

FIRST CITIZENS NATIONAL BANK
ARBITRATION PROVISION

1. Definitions. In this Arbitration Provision ("Provision") the following words and phrases shall have the following respective meanings:

(a) "Claim" means any claim, dispute or controversy between the Customer, the Bank and the Covered Persons, or any combination of them, (whether in contract, tort, or otherwise, whether pre-existing, present or future, and including statutory, common law, intentional tort or equitable claims (including any claim for injunctive or declaratory relief)), that in any way arises from or relates to the Account Relationship, if such claim, dispute or controversy cannot be resolved without a lawsuit or arbitration proceeding. "Claim" includes disputes arising from actions or omissions prior to the date of this Provision. "Claim" has the broadest reasonable meaning, and includes initial claims, counterclaims, cross-claims and third-party claims. "Claim" includes any dispute about the validity or enforceability of the Deposit Account Agreement (the "Agreement") and any other agreement between Customer and Bank arising from or related to the Account relationship. However, it does not include any dispute about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof; all such disputes are for a court and not an arbitrator to decide.

(b) "Covered Person(s)" means the respective heirs, representatives, assigns, successors, employees, officers, directors, agents, attorneys, parent companies, subsidiary companies, sister companies, independent contractors and any other affiliated entities or persons, whether acting in their respective corporate or individual capacities, of the Bank and/or the Customer.

(c) "Account Relationship" means Customer's deposit account(s) with the Bank, including those acquired by the Bank through branch acquisitions and/or bank mergers, as well as all past and future agreements and transactions between the Customer, the Bank and the Covered Persons, or any combination of them related to the deposit account(s), including, without limitation, your Deposit Account Agreement with the Bank, an ATM card, debit card, check card or similar card, any account transaction or attempted transaction (including deposits, payments, transfers and withdrawals, whether by check, card, ACH or otherwise), overdraft protection services, any overdraft line of credit or overdraft transfer agreement, non-sufficient funds and overdraft items, and any disclosures, advertising, promotions, or oral or written statements related to the foregoing.

2. Scope. This Provision is a part of the Account Relationship described above between the Customer and the Bank. This Provision is incorporated into each document executed in connection with the Account Relationship. In the event of a conflict between the provisions of this Provision and other documents executed in connection with the Account Relationship, the provisions of this Provision shall control. This Provision shall apply to all Claims, regardless of whether a Claim accrued prior to the effective date of this Provision.

3. Dispute Resolution. Any Claim shall, upon the unilateral or joint election of the Customer, the Bank or the Covered Persons, respectively, as the case may be, either before or after institution of legal proceedings, be resolved by binding arbitration, as hereinafter provided, pursuant to the Rules of the Administrator in effect at the time the Claim is asserted. Arbitration is elected by giving a written demand for arbitration to the other party, by filing a motion to compel arbitration in court or by initiating an arbitration against the other party. Bank will not demand to arbitrate an individual Claim that Customer brings against Bank in small claims court or your state's equivalent court, if any. But if that Claim is transferred, removed or appealed to a different court, Bank will then have the right to demand arbitration.

4. Choosing the Administrator. "Administrator" means the American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, www.adr.org; JAMS, 620 Eighth Avenue, 34th Floor, New York, NY 10018, www.jamsadr.org; 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. The party initiating arbitration may select the Administrator by filing a Claim with the Administrator of that party's choice. Notwithstanding any language in this 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 the class action waiver in Section 5(e) below.

5. Arbitration.

(a) The Account Relationship involves interstate commerce, and the arbitration is subject to and shall be governed in accordance with the Federal Arbitration Act, 9 U.S.C. §1, et. seq., as amended, and the Rules of the Administrator, notwithstanding any choice of law provision in the Agreement or any other documents executed in connection with the Account Relationship. The Arbitrator shall have authority to award compensatory damages and grant such equitable relief that he/she deems appropriate. The Arbitrator shall have no authority to award punitive, exemplary, or other non-economic damages (except to the extent that any such restriction or limitation is prohibited under applicable state law, in which case the Arbitrator shall have only such authority to award said damages as would be allowable under applicable state law). The Arbitrator shall give effect to applicable law, including statutes of limitations and all issues of formation, consideration, capacity, fairness, unconscionability, mutuality, duress, fraud, adhesion, arbitrability, revocability and/or waiver, in determining any Claim. Judgment upon the arbitration award may be entered in any court having jurisdiction. The Arbitrator(s) shall be chosen no later than 30 days after filing of the Claim with the Administrator. The arbitration procedures shall be concluded, and the Arbitrator's award issued, no later than six (6) months after selection of the Arbitrator. The Arbitrator will issue a written decision resolving the controversy and stating the facts reviewed, conclusions reached, and the reasons for reaching those conclusions, including, if applicable, the basis for any award of damages. **The decision of the Arbitrator(s) shall be final and binding on the parties and is not generally subject to judicial review, except in limited circumstances, including those circumstances set forth in the Federal Arbitration Act 9 U.S.C. §1, et. seq.** However, if the amount of the Claim exceeds \$50,000 or involves a request for injunctive or declaratory relief that could foreseeably involve a cost or benefit to either party exceeding \$50,000, any party can, within 30 days after the entry of the award by the Arbitrator, appeal the award to a three-arbitrator panel administered by the Administrator. The panel shall reconsider anew any aspect of the initial award requested by the appealing party. The decision of the panel shall be the majority vote. Reference in this Provision to "the Arbitrator" shall mean the panel if an appeal of the Arbitrator's decision has been taken. The costs of such an appeal will be borne in accordance with Section 7 below.

