

# Enhanced VoIP Terms & Conditions

## SERVICE AGREEMENT

This agreement ("Agreement") is between Net2Phone Global Services, LLC, its subsidiaries, affiliates and assigns (collectively "we," "us" or "N2P") and the user ("you," "user" or "End User") of N2P's VoiceLine Service ("Service"). This Agreement governs both the Service and any related devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter or any other IP connection device, ("Device" or "Equipment") used in conjunction with the Service. By activating the Service, you acknowledge that you have read and understood, and you agree, to the terms and conditions of this Agreement, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

### 1. TERMS AND CONDITIONS.

#### 1.1 Term.

The Service is offered on an annual basis for a term which begins on the date you activate your Service and ends on the day before the same date in the following year. Subsequent terms of this Agreement automatically renew on an annual basis without further action by you unless you give us written notice of non-renewal prior to the end of the annual term in which the notice is given. Expiration of the term or termination of the Service will not excuse you from paying any unpaid, accrued charges that are due in relation to the Agreement.

#### 1.2 Use of the Services.

The Service and Device are to be used for your personal use aboard your maritime vessel only. You acknowledge that the Service will not be used for any excessive business use including, but not limited to, auto-dialing, continuous or extensive call forwarding, continuous connectivity, fax broadcasting, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), automatic dialing, call centers, public calling centers or Internet cafes or any other activity that would be inconsistent with normal residential or small business usage patterns. You may not resell or transfer the Service or the Device to any other person for any purpose, or make any charge for the use of the Service. We reserve the right to immediately terminate or modify the Service, if we determine, in our sole discretion, that the Service is being used contrary to the provisions of this Agreement.

#### 1.3 Lawful Use of Service and Device.

You agree to use the Service and Device only for lawful purposes. This means that you agree not to use them for transmitting or receiving any communication or material of any kind when in our sole judgment, the transmission, receipt or possession of such communication or material may constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. We reserve the right to terminate your service immediately if we, in our sole discretion, believe that you have violated this provision. You are liable for any and all use of the Service and/or Device by yourself and by any person making use of the Service or Device provided to you and you agree to indemnify and hold us harmless against any and all liability for any such use. If we, in our sole discretion believe that you may have violated this provision, we may forward the objectionable material, as well as your communications with us and your personally identifiable information to the appropriate authorities for investigation and prosecution and you hereby consent to such forwarding.

#### 1.4 Use of the Service and Device.

The Service is being provided to you for use aboard your maritime vessel in United States waters and international waters. You agree to assume all responsibility for any use of the Service and Device outside of the foregoing areas and you do so at your own risk. You are liable for any and all such use of the Service and/or Device by yourself or any person making use of the Service or Device provided to you. We do not represent, warrant or guarantee that the Service or Device will always work outside of the areas stated in the first sentence of this section.

#### 1.5 Tampering with the Device or Service.

You agree not to change the electronic serial number or equipment identifier of the Device, or to perform a factory reset of the Device. We reserve the right to terminate your Service without refund should you tamper with the Device. You agree not to make or attempt to make any use of the Service that is inconsistent with its intended purpose.

#### 1.6 Theft of Service.

You agree to immediately notify us if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances and you will remain responsible for all charges for the Services until such time as you provide us with notice of the theft or fraudulent use of the Service.

#### 1.7 Reassignment of Number upon Service Termination.

Upon termination of the Service, we may, at our sole discretion, reassign a telephone number or Direct Inward Dialing ("DID") (collectively "Number") provided to you by us. You shall not obtain any rights, title or interest in the Number and the Number is not portable to other service providers. The Number is not to be used with any other device other than the Device provided by us and we reserve the right to change, cancel or reassign the Number at our discretion.

#### 1.8 Service Distinctions.

You acknowledge and understand that the Service is not a telecommunications service. Important distinctions (some, but not necessarily all, of which are described in this Agreement) exist between a telecommunications service and the enhanced Service offering provided by us. The Service is subject to different regulatory treatment than traditional telephone service. This treatment may limit or otherwise affect your rights of redress before any governmental telecommunications regulatory agencies.

