

BlueTone
Terms of Service
EXECUTIVE SUMMARY

BlueTone welcomes you to the use of its Services, which include local, long distance and international calling from either your land line or your mobile device (the “Services”). Your Enrollment to use the Services confirms your acceptance of these Terms of Use and Acceptable Use Policy (“Terms”).

1. **Service Plans.** BlueTone offers several Service Plans, all such Plans being subject to these Terms.

A. **Unlimited Calling Plan; Reasonable Use.**

- i. ***General Terms and Guidelines.*** Unlimited Calling Plans are only available to *new customers* of BlueTone. In order to enroll in an Unlimited Calling Plan, you must provide BlueTone with a functioning electronic mail (e-mail) address. BlueTone’s Unlimited Calling Plans are available at a promotional rate of \$9.99 per billing cycle, for three consecutive billing cycles. If you enroll in the middle of a billing cycle, the promotional period will not be prorated and instead, such billing cycle will count as the first of the three billing cycle promotion. However, the \$9.99 promotional rate shall be prorated. After the three billing cycle promotional period, the Unlimited Calling Plan will be \$14.99 per billing cycle. Each billing cycle for Unlimited Calling Plans is thirty (30) days. A customer that enrolls in an Unlimited Calling Plan will be sent an invoice for such enrollment, irrespective of if the customer uses the Service. There are no refunds.

Unlimited Calling Plans do not include calls to Alaska, rural destinations, 900/pay-per-calls, or Premium Rate Numbers (including Premium Rate numbers in USA, Argentina, Austria, Belarus, Belgium, Estonia, Gabon, Jordan, Kazakhstan, Latvia, Lithuania, Poland, Russia. Premium-rate telephone numbers are those where certain services are provided, and for which prices higher than normal are charged. Unlike a normal call, part of the call charge is paid to the service provider, thus enabling businesses to be funded via the call, e.g. adult chat lines.

All Destinations you can call in the Unlimited Calling Plan are located here: <https://btone.us/unlimited-international-plans.html>. Calls placed to destinations not included in your Unlimited Calling Plan will be subject to BlueTone’s standard rates, located here: <https://www.btone.us/low-rates-plans>.

- ii. ***Unlimited Calling Rules.*** Unlimited calling is based on personal, residential, non-commercial use. A combination of factors is used to determine abnormal use, including but not limited to, the number of unique numbers called, calls forwarded, minutes used and other factors. BlueTone’s Unlimited Calling Plan is designed to service our typical residential customers’ calling patterns (hereafter also referred to as “normal” residential use). “Unlimited” refers to that type and level of usage. “Typical” refers to the calling patterns of the vast majority of our customers on a particular calling plan, and for purposes of clarity in these Terms, shall not exceed

3,000 minutes in any given billing cycle, said amount representing a reasonable forecast of the usage of our customers. Normal residential traffic does not include any business service, or multiple usage of the same account, and does not include any fraudulent use. "Unlimited" does not refer to those types and levels of usage. Telephone utilization that is indicative of, or arising from, impermissible business, multiple family, community or fraudulent use, as outlined herein, on a residential class of service line may create network congestion that will manifest itself in increased busy signals for themselves and others.

- iii. ***Single Residential Use.*** BlueTone's residential unlimited service plans and features are only for single (and not extended or multi-) family residential (or personal, non-commercial) or co-branded use only. Co-branded use is defined as BlueTone's service that is provided by a third party partner under that third party partner's marketing brand, with or without reference to BlueTone. This means that only the account holder and residential family members may use BlueTone's unlimited service plans. Residential family members include your immediate family who reside in your personal residence - e.g., spouse, domestic partner, parents and/or children. If your residential service plan allows you to extend the service or feature(s) to another residential or mobile number, all use under that service plan is aggregated and must conform to single (and not extended or multi-) family residential (or personal, non-commercial) or co-branded use.
- iv. ***Impermissible Uses.*** Each of the following is impermissible under BlueTone's unlimited plans and considered outside of normal single residential use:
- a. by or for others who do not live with you;
 - b. operating a business, even if operating from the residence;
 - c. operating a call center and/or telemarketing;
 - d. resale to others; or
 - e. auto-dialing or fax/voice blasts.