(b) Provided, nothing contained herein shall prohibit the Bank, the Customer or any Covered Person from instituting a lawsuit for the purpose of compelling any other Covered Person to arbitrate a Claim in accordance with this Provision. In addition, the institution and maintenance of any action for judicial relief by any Covered Person, including an action for the collection of any indebtedness due under the

documents evidencing the Account Relationship, or pursuit of a provisional and ancillary remedy, shall not constitute a waiver of the right of the Bank, the Customer or any Covered Person, including the party instituting such action, to submit the controversy or claim to arbitration at any time for any reason convenient to such party. No portion of this Provision shall limit the right of any party to the Agreement to seek relief under any bankruptcy law or to exercise non-judicial self-help remedies such as setoff, replevin, repossession, to foreclose against or sell any real or personal property, collateral or security, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of any Party to the Agreement to resort to arbitration at any time.

(c) At the time of any request for arbitration hereunder, any party to the arbitration may require the other party(ies) to the arbitration to identify any and all claims and counterclaims, except as specifically excluded herein, which such other party(ies) may have against the other party, whether deemed to be compulsory or permissive, and any such party may request in writing that any other such party(ies) present all such claims and counterclaims which they may have against the other party under any arbitration under this Provision, whether deemed to be compulsory or permissive, and the failure to so bring any such claim or counterclaim under this Provision after such request by any such party shall constitute a waiver and a bar to the bringing of any such claim or counterclaim in any subsequent arbitration or legal action.

(d) In the event of a conflict between the provisions of this Provision and the Rules of the Administrator, the provisions of this Provision shall control.

(e) **The parties hereto each waive all rights to serve as a class representative in any class action involving a claim covered by this Provision and agree never to seek to establish a class action against any other parties hereto. The Arbitrator(s) is authorized to join any third party who desires to be a party to the arbitration, and to resolve any and all claims of said third parties which arise from or are related to any arbitrable claims under this Provision. Accordingly, no class action arbitration may be ordered or had under this Provision and, except as provided herein, there shall be no joinder of multiple parties, plaintiff or defendant, except for joinder of all parties necessary to resolve claims of third parties which arise from or are related to any arbitrable claims covered by this Provision.**

6. **WAIVER OF JURY TRIAL.**

THE PARTIES HERETO EACH WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY COURT IN ANY ACTION FOR THE ADJUDICATION OF A CLAIM HEREUNDER.

7. Administrative Fees and Expenses. Upon request, the Bank will advance the filing fees charged by the Administrator in connection with an arbitration proceeding hereunder for any Claim filed by any Customer or other Covered Person against the Bank, as well as the hearing fees, including the fees of the arbitrator(s), charged by the Administrator or by the arbitrator(s). The Arbitrator will determine who will ultimately be responsible for paying any filing, hearing or other administrative fees in connection with the arbitration. Unless inconsistent with applicable law, each party to an arbitration hereunder shall bear the expense of their respective attorneys', experts' and witness fees and expenses, regardless of which party prevails in the arbitration.

8. Selection of Arbitrators. All claims, including counter-claims, shall be decided by a single arbitrator, selected from a panel of nine (9) arbitrators submitted by the Administrator, by the Bank and the Customer either agreeing on the Arbitrator or striking persons from the panel until one person is left, that person being the Arbitrator. The Customer, or any party acting by or through the Customer, may make the first strike from the panel of arbitrators or may defer to the Bank or any party acting by or through the Bank for the first strike. The resolution of any disputes concerning selection, including, if necessary, the appointment of the Arbitrator(s), shall be done by the Administrator. However, the Arbitrator must be a retired or former judge or a lawyer with at least 10 years of experience.

9. Discovery. The Arbitrator shall have the power to authorize reasonable discovery and to issue any necessary orders and subpoenas pursuant to the arbitration rules of the Administrator. All discoveries shall be limited and expedited to the maximum extent practicable; provided, however, either party may submit a written request to the Arbitrator to expand the scope of discovery normally allowable under the arbitration rules of the Administrator. In no event shall the Arbitrator allow discovery which would result in this matter not being concluded and an award issued in the time specified herein.

10. Location. The arbitration sessions shall be held at a location mutually acceptable to the parties to the arbitration. If the parties to the arbitration cannot agree on the location, the location shall be selected by the Administrator.

11. Confidentiality. To the extent permitted by applicable law, all proceedings pursuant to or in connection with this Provision shall be kept strictly confidential, except for disclosures of information required in the ordinary course of the business of the parties hereto or by applicable law or regulation. This section shall not exempt from discovery or use in any other or future proceeding any evidence otherwise discoverable, merely because it is presented in, referred to, or discussed in the course of, or in connection with, proceedings pursuant to this Provision.

12. Survivability. This Provision shall survive the closing of the deposit account, termination of the Account Relationship or other contractual relationship between the Customer and the Bank, any legal proceeding and any bankruptcy to the extent consistent with applicable bankruptcy law.

THE PARTIES TO THE DEPOSIT ACCOUNT AGREEMENT DO KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY AGREE TO BE BOUND BY THE TERMS OF THE FOREGOING ARBITRATION PROVISION AND WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT TO A JURY TRIAL AND ANY BENEFITS THAT MIGHT BE DERIVED FROM A JURY TRIAL, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO APPEAL A DECISION EXCEPT IN CERTAIN, LIMITED CIRCUMSTANCES.