



Invisible Hand Networks' Liquid Bandwidth Exchange Exchange Agreement for Buyers/Sellers

This Agreement is effective as of _____ ("Commencement Date"), by and between Invisible Hand Networks ("IHN"), having an office at 670 Broadway, Suite 302, New York, NY 10012, and _____ [Participant] ("Participant"), a _____ [State of Incorporation] corporation, having an office at _____ [Address].

WHEREAS, IHN operates a "Liquid Bandwidth Exchange" physically located at the Telehouse America facility at 25 Broadway, NY, NY, the Equinix facility at 165 Halsey, Newark, NJ, and the Switch and Data facility at 111 8th Avenue, NY, NY.

WHEREAS, Participant is a seller and buyer of IP capacity; and

WHEREAS, IHN and Participant believe it would be advantageous to enter into an Agreement whereby IHN will provide a means ("The Exchange") by which Participant can purchase and sell capacity within this facility to and from other Participants, and in turn, IHN would receive compensation from the Participant for providing this service and for each transaction that occurs ("Fees"); and

NOW THEREFORE, In consideration of the mutual promises and covenants hereinafter contained and for other good and valuable consideration, IHN and Participant hereby agree as follows:

1.0 SERVICES

1.1 Network Access. IHN will connect all equipment to The Exchange via a Fast Ethernet or Gigabit Ethernet connection by default or as otherwise agreed to in writing by the two parties, and will perform related installation, network configuration and other set-up activities ("Services").

1.2 License. Subject to the terms and conditions set forth herein, IHN hereby grants Participant for the term of this Agreement, a limited, nonexclusive license to access and use The Exchange for the sole purpose of buying and selling bandwidth to other Participants, in accordance with the Terms and Conditions (as defined in Section 2.4) and Policies (as defined in Section 2.4).

2.0 PARTICIPANT OBLIGATIONS AND RESTRICTIONS

2.1 Installation/Maintenance. In addition to the Fees and other payments set forth in Section 3, Participant shall be responsible for all costs associated with the Services and the purchase of any necessary equipment.

2.2 On-Going Maintenance. IHN is not responsible to Participant for providing any administrative, technical, emergency or support personnel or services necessary for providing and maintaining Participant's equipment or Content (as defined below), except as set forth in Section

1.1. Upon Participant's specific written request for assistance, IHN may, at its sole discretion, provide such services, but only upon the condition that Participant agrees to pay for IHN's services at a time and material basis of IHN's then-current rates.

2.3 Ownership of Equipment and Content. All interest in and ownership of Participant's equipment and the content on such equipment (except for that provided by IHN or its suppliers or relating to The Exchange Application (as defined below) ("Content"), including, but not limited to, those portions of the Content that include Participant's trade names, trademarks or service marks, are and shall remain the property of Participant. Notwithstanding the foregoing, IHN hereby reserves all rights not expressly granted herein, and all right, title and interest in and to (i) any software (both source and object code), documentation, cabling, equipment, content or other materials provided by IHN or its suppliers, (ii) the user interface associated with The Exchange, and (iii) any and all software (both source code and object code) and web pages associated with The Exchange (collectively, items i-iii shall be referred to herein as the "Application").

2.4 Network Usage Restrictions. Participant agrees and acknowledges that the Content and Participant's use of The Exchange will be subject to IHN policies regarding use of its facilities, as well as any Participant terms and conditions which shall be set by IHN in its sole discretion,

and which may be found in Exhibit A ("Terms and Conditions"), or other policies governing the use of The Exchange set by IHN and communicated to Participant from time to time (collectively, "Policies"). IHN reserves the right to, and may, revise any of the Terms and Conditions or Policies upon thirty (30) days notice to Participant. Participant's continued use of The Exchange and/or the Application shall be considered the Participant's acceptance of any such modifications. If any Content or use of The Exchange violates said policies, or any laws or regulations of local, state, or federal governments, IHN may immediately suspend Service to Participant and terminate this Agreement at IHN's sole discretion.

