

# FIRST NATIONAL BANK NORTHWEST FLORIDA

## SHAZAM BRELLA Terms of Use Agreement

This SHAZAM BRELLA Terms of use Agreement ("Agreement") sets forth the terms and conditions that apply to your enrollment in the SHAZAM BRELLA mobile banking application (the 'service') offered through First National Bank Northwest Florida ('we,' 'our,' 'us'). You agree to be bound by the terms and conditions of this Agreement as may be amended from time to time.

### 1. Acceptance of Terms.

By clicking "I Agree" when you enroll in the service or by using the service, you agree to be bound by the terms and conditions of this Agreement. By agreeing to the terms and conditions of this Agreement, you represent that you have the capacity to be legally bound by it.

### 2. Description of the Service.

The service is a mobile banking application available for iPhone and Android devices, as well as other tablet devices and via an internet browser, which is tied to your debit card with us. We have set the features and functions of the service that will be available to our customers. The service will provide you with access to account balance information, and transaction alerts as managed by you, via e-mail, for the following transactions: transactions over a defined dollar amount set by you; international transactions; mail, internet or telephone transactions; or suspicious activity. The service may also provide the ability to send and receive funds through your debit card that you enroll in the service. The features and functions of the service, and the steps to be taken by you to manage the alert settings and the other features and functions of the Service, may be described further in any user guide or user manual that may be available as part of the service. Any user manual or user guide is not a part of this Agreement.

### 3. Alerts.

We may from time to time provide you with automatic alerts and voluntary account-related alerts. Automatic alerts may be sent to you following certain changes made online to your account, such as a change to your registration information. Voluntary account alerts may be turned on by default as part of the service. They may then be customized, deactivated, or reactivated by you. We may add new alerts from time-to-time, or cease to provide certain alerts at any time and in our sole discretion, and without notice to you. All alerts will be sent by email to the e-mail address you have provided. You are responsible for updating your profile with any change in your email address. Changes to your e-mail address will apply to all of your alerts. We reserve the right to discontinue sending alerts to any email address you have provided if any email or emails to the address are rejected or we have any other issues or concerns regarding any email address, and without notice to you.

### 4. Relationship.

This Agreement and your account relationship is solely with us, and the service is being provided solely by us. No agreement, account or other relationship with any of our service providers (including ITS, Inc., SHAZAM, Inc. or ITS Bank) is established by this Agreement or by your use of the service. All compliance, disclosure and account servicing with respect to this Agreement, the service and all transactions or actions effectuated through or under the service is solely our responsibility.

### 5. Account Information.

You represent that you are the legal owner of the accounts and financial and other information which you access via the service. By submitting information, data, passwords, usernames, PINS, other log-in information, materials and other content to us and our service providers through the service, you are representing that you have the right to submit such information and you are perpetually licensing that content to us and our service providers and permitting us and our service providers to use and store the content for the purpose of providing you the service and as otherwise permitted or required by law, rule or regulation. You expressly authorize us and our service providers to access your account and other information.

### 6. Information.

You are responsible for the accuracy and completeness of all information and data provided or input by you (including all account information, email addresses, funds transfer amounts and the recipients of funds), as well as for maintaining the confidentiality of any user name and password that allows you access to the service. By providing us with your e-mail address, you agree to receive all alerts or other notices by email to that e-mail address.

It is your responsibility to update or change your email address as necessary by updating your profile. We reserve the right to discontinue sending alerts or other information or notices to, or to not effectuate any funds transfers or other transactions associated with, any email address and related debit card if any email or emails to the address are rejected or we have any other issues or concerns regarding any email address, and without notice to you. Notices by email may be provided in the format selected by us or through a link to the appropriate page on our website, accessible through any standard, commercially available internet browser.

You also acknowledge and agree that we may share your name, email address and other information with any person that you engage in a transaction with pursuant to the service, including in connection with your receipt or payment of funds through the service.

Alerts may also contain some information about you or your accounts. Depending upon which alerts you select, information such as account balance may be included.

Account information, including your name and email address, will also be provided to the other party to any funds transfer transactions. Anyone with access to your cell phone or e-mail will be able to view the content of these alerts and your transaction information. It is your responsibility to maintain the security of your cell phone and e-mail.

