



StreamingHand

StreamingHand Service Agreement

THIS AGREEMENT is made between Invisible Hand Networks, Inc. ("IHN"), a Delaware corporation which provides network services ("Network access") and co-location space ("Space") under the name or mark, "StreamingHand Service", and Customer, identified as the party specified below and/or in the "Customer Order" form attached hereto and executing this Agreement. This Agreement is effective as of the date of Customer's signature below ("Effective Date").

1 DEFINITIONS

- 1.1 **"Actual Startup Date"** shall be the date on which IHN makes available the Space and/or the Service to Customer.
- 1.2 **"Space"** means the location at which space for Customer's Equipment is made available by IHN to Customer. Space may also be referred to below as "Colocation Space".
- 1.3 **"Equipment"** means computer, networking, and data communications hardware and software owned, located, and maintained by Customer or IHN.
- 1.4 **"Services"** means StreamingHand Service including Space and Network access.
- 1.5 **"End User"** means Customer's subscribers or customers to whom Customer will provide services utilizing, in part, Services provided by IHN to Customer.
- 1.6 **"Planned Service Outage"** means a complete loss of transmit or receive capability occurring on IHN's network, caused by mutually agreed upon scheduled maintenance or planned

enhancements or upgrades to either party's systems.

- 1.7 **"Service Outage"** means a complete loss of transmit or receive capability occurring on IHN's network.

2 SERVICES

- 2.1 **Space.** IHN, at its sole discretion, will either host in its own servers, or provide rack space for Customer's Equipment.
- 2.2 **Network Access.** Equipment will be connected to the StreamingHand Network via a 100/1000 Mbps Ethernet connection by default or as otherwise set forth in the attached Addendum B.

3 CUSTOMER OBLIGATIONS

- 3.1 **Installation/Maintenance.** Customer shall, at its own expense, supply, order, install, configure, engineer, troubleshoot, and maintain all Equipment, including cabling and termination devices necessary to support access to the StreamingHand Network. IHN shall not be obligated to provide any such services or provide any installation assistance. For Customers in which IHN is providing hosting services only, Customer is responsible for the Content placed on IHN's equipment.
- 3.2 **On-Going Maintenance.** IHN is not responsible to Customer for providing any administrative, technical, emergency or support personnel or services necessary for providing and maintaining Customer's Equipment or Content. Upon Customer's specific written request for assistance, IHN may, at its sole discretion, provide



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such services, but only upon the condition that Customer agrees to pay for IHN's services at a time and material basis of \$150 per hour.

3.3 **Ownership of Equipment and Content.**

All interest in and ownership of the Customer's Equipment and the Customer's content ("Content") including, but not limited to, those portions of the Content that includes Customer's trade names, trademarks or service marks, are and shall remain the property of Customer.

3.4 **Network Usage Restrictions.**

Customer agrees and acknowledges that the Content and Customer's use of the Space will be subject to IHN's policies regarding use of its network ("Network Policies"), which policies (including, but not limited to, its network abuse policy as determined from time to time) are set by IHN in its sole discretion. If any Content or use of the Space violates the Network Policies, or any laws or regulations of local, state, or federal governments, IHN may immediately suspend Service to Customer and terminate this Agreement at IHN's sole discretion.

3.5 **Backup.**

IHN shall not provide or guarantee any data backup or data storage of Customer's Equipment or Content, unless IHN otherwise agrees in writing to do so in its Customer Order form.

3.6 **Responsibility for its End Users.**

Customer shall be solely responsible for providing service and support to its End Users.

4 BILLING AND PAYMENT

4.1 **Payments.**

Customer accepts and agrees to pay all fees incurred as invoiced, including additional service fees as set forth in Addendum A attached hereto. Invoices are delivered monthly, and all invoices are due upon receipt, and

become past due thirty (30) days from date of invoice. Beginning on the past due date, past due amounts bear interest at a rate of 1.5% per month (prorated on a daily basis), or at the highest rate allowed by law, whichever is less.