BlueTone's residential unlimited calling plan customers use less than 3000 minutes per month and do not have any unusual usage patterns in terms of unique numbers called or high call forwarding/transferring usage. A customer's aggregate usage may be considered outside of normal use if it exceeds 3000 minutes per month IN COMBINATION with one or more of the following, including, but not limited to, excessive:

- a. unique numbers called;
- b. call lengths;
- c. call forwarding/transferring;
- d. conference calling;
- e. short duration calls;
- f. number of calls made during a month;
- g. number of calls made to a conference calling service during a month;
- h. number of calls made during business hours;

- i. number of calls terminated and re-initiated consecutively, which, in the aggregate, result in excessive call lengths during a specific time frame; or other abnormal calling patterns indicative of an attempt to evade enforcement of these terms and its restrictions.

Based on such a combination, BlueTone may determine that abnormal, unreasonable or impermissible usage is occurring when compared to typical customers on the same calling plan, and may take appropriate steps, including:

- a. Contacting you to inform you of BlueTone's abnormal high usage determination;
 - b. Demanding that you reduce your usage
- v. ***For Lawful and Appropriate Purposes Only; BlueTone's Rights.*** You may not use our Service in any way that is illegal, fraudulent, improper or inappropriate. You may not use any automated means to manipulate our Service or use our Service to violate any law, rule, regulation or any third party's intellectual property or personal rights.

BlueTone has the right to review your account and take further action, including, but not limited to, immediate suspension of your Service if account usage is beyond normal standards for typical customers on the same calling plan, impermissible or detrimental to other customers' ability to use the Service or adversely affects our operations. If we determine that you are engaging in abnormal or impermissible usage, we will use commercially reasonable efforts to inform you and may provide you with the opportunity to correct the improper usage. If we afford you the opportunity to correct your abnormal usage patterns and you fail to immediately conform to normal use, we may exercise our right to transfer your service to a more appropriate plan, charge applicable rates for that plan, implement other limitations or suspend or terminate your Service with or without notice. If we believe that our Service has been used for an unlawful purpose, we may immediately terminate your Service with or without notice and/or forward the relevant communication and other information to the appropriate authorities for investigation and prosecution. We reserve all of our legal rights.

- vi. ***Destination Change.*** Due to market forces beyond BlueTone's control, BlueTone might have to remove or block a destination from the Unlimited Calling Plan. In such a circumstance, BlueTone will provide you notice in your invoice one billing period prior to when such change is to take effect, or in your "My Account" page in which case the change will take effect immediately. It is your responsibility to check your My Account page regularly.

B. Standard Rates Plans.

All calls placed that are not included in the Unlimited Plans shall be subject to BlueTone's Standard Rates. Standard Rates can be found at <https://www.btone.us/low-rates-plans>. You will also be charged a Transporter Surcharge for Standard Rates calling, such amount being \$3.00 plus ten percent (10%) of your Account Usage (calculated as the minutes you use multiplied by the charge per minute, including round-ups) if such Account Usage. The Transporter Surcharge is not a tax or charge required by any regulatory agency. Instead, it is a cost designed to recoup some of BlueTone's costs associated with the provision of services to you, including costs from carriers, personnel required to manage your account, and other similar business costs incurred by BlueTone.

Standard Rates are subject to change with or without notice. BlueTone will attempt to give you notice within commercially reasonable means, which includes calling you directly, calling you and leaving you a voice recording, emailing you, and/or placing a notice on your invoice. However, given market forces, providing you advanced notice of a rate change may not be practical. It is your responsibility to regularly review BlueTone's Standard Rates at <https://www.btone.us/low-rates-plans> as those rates will govern your Standard Rates Plan.

2. **On Your Invoice.**

Your invoice from BlueTone, whether for Unlimited Calling Plans or Standard Rates Plans, will include various additional line items beyond "Account Usage" ("Transporter Surcharge" in the case of Standard Rates Plans). Your Invoice might have a line-item for State and Federal Charges or State and Federal Taxes or some variation thereof "Taxes and Charges"). However, BlueTone treats your rates as all-inclusive, meaning all Taxes and Charges and other government mandated Surcharges (wherever applicable) associated with your Services are included and a line-item on your invoice will state "incl. in rates" wherever applicable. You will not have a separate line-item identifying the Taxes and Charges collected for your Services, and we make no assurances that amounts we collect from you for the Services include Taxes and Charges, unless such items are specifically itemized with a numerical calculation. Instead, we defer to the advice of our tax accountants and regulatory attorneys to determine if any Taxes and Charges need to be collected and paid based on your jurisdiction. In any event you will not receive a refund for amounts collected to the extent such amounts include Taxes and Charges, and by using the Services you agree that you waive and release the Company from any refund relating to Taxes and Charges.

