



## **Terms of Use – Last Updated March1, 2010**

**PLEASE READ THESE TERMS OF USE CAREFULLY. THEY MAY HAVE CHANGED SINCE YOUR LAST VISIT TO THIS WEBSITE. BY USING THIS WEBSITE (ALSO REFERRED TO AS "SERVICE"), YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS OF USE. IF YOU DO NOT ACCEPT THESE TERMS OF USE, THEN WE RECOMMEND THAT YOU DO NOT USE THIS WEBSITE.**

BlueWave Mobile reserves the right, in its sole discretion, to modify or change this Terms of Use at any time with or without prior notice to you. You should visit the URL of this page or BlueWave Mobile website to review the current Terms of Use on a regular basis. The date of the last update will be posted at the top of this Terms of Use for your convenience. Your continued use of the service following the posting of any changes to the Terms of Use constitutes your full acceptance of those changes.

If you have any questions, concerns, or comments about this Terms of Use, you may [click here](#) to contact us.

BlueWave Mobile provides businesses and organizations with a variety of tools to collect names, mobile numbers, IM screen names, and email addresses. BlueWave Mobile's service may NOT be used for sending of unsolicited messages (sometimes called "spam"). See our Anti-SPAM Policy.

### **Warranty Disclaimer**

Use of the service and any reliance by you upon the service, including any action taken by you because of such use or reliance is at your sole risk. BlueWave Mobile does not warrant that the service will be uninterrupted or error free, nor does it make any warranty as to the results that may be obtained from use of the service. The service is provided "as is" and BlueWave Mobile disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose and non-infringement.

### **Anti-SPAM Policy**

BlueWave Mobile has a no tolerance spam policy. BlueWave Mobile's customer support actively monitors large import lists and messages going to a large number of contacts. Any customer found to be using BlueWave Mobile for spam will be immediately cut-off from use of the service. If you know of or suspect any violators, please notify us immediately by [clicking](#)

here. Every out-going message via BlueWave Mobile contains a mandatory unsubscribe link. If the link is removed or de-activated in any way, BlueWave Mobile will terminate the customer's account.

- **What is Spam** - Spam is unsolicited email also known as UCE (Unsolicited Commercial Email). By sending messages to only to those who have requested to receive it, you are following accepted permission-based messaging guidelines.
- **What constitutes a pre-existing business relationship (a required condition for permission-based messaging)** - The recipient of your message has made a purchase, requested information, responded to a questionnaire or a survey, or had offline contact with you.
- **What constitutes consent** – The recipient of your message has made a purchase, requested information, requested to be added in your distribution list, responded to a questionnaire or a survey, or had offline contact with you.

## Acknowledgements

**Subject in each case to the terms listed in the remainder of this Agreement, you hereby acknowledge and agree that:**

- The service may only be used for lawful purposes.
- The service will be subject to monthly subscription fees once you have completed your free trial period or have exceeded the free trial offering.
- You agree you will not access or otherwise use ANY third party mailing lists for email addresses, instant message screen names, or mobile phone numbers, or otherwise prepare or distribute unsolicited messages in connection with our service.
- You agree to import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from you ("Permission Based Lists") in connection with your use of the service. You hereby covenant that you shall not use any other lists in connection with your use of the service.
- You acknowledge and agree that not all messages sent via BlueWave Mobile's service will be received by their intended recipients.
- Every message sent by you in connection with the service must contain BlueWave Mobile's "unsubscribe" link that allows the recipient to remove themselves from your mailing distribution list(s).

- You will comply with the restrictions on the content of the messages and the activities using the service as set forth in this Agreement.
- You will adopt and maintain the [Privacy Policy](#), which may be modified by BlueWave Mobile at anytime for any reason.
- BlueWave Mobile, at its own discretion and at anytime, may immediately disable your access to the service without refund if BlueWave Mobile believes in its sole discretion that you have violated any of the policies listed above or anywhere else in this Agreement.
- If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- BlueWave Mobile and you agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.
- No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind BlueWave Mobile in any respect whatsoever.
- In any action or proceeding to enforce rights under the Agreement, BlueWave Mobile will be entitled to recover its costs and attorneys' fees.
- The Agreement shall be governed by the laws of the state where BlueWave Mobile has located its principal place of business without regard to its choice of law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located nearest to where BlueWave Mobile is headquartered.

## Indemnification

You hereby agree to defend, indemnify and hold harmless BlueWave Mobile and its business partners, third-party suppliers and providers, licensors, officers, directors, employees, distributors and agents against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that (i) arises from any alleged breach of this Agreement, (ii) arises from the content or effects of any messages you distribute using the Products or (iii) otherwise arises from or relates to your use of the service. In addition, you acknowledge and agree that BlueWave Mobile has the right to seek damages when you use the service for unlawful purposes, in an unlawful manner, and/or in a manner inconsistent with the terms of this Agreement, and that

such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages.

## Termination

You may terminate this Agreement at any time by notifying BlueWave Mobile's Customer Support. There are no refunds for any fees paid. BlueWave Mobile may terminate this Agreement or the service, disable your account or put your account on inactive status, in each case at any time with or without cause, and with or without notice. BlueWave Mobile shall have no liability to you or any third party because of such termination or action. BlueWave Mobile may delete any of your archived data within 30 days after the date of termination. If your account is classified (at BlueWave Mobile's sole discretion) as inactive for over 180 days, BlueWave Mobile has the right to permanently delete all of your account data. BlueWave Mobile will use good faith efforts to contact you via email prior to taking any permanent removal actions.

## Prohibited Content

**BlueWave Mobile prohibits the use of the service by any business, person, or entity that:**

- Provides, sells or offers to sell any of the following products or content (or services related to the same): pornography or illicitly pornographic sexual products, including but not limited to magazines, video and software; escort services; illegal goods; illegal drugs; illegal drug contraband; pirated computer programs; instructions on how to assemble or otherwise make bombs, grenades or other weapons.
- Displays or markets material that exploits children, or otherwise exploits children under 18 years of age.
- Provides, sells or offers products, services or content frequently associated with unsolicited commercial email, a.k.a. spam, such as online and direct pharmaceutical sales, including but not limited to health and sexual well-being products, work at home businesses, credit or finance management, including but not limited to credit repair and debt relief offerings and stock and trading tips, and mortgage finance offers, DJ/nightclub, event/club promotions/party lists, and odds making and betting/gambling services, including but not limited to poker, casino games, horse and dog racing and college and pro sporting events.
- Provides material that is grossly offensive, including blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity or post any obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable content.
- Posts or discloses any personally identifying information or private information about children without their consent (or their parents consent in the case of a minor).
- Sells or promotes any products or services that are unlawful in the location at which the content is posted or received.
- Introduces viruses, worms, harmful code and/or Trojan horses on the Internet.

- Promotes, solicits or participates in pyramid schemes or multi-level channel and/or network marketing (MLM) businesses, including but not limited to personal work-at-home offers promoting "get rich quick", "build your wealth" and "financial independence" offerings.
- Engages in any libelous, defamatory, scandalous, threatening, harassing activity.
- Posts any content that advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information or assistance in causing or carrying out such violence.

Provides content, including images, of authors, artists, photographers or others without the express written consent of the content owner.