

## **BlueTone**

### **Terms of Service – Customer Service Agreement & Fair Use Policy**

#### **1. Parties**

BlueTone (“BlueTone”) is pleased to provide residential and business long-distance telephone service (the “Service”) to you, subject to these terms of service (the “Terms of Service”). “You” and “your” refer, as applicable, to you and every person who uses the service provided to you.

#### **2. Responsibility for All Charges**

By beginning to utilize the Service provided by BlueTone, you accept these Terms of Service. You are responsible for the charges incurred while using the Service. Your enrollment with BlueTone commences with the first provision or availability of the Service to you. Within ten (10) days thereafter, your acceptance of this Agreement will become final unless you first cancel the Service directly and/or through notifying your local telephone company of your selection of a different long distance carrier. These Terms of Service will continue in effect thereafter until you do so terminate the Service from BlueTone. You agree, for your protection against “slamming” - unauthorized switching of your long-distance provider, which occurs without notice to you - that BlueTone may contact you if it has reason to believe your account has been switched and to confirm whether or not you approve of the change. If slamming has occurred, you agree to allow BlueTone to aid you in returning your Service to BlueTone and to complain to the appropriate authorities.

#### **3. Fees , Rates, and Changes to Terms of Service**

The Service is offered to you at the rates specified by BlueTone to you from time to time, plus goods and services tax, sales and other taxes and fees applicable thereon (“Taxes and Fees”). BlueTone reserves the right to add to/round up each call by up to three (3) minutes. It is your responsibility to confirm with a BlueTone representative the rounding applicable to your Service. BlueTone will determine, in its reasonable discretion, the Taxes and Fees you are responsible to pay and which it is obligated to collect from you. You acknowledge that the amount of these Taxes and Fees may change or increase at any time without notice. Applicable Taxes and Fees may be collected on the basis of the service address you provide us. BlueTone may bill you for a Transporter Surcharge which represents what BlueTone reasonably estimates to recover costs related to governmental mandates and levies; and for costs imposed on BlueTone with respect to its service to you by other carriers.

Any changes to these Terms of Service will not be effective until you receive notice of such change. BlueTone will provide you notice of a change in your invoice. It is your responsibility to go to BlueTone’s website to review the Terms of Service. If you do not have access to the internet, you can contact BlueTone customer service and ask BlueTone to fax or mail you a copy of the updated Terms of Service. The updated Terms of Service will become effective at the beginning of your next billing cycle. It is your responsibility to review each invoice as you receive it to verify if a notice of change has been provided and whether all rates and charges are accurate. If you dispute any charges in your invoice, you have up to thirty (30) days after the due date of that invoice to notify BlueTone of your dispute. If you do not dispute an invoice by that time, the invoice shall be deemed valid and all charges identified therein are due and payable. To properly dispute an invoice, you must call BlueTone customer service at 028 003 6111. During the dispute process, the Continuation Fee defined herein shall be suspended and no collection efforts will be commenced. If the dispute is resolved in your favor, you will not be responsible to pay the disputed amount. If the dispute is resolved in BlueTone’s favor, BlueTone reserves the right to add the Continuation Fee on to your balance due.

#### **4. Billing and Payment**

You agree to pay BlueTone all undisputed charges for the Service appearing on your invoice by the specified due date, together with all applicable Taxes and Fees. BlueTone will provide your bill in a format it chooses, which may change from time to time. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, BlueTone may make reasonable adjustments and prorations. Usage may be back-billed in a subsequent billing cycle to the extent allowed by applicable law and if so, this usage will be charged as if used during the cycle being billed. You may receive your invoice for the Service from BlueTone, from any of BlueTone’s affiliates, or from your local telephone company. If you receive a paper bill, you will be assessed \$2.99 paper bill fee. You authorize BlueTone to charge your credit card (if you provide information for that purpose) or to use another authorized payment method to collect amounts due from you. If applicable, you will promptly notify BlueTone of any changes to your credit card account, billing address, or other information that would interfere with collection. If you do not pay amounts due to BlueTone, you agree that BlueTone can charge any outstanding amount to your credit card or withdraw it from any authorized bank or credit card account. No additional notice or consent will be required for billings to that credit card or account. If you pay by personal check, and that check is returned for whatever reason, you agree to a \$30.00 service fee to be added to your account for each returned personal check. You acknowledge that you are eligible to receive services for the favorable rates, under BlueTone’s preferentially low Today’s Rates, which have been offered to you at the time of your subscription for only so long as you maintain a reliable record of payment. If full payment of charges due and owing is not made by the date set forth in the invoice as ending the grace period, a Late Fee of \$4.99 + 1.5% of your outstanding invoice balance per billing cycle will be assessed on your account. If you fail to satisfy an unpaid balance of charges invoiced to you for three consecutive billing cycles, all unpaid charges and rates applicable to your account, and Taxes and Fees applicable, will revert, for so long as an undisputed, unpaid balance remains unsatisfied, to the highest rates BlueTone offers (“Default Rates, available on-line at [www.btone.com.au](http://www.btone.com.au)). 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 Company 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. You also understand that you will be liable for costs of collection, including reasonable attorney fees, expenses and court costs which BlueTone may incur if you fail to make payment for the Service.