2.5 Backup. IHN shall not provide or guarantee any data backup or data storage of Participant's equipment or Content.

2.6 Further Assurance. Participant understands that IHN shall have no obligation to monitor amounts of bandwidth ordered by purchasers and amounts of bandwidth actually delivered by sellers on The Exchange. Any disputes that arise between Participants regarding the amount of bandwidth bought and the amount of bandwidth actually delivered, shall be settled by Participant, with no obligation from IHN. IHN shall have no obligations to collect monies owed from buyers for bandwidth to them from one or more sellers. It shall be the seller's responsibility to collect any monies owed from buyers. In cases where IHN acts as the payment clearing-house, IHN shall collect monies from buyers for bandwidth purchases, and sellers shall be paid within 90 days of the date of the invoice to the buyer.

2.7 Marketing. Participant agrees that from time to time IHN may refer to Participant, and may briefly describe Participant's business, in IHN's marketing efforts and on the IHN website. Participant hereby grants IHN a limited license to use any Participant trade names and trademarks only for this purpose. Marketing efforts may address marketing collateral including case studies and targeted mailing pieces, marketing activities including trade shows, seminars, and lead generation events, sales training, and public relations opportunities including press releases. If a seller, Participant agrees to have market information publicly available on the Internet through IHN's market information portal and monthly bandwidth market report unless otherwise requested.

3.0 BILLING AND PAYMENT

3.1 Payments. Participant shall pay IHN a \$200 one-time Merkato seat fee in addition to the following fees for the Participant's use of The Exchange, as described below:

(i) **Selling:** Sellers incur a Transaction Fee equal to 15% of the total value of transactions executed on the Exchange. Sellers pay no installation fee for a FastE connection to the exchange, and a \$400 installation fee for a GigE connection to the exchange.

(ii) **Buying:** Buyers pay no installation fee for a FastE connection to the exchange, and a \$400 installation fee for a GigE connection to the exchange. There is no monthly minimum charge for a FastE or GigE connection.

Invoices are delivered monthly, and all invoices are due upon receipt. In the event that Participant fails to pay the fees invoiced within 30 days after the due date, such unpaid amounts shall bear interest from the date due until paid at a rate equal to 1.5% per month of such past due payment. In addition to such monthly interest, Participant agrees to a late charge equal to 5% of such past due payment as an agreed liquidated amount in compensation for IHN's administrative expenses relating to such late payment. If any of the above fees are in excess of the maximum amount permitted by applicable law, Participant shall pay the maximum interest permitted by applicable law in lieu of the fees set forth above.

3.2 Taxes and Fees. Participant is responsible for payment of all sales, use, gross receipts, excise, access, bypass, franchise, or other local, state and federal taxes, fees, charges, or surcharges, however designated, imposed on or based on the provision, or use of The Exchange and any services furnished by IHN hereunder.

4.0 TERM / TERMINATION

4.1 Term/Extension. Subject to earlier termination, as provided herein, the term of this Agreement shall be for a period of one (1) year from the effective Commencement Date ("Initial Term"), and shall automatically extend thereafter for successive terms of one (1) year each ("Renewal Terms"), unless either party gives the other party sixty (60) days written notice prior to the end of the then-current term.

4.2 Termination. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party. Either party shall have the right to terminate this Agreement in the event of a material breach of the Agreement by the other party where such breach remains uncured for seven (7) days after receipt of notice of default by the non-defaulting party to the defaulting party.

4.3 Obligations on Termination. In the event of any expiration or termination of this Agreement for any reason, Participant must remove all copies of the Application and all

of its components from all of Participant's systems and equipment, and must destroy all such Application components and copies, along with all related media and documentation.

5.0 LIABILITIES

5.1 The Exchange Facilitates Transactions. The Exchange is a venue, which allows buyers, and sellers to bid for, offer, sell, and buy bandwidth. IHN facilitates the operation of the exchange, and acts as a clearinghouse for buyer/seller transactions. IHN has no control over the quality or amount of the bandwidth advertised the truth or accuracy of the listings and the ability of sellers to sell through The Exchange. IHN cannot ensure that a seller will actually complete a transaction.

