spruce Electronic Account and stop sending you certain notices. For security reasons, we may refuse a withdrawal or transfer from your Spending Account we determine is dormant if we cannot reach you in a timely fashion to confirm the transaction's authorization. Ultimately, we may close your Spending Account if we determine it is dormant. Should your Spending Account have a remaining balance after a certain period of time determined by state law, we may be required to remit the remaining funds to the appropriate state agency.
- 21. Death or Incapacity.** You agree to make arrangements with a designee to notify us promptly if you become legally incapacitated or die. We will continue to accept deposits and process transaction instructions until we know of your death or incapacity and have a reasonable opportunity to act. You agree that even when we have knowledge of your death, we may accept deposits or process transactions on your Spending Account unless ordered to stop by someone claiming an interest in your Spending Account. We may require additional documentation to confirm any claims made on the Spending Account. You may designate a beneficiary on your Spruce Accounts by contacting Customer Service and filling out the required documentation.
- 22. Returns and Refunds.**

  - a. Merchant Credits.** If you are entitled to a refund for any reason for goods or services purchased with your Spending Account, the return and refund will be handled by the merchant. If the merchant credits your Spending Account, you agree to accept such credit and understand that it may not be immediately available. While merchant refunds post as soon as they are received, please note that we have no control over when a merchant sends a credit transaction, and the refund may not be available for a number of days after the date the refund transaction occurs.
  - b. Merchant Disputes.** All disputes regarding purchased goods or services must be addressed and handled directly with the merchant from whom those goods or services were obtained. We are not responsible in any way for any goods or services you decide to purchase, including without limitation, their quality, safety, legality, or delivery. We will not become involved in any dispute involving such goods or services. You also agree to release us and our service providers, including the respective directors, officers, employees, and agents of either, from any and all claims, demands and damages between persons using and accepting the Card associated with your Spending Account, including any claims, demands or damages arising out of or related to the purchase or sale of goods or services.
- 23. Arbitration if a Dispute Arises ("Arbitration Agreement").**

  - a. Scope of Arbitration Agreement.** You and the Covered Parties agree that all disputes and claims between you and the Covered Parties shall be resolved through binding individual arbitration unless you opt out of this Arbitration Agreement using the process explained below. However, to the fullest extent permitted by applicable law, either you or the Covered Parties may elect that an individual claim be decided in small

claims court, as long as it is brought and maintained as an individualized claim. All issues are for the arbitrator to decide, except that issues relating to the arbitrability of disputes and the validity, enforceability, and scope of this Arbitration Agreement, including the interpretation of Sections 23(b), (d), and (f) below, shall be decided by a court and not an arbitrator. The terms “Covered Parties” or “we” or “us” in this Arbitration Agreement include MetaBank®, National Association; HRB Digital LLC.; and Emerald Financial Services, LLC; their respective direct or indirect parents, subsidiaries, and affiliates; and the predecessors, successors, officers, directors, agents, employees and franchisees of any of them.

**Arbitration Opt Out: You may opt out of this Arbitration Agreement within 30 days after you sign this Agreement by filling out the form at [www.arbitrationoptout.com/metabank](http://www.arbitrationoptout.com/metabank) or by sending a signed letter to MetaBank Arbitration Opt Out, P.O. Box 5846, Kansas City, MO 64171. The letter should include your printed name, address, the first five digits of your Social Security Number, and the words “Reject Arbitration.” If you opt out of this Arbitration Agreement, any prior arbitration agreement shall remain in force and effect.**