#### **5. Deposit**

Depending on your credit standing, BlueTone may require a deposit, prepayment or other security as a condition of providing the Service. You will not earn any interest on deposits held by BlueTone. If your Service is terminated, BlueTone will apply the deposit against the outstanding balance in your account, and refund any remaining balance of the deposit to you. You authorize BlueTone before commencing the Service to you, and at any time you have an outstanding, overdue balance, to verify your creditworthiness with a credit reporting agency and to verify your identity.

## **6. Default and Termination**

Without prior notice to you, BlueTone may, in its sole discretion, terminate your use of the Service 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 these Terms of Service; 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.

## **7. Use of the Service**

Your use of the Service must comply with these Terms of Service and all applicable laws and regulatory requirements. Without limitation, you may not directly or indirectly: (a) use the Service: (i) for any purpose that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, provincial, federal or international law, or for the purposes of encouraging or assisting others to do any of the foregoing; (ii) to make prank, harassing, threatening, annoying, abusive or offensive calls or other communications; (iii) to invade another person's privacy or collect or store personal data about other users of the Service; (iv) to stalk or otherwise harass another; (v) to harm minors; (vi) to unlawfully use, transmit, disseminate or otherwise make available content that is unlawful, threatening, abusive, libelous, slanderous, defamatory or otherwise offensive; (vii) to unlawfully promote or incite hatred; or (viii) to transmit, disseminate or otherwise make available information protected by copyright, or other proprietary or contractual right, or related derivative works, without obtaining prior permission of the copyright owner or rights holder; (b) resell or transfer the Service to any other person for any purpose or receive, directly or indirectly, any charge or benefit for the use of the Service, without express written permission from BlueTone. If you find that your Service has been or is being fraudulently used, you must 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. 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 028 003 6111.

## **8. Confidentiality of Customer Information**

Unless you provide express consent or disclosure is pursuant to a legal power, all information kept by BlueTone and its affiliates regarding you other than your name, address, listed telephone number and electronic mail address, 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 telephone 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) or to 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. Express consent may be taken to be given by you where you provide: (a) written consent; (b) oral confirmation by an independent third party; (c) electronic confirmation through the use of a toll-free number; or (d) consent through other methods as long as an objective documented record of your consent is created by you or an independent third party.

## **9. General Limitation of Liability.**

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 or network problems, 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 BlueTone's 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.

THE MAXIMUM AGGREGATE LIABILITY OF BLUETONE TO YOU, AND THE EXCLUSIVE REMEDY IN CONNECTION WITH THESE TERMS OF SERVICE 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 US ARISING OUT OF OR RELATING TO THE SERVICE OR DEVICE WILL BE RESOLVED BY ARBITRATION WITHIN THE STATE OR TERRITORY IN WHICH YOU LIVE. 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 SERVICE 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 Customer Complaints**

You may report any customer complaints to BlueTone by calling 028 003 6111

#### **11 Governing Law**

These Terms of Service are governed exclusively by the laws of the province in which your service address is located.

#### **12 General Provisions**

These Terms of Service, together with BlueTone's published Service rates, BlueTone's invoice terms and any guides or manuals that BlueTone may provide to you regarding your Service, all as amended from time to time, constitute the entire written agreement between you and BlueTone for the Service and supersede all prior agreements, written or oral. Any provision of these Terms of Service that is unenforceable at law will be ineffective to the extent of such enforceability without invalidating the remaining provisions of the Terms of Service. No failure by BlueTone to exercise any right under these Terms of Service will constitute a waiver of any provision of these Terms of Service. These Terms of Service inure to the benefit of and are binding on you and your heirs and legal personal representatives. You may not assign or transfer these Terms of Service. BlueTone may assign or transfer these Terms of Service or any of its rights or obligations hereunder and these Terms of Service inure to the benefit of and are binding on BlueTone's successors and assigns.

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