#### 7. Your use of the service.

Your right to use the service is personal to you and is not transferable or assignable by you to any other person or entity. In order for us to provide the service to you, you must keep your email address and other profile and registration information current and accurate. Your access to the service may be interrupted from time to time for various reasons, including but not limited to equipment malfunction, periodic updating, maintenance or repair, or other actions that we or our service providers may elect to take in our sole discretion. You shall not use the service, or allow the use of the service, for any illegal purpose or in a way that violates any foreign, federal, state or local law, rule, regulation, ordinance or order.

#### 8. License.

Subject to your compliance with this Agreement, you are hereby granted a personal, limited, non-transferable, non-exclusive, non-sublicensable and non-assignable license to download, install and use the software associated with the service on your wireless device within the United States and its territories. In the event that you obtain a new or different wireless device, you will be required to download and install the software associated with the service to that new or different wireless device and to delete the software associated with the service from your wireless device that has been replaced. This license shall be deemed immediately revoked and terminated upon any termination of the service or this Agreement, your noncompliance with this Agreement, your deletion of the software from your wireless device, or upon our written notice to you at any time, with or without cause. In the event the license is revoked or terminated for any reason, you shall promptly delete the software associated with the service from your wireless device. We and our service providers reserve all rights not expressly granted to you in this Agreement.

#### 9. Charges for the service.

You shall pay for the service in accordance with our current fee schedule as amended by us from time to time, in our sole discretion. Any change in the fee schedule shall be effective at the time determined by us. You authorize us to automatically charge your account for all such fees incurred in connection with the service. In the future, we may, in our sole discretion, but we have no obligation to, add to or enhance the features of the service. By using such added or enhanced features, you agree to pay for such service in accordance with the then current fee schedule.

#### 10. Intellectual Property Rights; Proprietary Rights.

The service, including its content, software, images, logos and other material, are protected under both United States and other applicable copyright and trademark laws and other laws. The service and the content of the service either belongs to or is licensed to us or our service providers. We grant you the right to use the service subject to and upon the terms of this Agreement. You may use the Service only for your own personal, internal and non-commercial use only. Any distribution, reprint, or electronic reproduction of the Service or any content related to the service, in whole or in part, for any purpose is expressly prohibited. You shall not, nor attempt to, reverse engineer, reverse compile, decipher or disassemble any software or technology comprising or related to the Service.

#### 11. Disclaimer of Representations and warranties.

The service is provided on an "as is" basis, and we make no express representations or warranties, and we hereby disclaim and exclude in entirety any and all implied warranties, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or noninfringement, regarding the service and all other matters whatsoever. Your use of the service is at your own risk.

You acknowledge that the service could include inaccuracies, and we do not represent or warrant the timeliness, reliability, completeness or accuracy of the service or any alerts, funds or other transactions or other actions, or that the service or any alerts, funds or other transactions or other actions are free of errors, viruses or other potentially damaging content.

We shall attempt to preserve the confidentiality of your account data and other personal information in accordance with applicable law. We shall not be liable for inadvertent disclosure of your account data or other personal information if, without limitation, it is caused by non-authorized intrusion or hacking or by your failure to maintain proper security of your account data or other personal information.

#### 12. Disclaimer.

You understand and agree that any alerts provided to you through the service or any funds or other transactions or other actions to be made through or under the service may be delayed or prevented by a variety of factors, and that we neither guarantee the delivery nor the accuracy of the content of any alert, funds or other transaction or other action. We may also cease to provide or allow any types of alerts, funds or other transactions or other actions at any time, and in our sole discretion. We shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert, funds or other transaction or other action, for any errors in the content of any alert, funds or other transaction or other action, or for any actions taken or not taken by you or by any other person in reliance on any alert, funds or other transaction or other action.

#### 13. Limitation on Liability.

In no event shall we or our parent, subsidiaries, affiliates, employees, agents, customers, vendors, suppliers or service providers be responsible or liable for any losses, damages, costs, expenses or other amounts, including but not limited to, direct, indirect, incidental, special, consequential, punitive or other damages, or for any other liabilities, in any way arising or resulting from your use of or inability to use the service, any omissions, errors, defects or viruses in the service, failure of performance of the Service or otherwise from the service, and whether in an action in contract, tort (including but not limited to negligence), or otherwise, and even if we have been advised or knew of the possibility of such damages.