#### 1.9 Ownership and Risk of Loss.

You are purchasing the Device and therefore, are the owner of the Device and bear all risk of loss of, theft of, casualty to or damage to the Device, from the time it is shipped and received by you.

#### 1.10 Intellectual Property.

The Service and Device and any firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on our website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of ours are and shall remain our exclusive property and nothing in this Agreement shall grant you the right or license to use any such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to you in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement. You expressly agree that the Device is exclusively for use in connection with the Service and that we will not provide any passwords, codes or other information or assistance that would enable you to use the Device for any other purpose. If you decide to use the Service through an interface device not provided by us, which we reserve the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Service and you will indemnify and hold us harmless against any and all liability arising out of your use of such interface device with the Service. You shall not reverse compile, disassemble or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

## 2. EMERGENCY (911) SERVICES.

ALL EMERGENCY (911) SERVICE CALLS WILL BE ROUTED TO THE CENTRAL UNITED STATES COAST GUARD (USCG) ATLANTIC REGIONAL SEARCH AND RESCUE (SAR) COORDINATION CENTER LOCATED IN PORTSMOUTH, VIRGINIA.

## 3. POWER AND/OR BROADBAND SERVICE OUTAGES.

#### 3.1 Loss of Service Due to Power Failure or Internet Service Outage.

You acknowledge and understand that the Service (including emergency services) will not function in the event of power failure. You also acknowledge and understand that the Service requires a fully functional broadband connection to the Internet (which is not provided by N2P) and that, accordingly, in the event of an outage of, or termination of service with or by, your Internet service provider ("ISP") and/or broadband provider, the Service will not function. Should there be any interruption in the power supply or broadband outage, the Service will not function at all until power and service is fully restored. A power failure or disruption may also require that you reset or reconfigure the MTA equipment prior to utilizing the Service.

## 4. BILLING.

#### 4.1 Billing Increments.

Call times for each call are rounded up to the next whole minute and billed in full minute increments. Per call charges are rounded up to the next whole penny. All calls for which we receive answer supervision shall incur a mini-

mum one-minute charge. We rely on answer supervision to determine whether and when a call has been answered. Answer supervision is a signal sent by the carrier connecting the call to indicate the start of call. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voicemail systems, private branch exchanges, and interexchange switching equipment. Where no answer supervision is received, we will commence billing forty (40) seconds following dial time unless the caller has terminated the call. All fees and payments due for the Service shall be submitted to KVH Industries, Inc. 50 Enterprise Center, Middletown, RI 02842, U.S.A.

#### 4.2 Termination/Discontinuance of Service.

We reserve the right to suspend or terminate the Service at any time, with or without cause and without notice to you. If we discontinue providing the Service without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges.

#### 4.3 Taxes.

You are responsible for any applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, universal service fees, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Service or Devices. Such amounts are in addition to payment for the Service or Devices. Fees for the Service are subject to change on the first day of each calendar month.

### 5. WARRANTIES AND LIMITATION OF LIABILITIES.

#### 5.1 Disclaimer of Warranties for Services.

All Services provided by us are provided on an "as is" basis. We make no warranty to you or any other person or entity, whether express, implied or statutory, as to the description, quality, title, non-infringement, merchantability, completeness, or fitness for a particular purpose as to the Services provided to you, all such warranties hereby being expressly excluded and disclaimed. We do not warrant that the Services are error-free or will operate without packet loss or interruption nor do we warrant the reliability of any connection to or any transmission over the Internet. End user assumes total responsibility and risk for use of the Services.

