



SERVICE AGREEMENT

This Service Agreement ("Agreement") is entered into by and between **The Regents of the University of California on behalf of the University of California, San Diego**, a public, not-for-profit, educational institution located at 9500 Gilman Drive, La Jolla, California 92093 ("UCSD") and the **Company** whose name and address appear on Exhibit A, attached hereto and incorporated by reference herein ("Company").

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Scope of Work.** UCSD will perform the services set forth on Exhibit A, Services, attached hereto and incorporated by reference herein ("Services").
2. **Deliverables.** UCSD will provide to the Company the deliverables set forth on Exhibit A, incorporated by reference herein.
3. **Cost.** As consideration for UCSD's performance of the Services, the Company will pay UCSD the costs set forth on Exhibit A, incorporated by reference herein.
4. **Payment.**
 - 4.1. **Schedule.** The Company shall pay UCSD the compensation on the dates or milestones set forth on Exhibit A, incorporated by reference herein.
 - 4.2. **Remittance.** Checks are to be made payable to The Regents of the University of California and sent to the address set forth in Exhibit A.
5. **Term of Agreement.** This Agreement will begin and end on the dates set forth on Exhibit A.
6. **UCSD Contact.** All inquiries and notices with respect to this Agreement shall be sent to the UCSD contact whose name and related information are set forth on Exhibit A.
7. **Responsibilities.** The Company shall provide to UCSD those items listed in Exhibit A, if any, in a timely and secure manner so as to allow UCSD to perform its work. The parties agree to comply with any and all applicable laws, rules, regulations, and policies.
8. **Termination.** Either party may terminate this Agreement upon thirty (30) days' written notice. If the Company terminates this Agreement, the Company will pay UCSD for all costs and any non-cancelable obligations incurred up to the effective date of termination.
9. **Insurance.** Each party shall, at its sole cost, insure its activities and indemnification obligations in connection with this Agreement from its inception and shall keep in force and maintain insurance or self-insurance as follows: general liability, business automobile liability, and workers' compensation and such other insurance as may be necessary to provide coverage for its performance under this Agreement. If the insurance is written on a claims-made form, it shall continue for a period of three years following termination of this Agreement. The coverage required herein shall not in any way limit the liability of either party.
10. **Indemnification.** Each party shall defend, indemnify and hold the other party, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including attorneys' fees), and claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury (including death) or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, employees, or agents.
11. **Patent Infringement Indemnification.** The Company shall indemnify, defend, and hold harmless UCSD, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that the Company's furnishing or supplying UCSD with parts, goods, components, programs, practices, or methods under this Agreement or UCSD's use of such parts, goods, components, programs, practices, or methods supplied by the Company under this Agreement constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. UCSD shall inform the Company as soon as practicable of the suit or action alleging such infringement. The Company shall not settle such suit or action without the consent of UCSD. UCSD retains the right to participate in the defense against any such suit or action.
12. **Limitation of Liability.** EXCEPT WITH REGARD TO ITS INDEMNIFICATION OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR COSTS, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS OR REVENUES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT. UCSD DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL UCSD'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY THE COMPANY FOR THE SERVICES.
13. **Company's Ownership of Deliverables.** The Company will own the deliverables upon payment in full of the cost of the Services.
14. **Use of UCSD Name.** California Education Code Section 92000 prohibits use of the University of California, San Diego's name to suggest that UCSD endorses a product or service. The Company will not use The University of California's name, or any acronym thereof, including UCSD, without UCSD's prior written approval.
15. **Excusable Delay.** In the event of a delay caused by inclement weather, fire, flood, strike or other labor dispute,

acts of God, acts of Governmental officials or agencies, or any other cause beyond the control of UCSD, UCSD's performance is excused hereunder for the periods of time attributable to such a delay, which may extend beyond the time lost due to one or more of the causes mentioned above. The Company's duty to pay for past or continuing costs is not suspended hereunder.


16. **Non-Interference.** Notwithstanding any other provision contained herein, the use of UCSD facilities and/or UCSD personnel in support of this Agreement can only be authorized to the extent that it will not interfere with work related to the prime missions of UCSD and/or the Department (e.g., education and research). Accordingly, Company's exclusive remedy for failure by either UCSD or persons acting on its behalf to perform services or furnish information or data hereunder at any particular time or in any specific manner, is limited to reimbursement of any unexpended payments under this Agreement.
17. **Non-Exclusive Nature of Services.** The Services herein are being offered to Company on a non-exclusive basis. Nothing herein shall be construed as granting Company any exclusive right(s) to the Service(s) referenced herein, and UCSD retains the right to offer and perform similar or identical Services for others.
18. **Notice.** Any notice or communication required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by overnight mail, or prepaid registered mail, or confirmed facsimile transmission, addressed to the other party at the address set forth on Exhibit A, or at such other address as such party hereto may hereafter specify in writing to the other party.
19. **Status of Parties.** This Agreement is not intended to create, nor shall it be construed to be, a joint venture, association, partnership, franchise, or other form of business relationship. Neither party shall have, nor hold itself out as having, any right, power or authority to assume, create, or incur any expenses, liability, or obligation on behalf of the other party, except as expressly provided herein.
20. **Third-Party Beneficiary.** There are no intended third-party beneficiaries to this Agreement.
21. **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable in any respect, such provision shall be treated as severable, leaving the remaining provisions unimpaired, provided that such does not materially prejudice either party in their respective rights and obligations contained in the valid terms, covenants, or conditions.
22. **Non-Waiver.** The failure of either party to require the performance of any of the terms of this Agreement or the waiver by either party of any default under this Agreement shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.
23. **Modification of Agreement.** This Agreement shall be changed only by written agreement of the parties.
24. **Applicable Law.** This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.
25. **Signatures, Counterparts and Copies.** This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one contract with the same force and effect as if