Without limiting the generality of the foregoing, we shall not be liable for loss of funds, loss of business, loss of goodwill, loss of use, lost profits, lost data or other intangibles. Further, our total liability to you under this Agreement and under any theory, including breach of contract, negligence or other tort, shall in no event exceed the total amount of the payments made by you to us, if any, during the last 12 months under this Agreement.

#### 14. Indemnification.

You shall indemnify, defend and hold us and our affiliates and service providers harmless from and against any and all suits, actions, proceedings, claims, counterclaims, demands, allegations, assertions, liabilities, damages, losses, expenses and costs, including but not limited to attorneys' fees and court costs, and other amounts, in any way caused by or arising from your use of the service, any other person's use of the service through you (including to receive funds from you or to send you any funds), your violation of this Agreement, your violation of any foreign, federal, state or local law, rule, regulation, ordinance or order, or your infringement of any intellectual property or other right of anyone. This Section survives any termination of this Agreement. Our service providers may enforce this section, either independently or jointly with us.

#### 15. Termination of Enrollment.

You may cancel your enrollment in the service by removing all of your debit cards from the service. The deletion of the application from your wireless device will not in itself cancel your enrollment in the service. If you have questions about cancelling your enrollment in the service, you can call us at 877-602-6935.

We reserve the right to change or cancel any or all of the service at any time without notice. We may also cancel or suspend your access to the service at any time without notice and for any reason, including but not limited to your non-use of the service for such period of time as is determined by us. Your enrollment in the service shall also automatically terminate, without notice, in the event our right to offer and provide the service is lost or terminated, for whatever reason.

You agree that we will not be liable to you or anyone else for any modification, suspension, cancellation or discontinuation of any or all of the service, for whatever reason. The termination of this Agreement, for whatever reason, will not affect any of your liability under this Agreement, including, without limitation, under sections 9 and 14.

#### 16. Amendments to the Agreement.

We may amend or restate this Agreement from time to time, in our sole discretion, including adding new or different terms or conditions. Any such amendments or restatements will be posted on our website. You shall be deemed to have accepted and agreed to any such amendments or restatements by your use of the Service subsequent to the posting of the amendments or restatements.

17. Governing Law and Jurisdiction.

This Agreement and your relationship with us pursuant to this Agreement shall be governed and controlled by the laws of the state of Florida, but without regard to its conflict or choice of laws provisions. Any dispute with us arising under or related to this Agreement or the Service shall be resolved exclusively by the small claims court of Panama City within the county of Bay, except with respect to imminent harm requiring temporary or preliminary injunctive relief in which case we may seek such relief in any court with jurisdiction.

In the event of a dispute in which the amount in controversy is not within the jurisdictional limits of, and is not filed in, a small claims court, either of us may elect to arbitrate such dispute in accordance with the commercial Arbitration Rules of the American Arbitration Association. If these rules are not available, you and we may use a mutually agreeable comparable substitute arbitration procedure. Arbitration can only decide our or your dispute and cannot consolidate or join claims of other persons who may have similar claims. There shall be no authority or right for any disputes to be arbitrated on a class-action basis. If you or we choose arbitration, neither of us shall have the right to litigate the dispute in court or have a jury trial. In addition, you will not have the right to participate as a representative or member of any class of claimants pertaining to any dispute subject to arbitration. These arbitration provisions shall survive closure of your account and termination of all business with us.

18. Severability.

If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible so as to effect the intent of this Agreement, and the remainder of this Agreement will remain in full force and effect.

19. No change in our Rules.

Nothing in this Agreement is intended to, or does, amend, modify or otherwise change or alter any of our operating or other rules or regulations that otherwise apply to any transactions or actions effectuated under or through the service, including all rules or regulations applicable from time to time to funds transfers. You are responsible for complying with all of those rules and regulations.

20. Entire Agreement.

This Agreement constitutes the entire agreement between you and us with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.