5.2 Participant Release. In the event that Participant has a dispute with one or more Users, Participant releases IHN (and its affiliates and the respective officers, directors, consultants agents and employees of each) from all claims, demands and damages of any kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes, The Exchange, and/or the Application. If Participant is a California resident, Participant hereby waives California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executed the release, which if known by him must have materially affected his settlement with the debtor."

5.3 LIMITATION ON DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, IHN SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES, THE COST OF REPLACEMENT SERVICES, OR DAMAGES TO PARTICIPANT'S BUSINESS OR TO THE BUSINESS OF PARTICIPANT'S CUSTOMERS) WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF (I) THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, OR (II) IHN'S NEGLIGENCE OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (III) BREACH OF THIS AGREEMENT BY IHN OR (IV) ANY OTHER CAUSE, WHETHER OR NOT IHN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, IHN'S AGGREGATE LIABILITY ARISING UNDER, WITH RESPECT TO OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL MONIES PAID BY PARTICIPANT

TO IHN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH LIABILITY ARISES.

5.4 Disclaimer of Warranties. IHN MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, TITLE OR NONINFRINGEMENT. THE EXCHANGE AND THE APPLICATION ARE PROVIDED "AS IS." WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IHN SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING (I) ANY BENEFIT PARTICIPANT MIGHT OBTAIN FROM THE EXCHANGE OR THE APPLICATION; (II) THE OPERATION OR APPEARANCE OF THE EXCHANGE OR APPLICATION; OR (III) THAT ANY SELLER HAS THE BANDWIDTH THEY OFFER THROUGH THE EXCHANGE, OR THAT ANY BUYER OR SELLER WILL COMPLETE ANY TRANSACTION THROUGH THE EXCHANGE. IHN DOES NOT GUARANTEE CONTINUOUS OR UNINTERRUPTED SERVICES OF THE EXCHANGE. IN THE EVENT OF INTERRUPTION OF THE SERVICES OF THE EXCHANGE, IHN'S SOLE OBLIGATION SHALL BE TO RESTORE SERVICE TO THE EXCHANGE AS SOON AS COMMERCIALY REASONABLY POSSIBLE.

6.0 GENERAL TERMS

6.1 Force Majeure. IHN shall not be liable for any failure of performance or equipment due to causes beyond IHN's control (including, without limitation, the acts and omissions of other Users and participants in The Exchange). In the event IHN is unable to deliver service for fourteen (14) consecutive days as a result of force majeure, Participant shall not be obligated to pay IHN for the affected service for so long as IHN is unable to deliver.

6.2 Assignment and Resale. Participant shall not assign this Agreement and shall not permit any other person or entity to utilize The Exchange without prior written consent of IHN, which consent shall not be unreasonably withheld. Any assignee to which IHN consents shall deliver to IHN a written agreement satisfactory to IHN in which such assignee expressly assumes the obligations of Participant hereunder and agrees to perform such obligations for the benefit of IHN. Participant shall reimburse IHN on demand for any reasonable costs that may be incurred by IHN in connection with any proposed assignment. Notwithstanding any assignment, Participant will remain fully liable for the payment of any monthly fees, transaction fees and any other charges hereunder and for the performance of all of the

other obligations of Participant contained in this Agreement. The consent by IHN to any assignment shall not relieve Participant of the obligation to obtain the consent of IHN to any future assignment. If Participant is a corporation, a change (by one or more transactions) in ownership of a majority of the voting stock of Participant shall be deemed an assignment of this Agreement, except for transactions with a corporation into or with which Participant is merged or consolidated or involving the acquisition by such corporation of all or substantially all of the assets of Participant in connection with the acquisition of Participant's business. If Participant is a partnership, a limited liability company or another legal entity, a change in the controlling interest in Participant (including the admission of new partners or members or the withdrawal of existing partners or members having a controlling interest) shall be deemed an assignment of this Agreement subject to the provisions of this Section 6.2, regardless of whether the transfer is made by one or more related transactions, or whether one or more persons or entities hold the controlling interest prior to the transaction or afterwards, except for transactions with an entity into or with which Participant is merged or consolidated or involving the acquisition of all or substantially all of the assets of Participant.