- b. Commencing Arbitration.** You or we may commence an arbitration proceeding only if you and we do not reach an agreement to resolve the dispute or claim during the Informal Resolution Period (defined below).
- i. Pre-Arbitration Notice of Dispute.** A party who intends to seek arbitration must first mail a written Notice of Dispute (“Notice”) to the other party. The Notice to the Covered Parties should be addressed to: EFS-Legal Department, Attention: Notice of Dispute, 1301 Main Street, Kansas City, MO 64105. The Notice must be on an individual basis and include all of the following: (1) the claimant’s name, telephone number, and e-mail address; (2) the nature or basis of the dispute or claim; and (3) the specific relief sought.
  - ii. Informal Settlement Conference.** After the Notice containing all of the information required above is received, within 60 days either party may request a conference to discuss informal resolution of the dispute (“Informal Settlement Conference”). If timely requested, the Informal Settlement Conference will take place at a mutually agreeable time by telephone or videoconference. You and our business representative must both personally participate in a good-faith effort to settle the dispute without the need to proceed with arbitration. The requirement of personal participation in an Informal Settlement Conference may be waived only if both you and we agree in writing. Any counsel representing you or us may also participate; however, if you have retained counsel, a signed statement may be required by law to authorize certain Covered Parties to disclose your confidential tax and account records to your counsel. Any applicable statute of limitations will be tolled during the period between the date that either you or we send the other a fully complete Notice, until the later of (1) 60 days after receipt of the Notice; or (2) if a Settlement Conference is timely requested, 30 days after completion of the Settlement Conference (the “Informal Resolution Period”). The parties agree that the existence or substance of any settlement discussions shall not be disclosed.
  - iii. Enforcement of Pre-Arbitration Requirements.** A court will have the sole authority to enforce this Section 23(b), including the power to enjoin the filing or prosecution of an arbitration if you or we do not first provide a fully complete Notice and participate in a timely requested Informal Settlement Conference.
- c. How Arbitration Works.** Arbitration shall be conducted by the American Arbitration Association (“AAA”) pursuant to its Consumer Arbitration Rules (“AAA Rules”), as modified by this Arbitration Agreement. AAA Rules are available on AAA’s website [www.adr.org](http://www.adr.org) or by calling AAA at (800) 778-7879. If AAA is unavailable or unwilling to administer the arbitration consistent with this Arbitration Agreement, the parties shall agree to, or the court shall select, another arbitration provider. Unless the parties agree



otherwise, any arbitration hearing shall take place in the county of your residence. The arbitrator will be either a retired judge or an attorney specifically licensed to practice law in the state of your residence and selected by the parties from the arbitration provider's national roster of arbitrators. The arbitrator will be selected using the following procedure: (1) the arbitration provider will send the parties a list of five candidates meeting this criteria; (2) if the parties cannot agree on an arbitrator from the list, each party shall return its list to the arbitration provider within 10 days, striking up to two candidates, and ranking the remaining candidates in order of preference; (3) the arbitration provider shall appoint as arbitrator the candidate with the highest aggregate ranking; and (4) if for any reason the appointment cannot be made according to this procedure, the arbitration provider will provide the parties a new list of five candidates meeting the above criteria until an appointment can be made.

- d. Waiver of Right to Bring Class Action and Representative Claims.** All arbitrations shall proceed on an individual basis. The arbitrator is empowered to resolve the dispute with the same remedies available in court, including compensatory, statutory, and punitive damages; attorneys' fees; and declaratory, injunctive, and equitable relief. However, the arbitrator's rulings or any relief granted must be individualized to you and shall not apply to or affect any other client. The arbitrator is also empowered to resolve the dispute with the same defenses available in court, including but not limited to statutes of limitation. **You and the Covered Parties also agree that each may bring claims against the other in arbitration only in your or their respective individual capacities and in so doing you and the Covered Parties hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration, to assert or participate in a private attorney general lawsuit or private attorney general arbitration, and to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind.** If a court decides that applicable law precludes enforcement of any of this section's limitations as to a particular claim or any particular request for a remedy for a claim (such as a request for public injunctive relief), then the parties agree that the particular claim or the particular request for a remedy (and only that particular claim or particular request for a remedy) must remain in court and be severed from any arbitration. No arbitration shall proceed in any manner as a class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims, unless all parties consent in writing.
- e. Arbitration Costs.** Payment of all filing, administrative, arbitrator, and hearing fees will be governed by AAA Rules, but if you inform us that you cannot afford to pay your share of the fees, we will consider advancing those fees on your behalf. In addition, we will reimburse you for your share of the fees at the conclusion of the arbitration (regardless of who wins), so long as (i) you complied with Sections 23(b) and (d) above and Section 23(f) below, and (ii) neither the substance of your claim nor the relief you sought was determined to be frivolous or brought for an improper purpose as measured by the standards set forth in Federal Rule of Civil Procedure 11(b); otherwise, the payment of fees will be governed by AAA Rules and you agree to reimburse the Covered Parties for all fees advanced on your behalf.
- f. Arbitration of Similar Claims.** If 25 or more claimants submit Notices raising similar claims and are represented by the same or coordinated counsel, all of the cases must be resolved in arbitration in stages using staged bellwether proceedings if they are not resolved during the Informal Resolution Period. The parties agree that the individual resolution of claims in arbitration might be delayed if the claims are pursued in connection with 25 or more similar claims. In the first stage, the parties shall each select up to 10 cases per side (20 cases total) to be filed in arbitration and resolved individually in accordance with this Arbitration Agreement, with each case assigned to a separate arbitrator. In the meantime, no other cases may be filed in arbitration. If the parties are unable to resolve the remaining cases after the conclusion of the first stage bellwether proceeding, each side may select up to another 10 cases per side (20 cases total) to be filed in arbitration and resolved individually in accordance with this Arbitration Agreement. During this second stage, no other cases may be filed in arbitration. This process of staged bellwether proceedings shall continue until the parties are able to resolve all of the claims, either through settlement or arbitration. If the filing procedures in this Section 23(f) apply to a claimant's Notice, any