Additionally, Company reserves the right to include the following additional charges on your Invoice.

Regulatory Recovery Fee: This charge helps defray costs of regulations BlueTone has to follow, including the BlueTone's payment of fees to regulatory compliance experts and their organizations; attorney fees associated with same; and compliance with Do Not Call Regulations. This charge is not mandated by local, state or federal governments to be collected, but is instead a charge associated with providing you the best communications experience. To the extent BlueTone will include this Fee, notice will be provided on an invoice the month prior to when the Fee will be charged to you and an approximation of this Fee will also be provided.

Carrier Charges (or "Carrier Recovery Fee"): This charge is tied to costs imposed on BlueTone from other telecommunications carriers and for certain network facilities and services BlueTone must purchase from them. This item also includes the costs associated with paying individuals to service BlueTone's relationship with carriers, while also evaluating wholesale and retail rates applicable to the Services. This charge is not mandated by local, state or federal governments to be collected, but is instead a charge associated with providing you the best communication experience. To the extent BlueTone will include this Fee, notice will be provided on an invoice the month prior to when the Fee will be charged to you and an approximation of this Fee will also be provided.

Operational Cover Charge: This charge is tied to costs associated with operating BlueTone in conjunction with providing the Services to you, including salaries and wages, customer service, technology monitoring and upgrading and protecting against fraud. This charge is not mandated by local, state or federal governments to be collected, but is instead a charge associated with providing you the best communication experience. To the extent BlueTone will include this Fee, notice will be provided on an invoice the month prior to when the Fee will be charged to you and an approximation of this Fee will also be provided.

Foreign Exchange Balancing Fee: This charge relates to the BlueTone's costs in dealing in foreign currency and the varying exchange rates which can affect the BlueTone's expense structure. This charge is not mandated by local, state or federal governments to be collected, but is instead a charge associated with providing you the best communication experience. To the extent BlueTone will include this Fee, notice will be provided on an invoice the month prior to when the Fee will be charged to you and an approximation of this Fee will also be provided.

Administrative Fees: This charge relates to BlueTone's costs in working with intellectual property and other legal experts, as well as cloud-based data storage options and customer privacy protection. This charge is not mandated by local, state or federal governments to be collected, but is instead a charge associated with providing you the best communication experience. To the extent BlueTone will include this Fee, notice will be provided on an invoice the month prior to when the Fee will be charged to you and an approximation of this Fee will also be provided.

International Regulatory Charge: This charge relates to charges imposed on BlueTone from foreign (non-US) entities or governments. This charge is not mandated by the United States or any of its government agencies, but BlueTone anticipates that it will have to pay this charge to foreign governments or entities in connection with providing services to customers. BlueTone reserves to the right to pay whatever the appropriate charges it must pay to such foreign entities or governments, and retain any overage collected from its customers. To the extent BlueTone will include this Charge, notice will be provided on an invoice the month prior to when the Fee will be charged to you and an approximation of this Fee will also be provided.

Bill Processing Charge. This charge is typically \$2.99 and charged to you to offset the costs incurred by BlueTone in generating and sending a paper bill. The Bill Processing Charge will be waived if you sign up for receiving electronic bills.

Late Fee \$4.99 + 1.5% per cycle interest on unpaid balances

International Discount Fee. BlueTone will add a \$4.99 fee on your invoice each cycle to ensure you will benefit of its lowest applicable international rates. You may opt out of the program, by calling Customer Service at 617/752.9151

Dormancy Fee. In the unusual circumstance where you have no usage for six consecutive billing cycles and have a credit balance on your account, you agree that Blue Tone will charge you a Dormancy Fee of \$5.00 per billing cycle until your account has a zero balance, at which point your account will be closed.

3. **Changes.**

BlueTone reserves the right to change these Terms at any time. Changes shall become effective when revised Terms are posted to BlueTone's website at www.btone.us and/or when notice is provided to you accompanying an invoice, whichever date is earlier.

4. **Default and Termination.**

Without prior notice to you, BlueTone may, in its sole discretion, terminate your use of the Services if you: a) do not pay your account balance in full when due (apart from specific charges you may have legitimately disputed with resolution); b) breach any of the material terms of the Agreement; or c) become bankrupt or insolvent. You will not be relieved from liability for charges through any such default on your part, except as the law of debtor protection may allow. All charges become immediately due and payable in the event of your default.