6.3 Notices. Any notices, or other communications under this Agreement, shall be sufficiently given if given in writing and delivered by U.S. Regular Mail or another recognized courier to the address of such party set forth at the beginning of this Agreement. Notice shall be deemed given when received. Either party may designate a different address by giving notice of change of address in the manner provided above.

6.4 Indemnification. Participant understands that IHN is acting as a facilitator for transactions between Participant and other Users. IHN shall not be responsible or liable for the performance or non-performance of transactions between Participant and other Users or for any disputes arising between Participant and other Users. Participant shall indemnify, defend, and hold harmless IHN and its affiliates and the respective officers, directors, consultants, agents and employees of each from and against all losses, liabilities, damages, claims, costs, and expenses (including reasonable legal fees and court costs) arising from or in connection with: a) the use by Participant of The Exchange or Application; or b) the performance or non-performance of transactions or offers for transactions between Participant and other Users or any disputes between Participant and other Users; or c) any negligence or wrongful act of Participant; d) any breach by Participant of any material provision of this Agreement, and e) any damage to tangible property, personal injury or death caused by Participant's acts or omissions, including, without

limitation, Participant's negligence or willful misconduct.

6.5 Contents of Communications. IHN shall have no liability or responsibility for the content of any communications transmitted via The Exchange, and Participant shall defend, indemnify and hold IHN and its affiliates and the respective officers, directors, consultants, agents and employees of each harmless from any and all losses, liabilities, damages, claims (including claims by governmental entities seeking to impose penal sanctions), costs, and expenses related to such content or for claims by third parties relating to Participant's use of The Exchange. IHN provides only access to The Exchange; IHN does not operate or control the information, services, opinions or other content of The Exchange. Participant agrees that it shall make no claim whatsoever against IHN relating to the content of The Exchange or respecting any information, product, service or software ordered through or provided by virtue of The Exchange.

6.6 Waiver. No delay or omission by either party in exercising any right under this Agreement will operate as a waiver of that or any other right. Either party may waive the requirements of any specific provision of this Agreement without waiving any other provisions of this Agreement. A waiver of consent given by either party on any one occasion is effective only in that instance and will not be construed as a waiver of any right on any other occasion.

6.7 Entire Agreement. This Agreement, including any Exhibits attached hereto, and the Terms and Conditions and Policies communicated by IHN to Participant sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by both parties.

6.8 Authority to Sign. Each party represents that the respective signatories of this Agreement presently have and shall have full authority to enter into this Agreement and to bind and obligate their respective organizations to the terms, rights, and obligations under this Agreement.

6.9 Damage or Destruction. In the event of any damage, destruction, or condemnation of any part of The Exchange or the facility in which The Exchange is located that renders The Exchange unusable or inoperable, either party shall have the right to terminate this Agreement and all of the parties' duties and obligations hereunder by giving notice to the other party.

6.10 Governing Law. The rights and obligations of the parties under this Agreement shall be governed by and

construed and enforced in accordance with the laws of the State in which The Exchange used by Participant is located without giving effects to conflicts of laws provisions. The parties hereby consent to jurisdiction and venue in the county where The Exchange used by Participant is located.

IN WITNESS HEREOF, the parties have entered into this agreement as of the date set forth:

To be completed by Participant:

Participant Name

Authorized Rep. Name and Title

Signature

Date

To be completed by IHN:

Authorized Rep. and Title

Signature

Date

Invisible Hand Networks' Liquid Bandwidth Exchange

Terms of Service for Buyers/Sellers

1. ACCEPTANCE OF TERMS

Welcome to the Invisible Hand Networks's Liquid Bandwidth Exchange. IHN provides this service to you, subject to the following Terms of Service ("TOS"), which may be updated by us from time to time with thirty (30) days notice to you. IHN also may offer other services from time to time that may be governed by different Terms of Service.

2. DESCRIPTION OF SERVICE

IHN currently provides Participants with access to a variety of buyers and sellers of bandwidth on the exchange. Unless explicitly stated otherwise, any new features that augment or enhance The Exchange, including the release of new IHN properties, shall be subject to the TOS. You understand and agree that IHN is not responsible for any inaccurate or incomplete information you provide to us.