#### 5.2 Limited Warranty for Device.

If End User purchased the Device new and the Device included a limited warranty at the time of purchase, End User must refer to the separate limited warranty document provided with the Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation. If End User's Device did not include a limited warranty at the time of purchase, End User agrees that it accepts its Device "as is" and that End User is not entitled to replacement or refund in the event of any defect. OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN DOCUMENTATION PROVIDED WITH THE DEVICE, WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE, DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET END USER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

#### 5.3 Limitation of Liability and Indemnification.

YOU ACKNOWLEDGE AND UNDERSTAND THAT OUR ENTIRE LIABILITY IS LIMITED TO THE PURCHASE PRICE OF THE EQUIPMENT AND SERVICES PROVIDED HEREUNDER. IN NO EVENT SHALL WE, OUR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR UNDERLYING SERVICE PROVIDERS BE LIABLE FOR ANY COSTS OR DAMAGES ARISING EITHER DIRECTLY OR INDIRECTLY FROM THE USE OF THE SERVICES INCLUDING WITHOUT LIMITATION ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, OR FOR ANY LOSS OF REVENUE, PROFITS, USE, DATA, GOODWILL OR BUSINESS OPPORTUNITIES OF ANY KIND OR NATURE WHATSOEVER, ARISING IN ANY MANNER FROM ANY CAUSE OF ACTION OR CLAIM RELATING TO THIS AGREEMENT OR TO THE SERVICES PROVIDED BY US (INCLUDING, BUT NOT LIMITED TO ANY INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL.

#### 5.4 Release.

By purchasing the Service, you acknowledge that you have read, understand and agree to these terms (including the limitations on Emergency (911) Services) and that you hereby release N2P, its directors, officers, employees, agents, distributors and underlying service providers from any and all liability associated with your use of the Service.

#### 5.5 Sole Remedy.

Your sole and exclusive remedies are expressly set forth in this Agreement. Some jurisdictions may not permit the exclusion or limitation of implied warranties, and some jurisdictions may not permit the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such jurisdictions, the liability of N2P, its directors, officers, employees, agents, distributors and underlying service providers shall be limited to the maximum extent permitted by law.

### 6. GOVERNING LAW AND ARBITRATION.

#### 6.1 Mandatory Arbitration.

Any dispute or claim between End User and N2P arising out of or relating to the Service or Device provided in connection with this Agreement shall be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration shall take place in Newark, New Jersey and shall be conducted in English. The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall 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 arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and End User will 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. END USER ACKNOWLEDGES THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

#### 6.2 Governing Law.

The Agreement and the relationship between you and N2P shall be governed by the laws of the State of New Jersey without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 6.1, you agree to submit to the personal and exclusive jurisdiction of the courts located within the State of New Jersey and waive any objection as to venue or inconvenient forum. The failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

#### 6.3 Entire Agreement.

This Agreement constitute the entire agreement between you and us and govern your use of the Service, superseding any prior agreements between you and us and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

#### 6.4 Severability.

If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

#### 6.5 Changes to Terms of Service.

We may change the terms and conditions of this Agreement from time to time. Any changes to this Agreement will become binding on you effective on the date posted to the N2P website and no further notice by N2P is required. This Agreement as posted supersedes all previously agreed to electronic and written terms of service, including without limitation any terms included with the packaging of the Device.

#### 6.6 Patents.

This product, the systems and methods that it accesses, and/or the related services we provide are covered by one or more patents or patents pending, including 6,829,645, 6,701,365, 6,687,738, 6,594,254, 6,513,066, 6,347,085, 6,226,678, 6,185,184, 6,131,121, 6,108,704, 6,009,469, 5,999,965, 5,712,907, 7,149,208. See also: <http://web.net2phone.com/about/patents/>.

#### 6.7 Trademarks.

All corporate names, service marks, logos, trade names, trademarks, websites and domain names (collectively "Marks") are owned by us and/or our affiliates and nothing herein shall grant you a license to use such Marks.

#### 6.8 Copyright.

All Services and/or Materials provided are protected by trademark, copyright, or other intellectual property laws. Any commercial use of the Services and/or Materials are strictly prohibited, without our express, prior, written consent. Any reproduction or redistribution of the Services and/or Materials not in accordance with the terms set forth herein is expressly prohibited by law, and may result in severe civil and criminal penalties.