5. **Use of the Services.**

Your use of the Services must comply with the provisions of this Agreement and all applicable laws and regulatory requirements. You agree not to use the Service for any unlawful or abusive purpose or in any way that damages BlueTone's property or interferes with or disrupts BlueTone's system or other users or that is in any way unlawful, fraudulent or abusive. You acknowledge that you must not transmit any communication which would violate any laws, court order, or regulation, or would likely be offensive or injurious to the recipient. You are responsible for all content you transmit while using the Service. Resale of Service is prohibited without BlueTone's prior written consent and your attainment of any required regulatory approvals. Some services may not be available or may operate differently in selected markets or jurisdictions.

6. **Fraud Prevention.**

If you find your Service has been or is being fraudulently used, you will immediately notify BlueTone and provide BlueTone with the documentation and information it may request (including affidavits and police reports). Until you so notify BlueTone, you will remain responsible for all charges made to your account. You agree to cooperate with BlueTone in any fraud investigation and to use any fraud prevention measures BlueTone prescribes. Failure to provide reasonable cooperation will result in your liability for all fraudulent usage.

7. **Confidentiality of Customer Information.**

Unless you consented expressly or by implication, or unless disclosure is pursuant to a legal power, all information kept by BlueTone and its affiliates regarding you other than your name, address and listed telephone number, is confidential and may not be disclosed by BlueTone to anyone other than:

- i. you or a person who, in BlueTone's reasonable judgment, is seeking the information as your agent;

- ii. another telecommunications company, provided the information is required for the efficient and cost-effective provision of telephone service and disclosure is made on a confidential basis with the information to be used only for that purpose;
- iii. a company involved in supplying you with telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose;
- iv. an agent retained by BlueTone to evaluate your credit worthiness, provided the information is required for and is used only for that purpose;
- v. a public authority or agent of a public authority, if in the reasonable judgment of BlueTone, it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information; or
- vi. through a valid court order including subpoena.

Express consent may have been given by you where you provide:

- i. written consent;
- ii. oral confirmation by an independent third party;
- iii. electronic confirmation through the use of a toll-free number;
- iv. consent through other methods as long as an objective documented record of your consent is created by you or an independent third party.

8. Mobile Marketing Program Terms

You acknowledge that by signing up with BlueTone, you consent to receive SMS, text and other electronic messages from (collectively, "Messages") BlueTone regarding your account activities, service alerts, special offers and other marketing messages. This consent is specific to the phone number(s) you provide to us. Message and data rates may apply when you receive certain Messages on your mobile phone. This mobile marketing program is for short code 29053. The program entails the following:

- i. Opting In: you can opt in using various methods, including texting JOINBT to the short code and signing up at www.btone.us or through a telemarketing agent;
- ii. Message Frequency: you will not receive more than 10 marketing Messages per month under this program;
- iii. STOP Instructions: you can opt out of receiving Messages at any time by replying STOP, QUIT, CANCEL, UNSUBSCRIBE, END or TERMINATE to the short code, clicking the unsubscribe button on an email or by contacting a customer service agent;
- iv. HELP Instructions: you can request customer support by replying HELPBOT to the short code or by contacting us at customer.care@btone.us or 617.752.9151.

9. Limitation of Liability; Dispute Resolution.

BlueTone is not liable for any deficiency in performance caused in whole or in part by act or omission of an underlying carrier or service provider, dealer, equipment or facility supplier, by unavailability or discontinuation of services to BlueTone or to other services utilized by BlueTone, by network problems, lack of connections, equipment failure or incidents in the

course of upgrade or modification, Acts of God, strikes, fire, terrorism, war, riot, emergency, government actions, equipment or facility unavailability or relocation, or causes beyond our reasonable control, including without limitation the failure of an incoming or outgoing call, failure of 9-1-1 service or location services, priority access or secured call service.