3. YOUR REGISTRATION OBLIGATIONS

In consideration of your use of The Exchange, you agree to: (a) provide true, accurate, current, and complete information about your company ("Registration Data"), as prompted by IHN, and (b) maintain and promptly update this Registration Data to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or IHN has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, IHN has the right to suspend or terminate your account and refuse any and all current or future use of The Exchange (or any portion thereof).

4. IDENTIFICATION TO BUYERS

Each resource on The Exchange represents bandwidth that is available from one seller. Before purchasing bandwidth, buyers are able to select the resource (or seller) from which they wish to purchase bandwidth from. Please indicate whether or not you wish to be identified to potential buyers on The Exchange:

- YES**, please identify my company to buyers on The Exchange.
- NO**, I wish to remain anonymous to buyers on The Exchange.

5. MEMBER ACCOUNT, PASSWORD, AND SECURITY

You will receive a password and username upon completing The Exchange registration process. You are responsible for maintaining the confidentiality of the password and username, and are fully responsible for all activities that occur under your password or username. You agree to immediately notify The Exchange Administrator of any unauthorized use of your password or username or any other breach of security. IHN cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 5.

6. MEMBER CONDUCT

Our services are available only to individuals who can form legally binding contracts under applicable law. You must also be legally able to sell the bandwidth you list for sale on The Exchange. Without limiting the foregoing, our services are not available to minors or to temporarily or indefinitely suspended Exchange members. Further, your Exchange username and password may not be transferred or sold to another party.

While The Exchange utilizes a patented auction process, please note that IHN does not act as a traditional "auctioneer". Rather, The Exchange acts as a venue to allow anyone to offer, sell, and buy bandwidth in a variety of formats, including a fixed price format (Reservation Market) and an auction-style format (Spot Market). IHN is not involved in the actual transaction between buyers and sellers. As a result, we have no control over the integrity, reliability, quality, price, or amount of bandwidth offered on The Exchange, the truth or accuracy of the posted offers, the ability of sellers to sell items, or the ability of buyers to buy items. We cannot ensure that a buyer or seller will actually complete a transaction.

Buyers are obligated to complete transactions with sellers for bandwidth purchased on The Exchange. If you receive a bandwidth allocation on either the Spot or Reservation Market, you are obligated to complete the transaction with the seller, unless the transaction is prohibited by law or by this Agreement. By bidding on bandwidth, you agree to be bound by the conditions of sale included in the bandwidth description, so long as those conditions of sale are not prohibited by law or by

this Agreement. If you are purchasing bandwidth on the Spot Market, you are obligated to purchase the quantity of bandwidth that is allocated to you at the end of the auction, at the agreed auction price.

Upon completion of an auction in the Spot Market, sellers are obligated to allocate the bandwidth they made available for the auction at the final calculated auction price. On the Reservation Market, sellers are obligated to fulfill all accepted reservations per the terms of the reservation.

Without limiting any other remedies, IHN may suspend or terminate your account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with The Exchange.

7. USER INFORMATION

"User Information" is defined as any information you provide to IHN in the registration, bidding, agent creation, or listing process. You are solely responsible for your User Information being accurate, complete, and current.

Your User Information: (a) shall not be false, inaccurate, or misleading; (b) shall not be fraudulent; (c) shall not violate any law, statute, ordinance or regulation. Furthermore, you may not make bandwidth available on The Exchange (or consummate any transaction that was initiated using The Exchange) that, by paying to us your associated fees, could cause us to violate any applicable law, statute, ordinance or regulation.

IHN also reserves the right to drop any traffic associated with unregistered MAC and/or IP addresses.

8. USAGE DATA

Each Participant may access their own utilization and transaction information via The Application as defined in section 2.3.

Participants are strictly prohibited from sending Spanning Tree Protocol (STP) broadcasts to The Exchange. In addition, IHN also reserves the right to limit the amount of broadcast and/or multicast traffic.

9. PROPRIETARY RIGHTS

You acknowledge and agree that the Merkato software used in connection with The Exchange ("Software") contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by IHN or its partners, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on The Exchange or the Software, in whole or in part.