

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "MSA") is made, effective as of this ____ day of _____, 2014 ('Effective Date'), between Optic Fusion, Inc, a Washington state corporation ("Provider") and Client, City of Tacoma, a municipal corporation of the state of Washington (the "Client").

Provider desires to provide services to Client and Client desires to purchase services from Provider on the terms provided herein. Accordingly, in consideration of the agreements and covenants contained herein, and other good consideration, the adequacy of which is acknowledged by both parties, the parties agree as follows:

1. SERVICES. During the term of this MSA, Provider shall perform the work, render the services and deliver the products as set forth in the attached Service Level Agreement (SLA) and one or more attached or later negotiated Work Order(s), incorporated here by this reference (the MSA, SLA and Work Orders collectively are the "Agreement"), provided each Work Order is signed by both parties. Neither party is obligated to perform any obligation related to a particular project, service or work until both parties have signed a Work Order and attached it to this MSA. Work Orders may be amended pursuant to the terms of this MSA. If a conflict or inconsistency arises between the terms of this MSA and a Work Order or other attachment, exhibit, or schedule attached hereto or thereto, then (a) if the conflicting or inconsistent provision of a Work Order specifically references and modifies a provision of this MSA, then such Work Order provision shall control; and, (b) in all other instances the terms and conditions of this MSA shall control.

2. PAYMENT FOR SERVICES. Client shall pay the fees set forth in the Service Level Agreement (the "Service Fees") according to the terms set forth in the Payment Schedule. Unless a due date for payment of fees and charges is set forth on the applicable Work Order Client will be invoiced monthly by Provider for fees and charges, plus all applicable taxes. Client will pay Provider for all services based on the rates, fees and charges in the Work Order. Client will pay all the amounts due on the date stated in the applicable Work Order, if any, or if invoice, within thirty (30) days of the date of the invoice.

3. DATA CENTER CLIENT EQUIPMENT AND CROSS-CONNECTIONS.

a. Client shall provide its own hardware, software and ancillary equipment , including: servers, switches, routers, telecommunications and/or other data equipment and power distribution cabling. Client shall also provide, upon request, information regarding its systems, rack/cabinet layout, network equipment, and cross-connection diagrams. Client shall have the option to use Provider for installation of its equipment or to use a contractor selected by Client or Client's technology or information services staff (with either collectively considered "Client Staff"). Client will submit to Provider in writing the names, titles and employers of Client Staff, who shall be deemed to be approved and for whom written consent shall presumed until such time that Provider communicates, in writing, its disapproval of any of the identified Client Staff. It is specifically understood that compliance with hardware warranty and software license

requirements are the sole responsibility of the Client. It is understood and agreed that Client shall not be entitled to make any construction changes or material alterations to Provider's facilities or equipment, including any cabling or power supplies for the equipment, without obtaining Provider's prior written approval. Provider reserves the right to perform and manage any construction or material alterations within its facilities ("Colocation Area") and such work performed at Client's request will be billed to Client at Provider's customary rates for such services.

b. Upon obtaining Provider's prior written consent, which consent shall not be unreasonably withheld, Client may cross-connect the equipment within in its cabinets to equipment located in different cabinets so long as these different cabinets are either owned by Client or provided to Client by Provider pursuant to a Work Order by use of Client Staff. Provider shall control and direct any and all installation and other work relating to the establishment of the cross-connections. Client shall compensate Provider for the cross-connection and interconnection products and services provided by Provider, if any, at Provider's then customary rates.

c. In a format similar to Attachment A, the Parties will provide names and contact information of individuals from both organizations who will be involved with each Party fulfilling the Agreement. Provider will permit access to Client's space only to those individuals identified as permitted or authorized or to those escorted by permitted or authorized individuals.

5. CONFIDENTIALITY.

a. Scope: Both parties acknowledge that in the negotiation and performances of this MSA and the obligations of the parties, each may receive Confidential or Proprietary Information of the other. "Confidential or Proprietary Information" is defined as all information, materials, data and documents, in whatever form, relating to either party which is not generally available to the general public which has been made available to the other and any information or materials specifically marked as "confidential" or "proprietary" by either party. The foregoing obligations shall apply to verbal information as well as specific portions of the information that are disclosed in writing or other tangible form and marked to indicate the confidential nature thereof. Notwithstanding the foregoing, "Confidential or Proprietary Information" does not include any information which:

- i. Was known to the receiving party prior to receipt under this Agreement, as demonstrated by the receiving party's records; or
- ii. Was publicly known or available prior to receipt under this Agreement, or later becomes publicly known or available through no fault of the receiving party; or
- iii. Has been or is disclosed, without restrictions on disclosure, to the receiving party by a third party having the legal right to disclose the same or to a third party by the disclosing party; or
- iv. Is independently developed by an employee, consultant, or agent of the receiving party without access to the information as received under this Agreement; or
- v. The receiving party is obligated to produce as a result of a court order or other legal process, including but not limited to the Washington State Public Records Act, Chapter 42.56 RCW, provided that the disclosing party has been given notice thereof and an opportunity to waive its rights or to seek a protective order or other appropriate remedy. In the case of Client being disclosing party the procedures for third party notice contained in the Public Records Act will satisfy this provision.

b. Covenants of Confidentiality and Nondisclosure: Upon written request of a disclosing party, the receiving party shall return all information disclosed in written or tangible form, and the receiving party shall destroy all their copies, excerpts or notes made by it which contain any portions of the information unless otherwise provided for by the parties. All rights and responsibilities under this Section shall survive termination of this Agreement. The parties agree to use their best commercially reasonable efforts to maintain the confidentiality of such material, but in no event lesser than was used by the receiving party with its own Confidential or Proprietary Information. Except as required by this Agreement or to perform this Agreement, both parties will not (i) make any use of such material that is Confidential or Proprietary Information or that could constitute competition with the disclosing party in the state of State, nor (ii) disclose such information to any third party without prior written authorization from the disclosing party. Each party shall (i) limit dissemination of the information received by it to those of its employees, agents and consultants whose duties reasonably justify the need for access to such information and who are subject to obligations of secrecy and limited use commensurate in scope with this Agreement, and (ii) take appropriate measures to assure that its employees, agents and consultants who receive or have access to such information, as contemplated above, observe and comply with all of the terms and provisions of, and each such party's obligations under, this Agreement. No other right or license to use the information is granted under this Agreement.

6. TERM and TERMINATION. This MSA begins on the Effective Date (defined below) and applies to all transactions between Provider and Client until terminated as provided herein. Unless terminated earlier as provided in this section, this Agreement will terminate after five years from the Effective Date, however, that the confidentiality covenants shall survive thereafter as provided above and the obligation to pay all outstanding invoices shall survive and continue until all invoices are paid. At the sole option of Client, this Agreement may be renewed for additional five year terms or portions thereof. Notice of intent to renew will be provided in writing by Client no later than thirty days prior to the expiration of the then existing term and an Amendment to this Agreement will be mutually executed.

This Agreement may be terminated in the event of default of the other party, by either party giving notice of termination in writing to the other party at least fifteen (15) calendar days in advance of the date of termination; provided written detailed notice of, and a thirty (30) day opportunity cure, said default has previously been given to the defaulting party by the terminating party and the default has not been cured. Furthermore, the preceding sentence notwithstanding, in the event Client has failed to pay two (2) consecutive invoices when due, then Provider may terminate the Agreement by giving five (5) business days advance written notice of termination. Client may terminate for convenience upon ninety (90) days notice, Provider may terminate for convenience upon one hundred and eighty (180) days written notice.

If Client terminates for convenience, Client agrees to pay an early termination charge (“Early Termination Charge”) calculated as follows:

Client shall pay the difference between the monthly fee set forth in the Payment Schedule and Provider's published rates for the actual period during which Provider rendered services. A published rate is a monthly fee between Provider and another Client for like services during the period which Provider rendered the services. For example, if Client terminates this five year agreement after two years, Client would pay the difference between the monthly fee for a two year Agreement for like services and the monthly fee for a five year Agreement for like services multiplied by the number of months Provider rendered services. Any Early Termination Charge assessed shall be due as of the effective date of the termination for convenience.

7. DAMAGE TO FACILITIES. If the building in which Provider's facilities are located is damaged by fire or other casualty, then Provider shall give notice to Client of such damage as quickly as commercially practical under the circumstances and if the parties agree Provider is unable to provide services as reasonably contemplated by the parties as a result of the damage, then this MSA may be terminated by mutual agreement as of the date of such determination, and the fees and charges paid or to be paid by Client for future services shall be adjusted accordingly. Under no circumstances shall Provider have any obligation to repair or replace equipment provided by Client which is damaged as a result of any event beyond the Provider's control. If Provider is unable to complete the repair of its facilities following fire or other damage within a reasonable period of time under the circumstances, Client shall have the option to terminate this Agreement, which option shall be the sole remedy available to Client against Provider.

12. SERVICE LEVEL AGREEMENT. Client is required to review the Service Level Agreement for the applicable services. Provider reserves the right to amend the service level agreement to improve operational performance, security, safety, and other applicable requirements.

13. INDEMNIFICATION. Each party shall indemnify, defend and hold the other all of its affiliates, agents, consultants, employees, subcontractors, shareholders, members, managers, directors and officers harmless from and against any and all actions, claims, court costs, damages, demands, expenses, liabilities, losses or penalties, including reasonable attorney fees (collectively "Claims") arising out of a party's negligent performance of or breach of this MSA.