EVEN IF BLUETONE HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES, BLUETONE WILL NOT BE LIABLE TO YOU OR ANY OF YOUR EMPLOYEES, AGENTS, CUSTOMERS OR ANY THIRD PARTIES FOR ANY DAMAGES ARISING FROM USE OF THE SERVICE OR OTHER SERVICES, INCLUDING, WITHOUT LIMITATION: INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR MULTIPLE DAMAGES; LOSS OF PRIVACY OR SECURITY DAMAGES; INTELLECTUAL PROPERTY DAMAGES; OR ANY DAMAGES WHATSOEVER RESULTING FROM INTERRUPTION OR FAILURE OF SERVICE; LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS DUE TO UNAUTHORIZED ACCESS, COST OF REPLACEMENT PRODUCTS AND/OR SERVICES, SUSPENSION OR TERMINATION OF SERVICES OR YOUR INABILITY TO USE THE SERVICE, THE CONTENT OF ANY MESSAGE OR COMMUNICATION TRANSMITTED TO OR RECEIVED BY YOU; OR LOSSES RESULTING FROM PURCHASE OF GOODS OR SERVICES THROUGH USE OF BLUETONE'S SERVICE OR TRANSACTIONS ENTERED INTO THROUGH USE OF THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES. AS SUCH, THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

THE MAXIMUM AGGREGATE LIABILITY OF BLUETONE TO YOU, AND THE EXCLUSIVE REMEDY IN CONNECTION WITH THE AGREEMENT FOR ANY AND ALL DAMAGES, INJURY, LOSSES ARISING FROM ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION RELATED TO THE SERVICE SHALL BE A REFUND OR REBATE OF THE PRORATED PERIODIC OR OTHER SERVICE CHARGES YOU HAVE PAID OR OWE FOR THE APPLICABLE SERVICE. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS WILL NOT ENLARGE OR EXTEND THIS LIMITATION OF MONEY DAMAGES.

ANY DISPUTE OR CLAIM BETWEEN YOU, ANY MEMBER OF YOUR HOUSEHOLD OR ANY GUEST OR EMPLOYEE OF YOU AND BLUETONE ARISING OUT OF OR RELATING TO THE SERVICE WILL BE RESOLVED BY ARBITRATION BEFORE A SINGLE ARBITRATOR AND WILL BE ADMINISTERED BY THE FEDERALLY RECOGNIZED ARBITRATION TRIBUNAL IN THE COUNTRY OF YOUR JURISDICTION (i.e. AMERICAN ARBITRATION ASSOCIATION ; ADR INSTITUTE OF CANADA; AUSTRALIAN CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION) . THE ARBITRATION WILL TAKE PLACE IN THE JURISDICTION IN WHICH YOU RESIDE. THE ARBITRATOR'S DECISION WILL FOLLOW THE PLAIN MEANING OF THE RELEVANT DOCUMENTS, AND WILL BE FINAL AND BINDING. WITHOUT LIMITING THE FOREGOING, THE PARTIES AGREE THAT NO ARBITRATOR HAS THE AUTHORITY TO: (I) AWARD RELIEF IN EXCESS OF WHAT THIS AGREEMENT PROVIDES; OR (II) AWARD PUNITIVE

OR EXEMPLARY DAMAGES. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED. ALL CLAIMS SHALL BE ARBITRATED INDIVIDUALLY. YOU SHALL NOT BRING, OR JOIN ANY CLASS ACTION OF ANY KIND IN COURT OR IN ARBITRATION OR SEEK TO CONSOLIDATE OR BRING PREVIOUSLY CONSOLIDATED CLAIMS IN ARBITRATION. THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

10. **Billing Provider.** As a customer of BlueTone, you may receive your bill from BlueTone, or any of BlueTone's affiliates, or from your local telephone operating company.
11. **Protection against Unauthorized Use.** To protect against unauthorized use, calling card accounts billing more than \$100 per billing cycle may be subject to interruption of service, unless prior arrangements have been made with BlueTone at 617.752.9151.
12. **Customer Complaints.** You may report any customer complaints to BlueTone by calling 617.752.9151.
13. **General Provisions.** This Agreement, together with any documents on BlueTone's websites, all as amended from time to time, constitute the entire written agreement between you and BlueTone for the Services and supersede all prior agreements, written or oral. Any provision of this Agreement that is unenforceable at law will be ineffective to the extent of such enforceability without invalidating the remaining provisions of the Agreement. No failure by BlueTone to exercise any right under the Agreement will constitute a waiver of any provision of the Agreement. The Agreement inures to the benefit of and is binding on you and your heirs and legal personal representatives. You may not assign or transfer the Agreement. We may assign or transfer the Agreement or any of our rights or obligations hereunder and the Agreement inures to the benefit of and is binding on our successors and assigns.

Updated as of Jul 16, 2020