statute of limitations applicable to the claims set forth in that Notice will be tolled from the time the first cases are selected for a bellwether proceeding until the claimant's Notice is selected for a bellwether proceeding, withdrawn, or otherwise resolved. A court will have the sole authority to enforce this Section 23(f) and, if necessary, to enjoin the filing or prosecution of arbitrations.

**g. Other Terms.** This Arbitration Agreement shall be governed by, and interpreted, construed, and enforced in accordance with, the Federal Arbitration Act and other applicable federal law. Except as set forth above in Section 23(d), if any portion of this Arbitration Agreement is deemed invalid or unenforceable, it will not invalidate the remaining portions of the Arbitration Agreement. No arbitration award or decision will have any preclusive effect as to any issues or claims in any dispute, arbitration, or court proceeding where any party was not a named party in the arbitration, unless and except as required by applicable law. Notwithstanding any provision in this Agreement to the contrary, we will not make any material change to this Arbitration Agreement without providing you with an opportunity to reject the change. Rejection of any future change will not impact this or any prior Arbitration Agreement to which you have agreed.

**24. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SPENDING ACCOUNT AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO YOU, AND HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING OUR SERVICES OR ANY FINANCIAL SERVICE OR RELATING TO OR ARISING OUT OF THIS SPENDING ACCOUNT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**25. Applicable Law.** Except as provided in the Arbitration Agreement, this Spending Account Agreement will be governed by and interpreted and enforced in accordance with federal law; to the extent state law applies and is not preempted by federal law, this Spending Account Agreement will be governed by the laws of the State of South Dakota (without reference to conflict of laws provisions).

**26. English Language Controls.** Any translation of this Spending Account Agreement is provided for your convenience only and may not accurately represent the original English. The meanings of terms, conditions and representations in this Spending Account Agreement are subject to definitions and interpretations in the English language.

**27. Amendment and Cancellation.** We may change the terms of this Spending Account Agreement at any time, except as otherwise provided in the Arbitration Agreement. We will notify you of any changes if required by, and in the manner provided by, applicable law. When we change this Spending Account Agreement, the then-current version will govern your Spending Account. If you continue to use your Spending Account or keep it open, you are deemed to have accepted and agreed to any changes, as of the effective date of any such change.

**28. Other Terms.** We may transfer or assign all or a portion of any of our rights and obligations to Emerald Financial Services or a third party without your notice or consent, unless required by law. Your rights and obligations may not be assigned. We do not waive our rights by delaying or failing to exercise them at any time. Except as provided in the Arbitration Agreement, if any provision of this Spending Account Agreement is determined to be invalid or unenforceable, the validity or enforceability of any other provision of this Spending Account Agreement shall not be affected. This Spending Account Agreement (including the Arbitration Agreement) will survive after your Spending Account is closed.