14. INSURANCE. During the term of this Agreement, Client shall maintain and provide to Provider proof of property insurance covering all of Client's equipment located on Provider's premises. Any equipment kept or maintained by Client at the Provider's premises shall be insured solely by Client for the full replacement value of such equipment or property and Client shall look solely to its own insurance in the event of any damage or loss to such equipment or other property. Provider acknowledges Client is self-insured for all other insurance requirements. Provider shall carry insurance in an amount and of a type sufficient to protect Client against claims arising out of this Agreement as such claims arise out of Provider's negligence and/or breach of this Agreement. Provider shall provide proof of such insurance coverage upon request by Client.

15. NO REAL PROPERTY INTEREST. Client acknowledges that it has only a license to occupy a portion of Provider's facilities and that it has not been granted any real property interest in or to such portion or facilities, or the building in which the facilities are located. Provider warrants

it has all necessary approvals to license its facility according to the terms contained herein. Client further agrees that neither this MSA nor any interest or right created herein shall be assigned, mortgaged, subleased, sublicensed, encumbered or otherwise transferred by Client except as expressly permitted herein. Client further agrees that no part of facilities provided by Provider may be used or occupied by any entity (including any affiliated entity) other than Client, inclusive of Client Staff, or Client's Affiliates (defined below), without Provider's advance written consent.

16. GENERAL PROVISIONS.

a. Force Majeure. Excluding electrical failure, or cooling system failure neither party shall be responsible for failure or delay in delivery of any service, if caused by an act of God or public enemy, war, terrorism, government acts, regulations or orders, fire, flood, embargo, quarantine, epidemic, labor stoppages or other disruptions, accident, unusually severe weather or other cause similar or dissimilar, beyond the control of the defaulting party.

b. Relationship, Assignment & Delegation. The parties are independent contractors under this Agreement. Except as expressly set forth herein, neither party has the authority to, and each party agrees that it shall not, directly or indirectly contract any obligations of any kind in the name of or chargeable against the other party without such party's prior written consent. Neither party to this Agreement may assign any of its rights or obligations under this Agreement to any person other than an Affiliate of such party without the prior written consent of the other party, which consent will not be unreasonably withheld. "Affiliate" means an entity controlled by, or under common control with, a party, or any entity into which a party is merged or combined.

c. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered, if delivered personally, three business days after being mailed by registered or certified mail (postage prepaid, return receipt requested) or one business day after being sent by overnight courier (providing proof of delivery), to the parties at the addresses set forth in the Work Order, or such other address as provided in accordance with this section.

d. Entire Agreement, Amendment & Waiver. This MSA, together with the SLA and any attached or later associated Work Orders, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters. Nothing in this Agreement is to be construed as an assignment or grant of any right, title or interest in any trademark, copyright, trade dress, patent right or other intellectual or industrial property right. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment by both parties, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Headings are for convenience only and are not intended to be substantive provisions of the Agreement.

e. Law & Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the Laws of the State Washington. Each of the parties hereby irrevocably and unconditionally consents to submit to the jurisdiction of the courts Pierce County Washington for any litigation arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties have made this Agreement as of the Effective Date first stated above.

CITY OF TACOMA

OPTIC FUSION, INC.

T.C. Broadnax, City Manager

Printed Name: _____

Title: _____

Address: _____

Jack Kelanic, Director Information
Technology Department

Andrew Cherullo
Director of Finance

City/State/Zip

Tax ID: _____

Approved as to Form:

Deputy City Attorney

Attest:

City Clerk

Service Level Agreement

This Service Level Agreement Attachment (“SLA”) sets forth the SLA applicable to the Colocation Services provided to Client within the Provider Facility. This SLA Attachment is subject to and incorporated into the Master Service Agreement and the applicable Service Schedule(s) between the parties and any terms not defined in this SLA shall have the meaning set forth therein.

Services

Basic services: Provider will supply an approximately 250 square foot cage secured by a biometric locking and logging system acceptable to Client. Provider will supply sixteen (16) 30 amp 208V circuits to Client racks as follows:

Rack number	1	2	3	4	5	6	7
Number of 30A, 208V Circuits	2	4	2	2	2	2	2

Provider will back up the circuits with a dedicated Uninterruptible Power Supply and 800KW generator with redundant automatic transfer switches. Provider will supply a backup generator in the event of a main generator failure. Provider will maintain a sufficient fuel supply for the main and/or backup generators to operate continuously until main power is restored. Provider will supply advanced zoned air-sampling fire detection and dry pipe pre-action sprinklers, together with gas based hand-held fire suppression. The climate control system will provide a constant temperature of 70 degrees Fahrenheit and 45% humidity, each +/- 10%. The cage will be monitored 24x7 by on-site Provider personnel and CCTV/video surveillance.