4.2 **Taxes and Fees.**

Except for taxes based on IHN's net income, personal and real property taxes imposed on IHN's property, Customer 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, sale, or use of the Services.

5 TERM/ TERMINATION

5.1 **Term/Extension.**

This Agreement term ("Term") is effective upon the Effective Date and shall continue for 30 days. Unless terminated by either party as provided below, this Agreement will automatically renew after the initial Term on a month to month basis, subject to then applicable rates, unless otherwise agreed in writing by the parties.

5.2 **Termination.**

Either party may terminate this Agreement upon written notice to the other party (1) at the end of either the initial or subsequent Term, so long as notice is provided thirty (30) days before the end of such Term, or (2) upon material breach of the Agreement by the other party, provided such material breach has not been cured after 15 days written notice has been given to the party in material breach.



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6 LIABILITIES

6.1 **Service Interruptions and Delivery.** IHN provides specific remedies regarding availability of Service as set forth in its “Service Level Agreement”.

6.2 **Limitation on Damages.** Notwithstanding any other provision hereof, neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including but not limited to damages for lost profits, lost revenues or the cost of purchasing replacement services) arising out of the performance or failure to perform under this Agreement, any related Customer Order form, or Service Level Agreement.

6.3 **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, EXCEPT FOR THOSE EXPRESSLY SET FORTH IN ANY APPLICABLE SERVICE LEVEL AGREEMENT.

7 GENERAL TERMS

7.1 **Force Majeure.** IHN shall not be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond IHN’s reasonable control. In the event IHN is unable to deliver Service as a result of force majeure, Customer shall not be obligated to pay IHN for the affected Service for so long as IHN is unable to deliver.

7.2 **Assignment and Resale.** Customer may not assign its rights and obligations under a Customer Order without the express prior written consent of IHN. IHN will

not unreasonably withhold its consent to a proposed assignment. These Terms shall apply to any permitted transferees or assignees. Customer shall remain liable for the payment of all charges due under each Customer Order.

7.3 **Notices.** Notices hereunder shall be deemed properly given when delivered, if delivered in person, or when sent via facsimile, overnight courier, electronic mail or when deposited with the U.S. Postal Service, (a) with respect to Customer, the address listed on the Customer Order, or (b) with respect to IHN, to: Contracts Management, InvisibleHand Networks, Inc., 3 Burlington Woods Drive, Burlington, Massachusetts. Customer shall notify IHN of any changes to its addresses listed on any Customer Order.

7.4 **Indemnification.** Each party shall indemnify the other from any claims by third parties and expenses (including legal fees and court costs) in respect of damages to tangible property, personal injury or death caused by Customer’s negligence or willful misconduct.

7.5 **Contents of Communications.** IHN shall have no liability or responsibility for the content of any communications transmitted by the Customer, and Customer shall indemnify and hold IHN harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) relating to such use by the Customer. IHN provides only access to the Internet; IHN does not operate or control the information, services, opinions or other content of the Internet. Customer agrees that it shall make no claim whatsoever against IHN relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet.



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- 7.6 **Entire Understanding.** The terms of this Agreement, including any Customer Orders executed hereunder, constitute the entire understanding of the parties related to Service. In the event of any conflict between the Agreement and the terms and conditions of any Customer Order, this Agreement shall control. All transactions between the parties to this Agreement shall be governed and construed in accordance with the laws of the state of Massachusetts.
- 7.7 **No Waiver.** No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

THE PARTIES REPRESENT AND WARRANT THAT THEY HAVE FULL CORPORATE POWER AND AUTHORITY TO DELIVER THIS AGREEMENT AND TO PERFORM THEIR OBLIGATIONS HEREUNDER, AND THE PERSON WHOSE SIGNATURE APPEARS BELOW IS DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE PARTY WHOM THEY REPRESENT.

IN WITNESS HEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE SET FORTH:

To be completed by Customer:

Customer Name

Authorized Customer Representative/Title

Signature

Date

To be completed by IHN:

Authorized IHN Representative/Title

Signature

Date