Support Services: Provider will provide five (5) hours of remote hands services per month at no additional cost. Provider will bill Client \$125 per hour in ¼ hour increments for additional remote hands services incurred during a monthly billing cycle.

Security Services: Provider will provide 24x7 on-site personnel to monitor Client cage. Security will also include 24x7 CCTV video surveillance and recording, a Client controlled Biometric reader, and key card access/logging.

Fiber to Client cage

Provider will install a conduit pathway to the Client cage from the current Click! Network fiber termination panel located in the collocation carrier cage. Provider will permit Click! Network to mount an additional fiber termination panel in the collocation carrier cage, assigned to Client, at a location identified by Provider.

Power and HVAC Maintenance Windows

Provider periodically schedules maintenance and upgrades for power and HVAC systems. Provider shall make all commercially reasonable efforts to provide Client at least 10 days prior notification of all

scheduled maintenance procedures, and to schedule such procedures within Client’s established Corporate Network Maintenance Window (Sundays 8:00am to 10:00am). From time to time if Provider is unable perform maintenance within Client’s established Corporate Network Maintenance Window, the Parties will mutually agree on a revised schedule. If Provider must perform emergency maintenance and 10 days prior notification is not practical, Provider will notify Client within 24 hours of determining such maintenance is required and Provider will make all commercially reasonable efforts to perform the maintenance within Client’s established Corporate Network Maintenance Window.

Service Level Target

The Service is provided with the following service level target.

Power Availability: 100%

Cooling System Availability: 100%

Credit Allowances

In the event of a service outage for any Provider system or service covered under this Agreement that affects Client equipment, Client shall be entitled to a credit for the pro-rated monthly charges for any Client equipment downtime. A Client affecting service outage begins when Provider is notified or becomes aware of the failure, whichever first occurs and ends when Client equipment becomes fully operational.

Credit Allowances do not apply to service outages (i) caused by the negligence or acts of Client and/or End User or their respective contractors, employees or agents, (iv) circumstances or causes beyond the control of Provider or its agents. For calculating credit allowances, every month is considered to have thirty (30) days. A credit allowance is applied on a pro-rated basis against the space NRC in Schedule A.

Credit Calculation

If the Service is subject to a Power Outage, Client may request service credits in accordance with this SLA. SLA credits are based on cumulative Power Outage over a calendar month. All Power Outage measurements will be based on Provider' internal monitoring equipment and records. Credit amounts will be calculated in accordance with the following table.

Cumulative Duration of Power Outage within a Calendar Month	Percentage of MRC for Affected Service to be Credited
1 minute through 14 minutes	5%
15 minutes through 59 minutes	10%
1 hours through 2 hours, 59 minutes	20%
Greater than 2 hours, 59 minutes	30%

Client equipment is capable of utilizing dual power sources and equipment shall be capable of operating at 100% of load without sustaining an outage on either source if power is lost to one of the sources. Equipment shall be plugged directly into both the A power strip and the B power strip. Client shall not permit power consumption to exceed the power rating identified in the Payment Schedule and Work Order 1. All equipment shall be in compliance with electrical regulations of the region where equipment is installed. Cabling used by Client shall meet national electrical and fire standards and any other reasonable specifications provided by Provider.

Definitions

"Affected Service" means only the portion of a Service actually impacted by Power Outage.

"Outage" means any period during which the Client is unable to utilize the Service due to Provider's failure to provide the specified power or cooling in the Client cage. All Outage measurements will be rounded to the nearest one minute increment.

Payment Schedule and Work Orders

Monthly Recurring Costs

Service	Description	Monthly Amount
Space	7 racks in custom cage	\$11,050
Power	16x30 amp 208V circuits	included
Fiber	Two fiber pairs	\$250
Support	5 hours of remote hands per month	included
	Total:	\$11,300

Work Order 1

Service	Description	One Time Amount
Space	7 racks in custom cage	\$16,800
Power	16x30 amp 208V circuits	7,800
Fiber	Conduit and two fiber pairss	\$1,000
	Total:	\$25,600

Attachment A
Provider/Client Staff List

Access Flag Key

(P) Primary Contact: Main point of contact for MSA/SLA issues.

(N) Notifications: Will receive maintenance and emergency notifications.

(D) Client Cage: Permitted Individuals.

(A) Access Changes: Authorized to make authorization changes and grant/revoke.

(S) Submit Tickets: Ability to create and respond to tickets.

(C) Contract Changes: Authorized to change contract language, billing information, and cancel services.

Client Contacts

First Name	Last Name	Email Address	Office Phone	Cell Phone	P	N	D	A	S	C
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Provider Contacts

First Name	Last Name	Email Address	Office Phone	Cell Phone	P	N	D	A	S	C
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

City Badge Access into Optic Fusion Datacenter