all signatures had been entered on one document. Signatures may be made electronically, and such electronic signatures shall be valid and binding upon the parties making them, and shall serve in all respects as original signatures. Signatures may be delivered among and between the parties by facsimile or electronic means. Thereafter, the parties further agree that electronic copies of this Agreement may be used for any and all purposes for which the original may have been used.

26. **Arbitration.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach solution within a period of sixty (60) days, then upon notice by either party to the other, all disputes, claims, questions, or disagreements shall be finally settled in accordance with the provisions of the American Arbitration Association ("AAA") and proceed under the provisions of Title 9 of the California Code of Civil Procedure Sections 1280 through and including 1294.2. The discovery provisions of the California Code of Civil Procedure Section 1283.05 shall be applicable to this Agreement. Each party shall bear its own costs.
27. **Headings and Captions.** Headings and captions in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the interpretation hereof.
28. **Authority.** Both parties represent that each has the full authority to perform its obligations under this Agreement and that the person executing this Agreement has the authority to bind it.
29. **Survival.** Provisions of this Agreement, which by their express terms, or by necessary implication, apply for period of time other than specified herein, shall be given effect, notwithstanding termination or expiration.
30. **Company's Representations and Warranties.** Company hereby represents and warrants that, except as expressly provided for herein, no obligations are imposed upon UCSD as a result of any other agreement(s) involving Company to which UCSD is not a party.
31. **Export Control.** No ITAR or export controlled materials shall be delivered to UCSD pursuant to this agreement.
32. **Entire Agreement.** This Agreement, including Exhibit A made a part hereof, sets forth the entire agreement of the parties with respect to the subject matter herein and supersedes any prior agreements, oral and written, and all other communications between the parties with respect to such subject matter. Any terms and conditions contained in the Company's purchase order, and any NDA or separate scope of work or similar document shall have no force and effect. Any changes or additions to Sections 1-32 inclusive, of this Agreement are invalid, unless approved in writing by the UCSD representative identified in Exhibit A, Paragraph 7.

IN WITNESS WHEREOF, the Company has executed this Agreement on the date set forth below

Company Name: ~~Wilson Operations, LLC~~ *Freedom Telecommunications d/b/c wilson*

By:  _____

Name: *Glean Nieves* _____

Title: *VP - General Counsel* _____

Date: *8/17/16* _____

EXHIBIT A

SERVICES

COMPANY: *Freedom Telecommunications*
Wilcon Operations, LLC dba wilcon

State of incorporation: *CA DE*

Principal place of business located at 624 South Grand Ave. Suite 2500, Los Angeles, CA 90017

Attention: Christine LaTone

Telephone: 213-550-5243

Fax:

Email: clatone@wilcon.com

1. SCOPE OF WORK:

The Services will be performed as set forth below or in accordance with the attachment hereto and incorporated by reference herein. The Company may issue a purchase order for each Service, however, any terms and conditions set forth on the purchase order are of no force and effect and only the terms and conditions set forth in this Agreement shall apply to the Services hereunder.

Provide rack space for equipment.

I have accepted this Scope of Work on behalf of UCSD and the responsibility for administering and monitoring the agreement.

_____	Business Officer, SDSC	__/__/12
Signature of UCSD Department Chair or Designee	UCSD Title	Date

2. DELIVERABLES:

4 U of rack space for cross connects (based on \$649/unit cost) \$2,596

3. COST: Total \$ 2,596

4. PAYMENT

4.1. SCHEDULE:

0% of cost due upon signing of this Agreement.

Client will be invoiced for full amount upon both parties signing the agreement (i.e. fully executed agreement).

4.1.1. Invoices will be submitted in accordance with the payment schedule.

4.2. REMITTANCE: Checks are to be made payable to **The Regents of the University of California** and sent to:

University of California, San Diego
Attention: Central Cashier's Office
9500 Gilman Drive Mail Code 0009
La Jolla, California 92093-0009

5. TERM OF AGREEMENT: This Agreement will begin on 06/01/2016 and end on 05/31/17.

6. UCSD CONTACT:

Brian Balderston
University of California, San Diego
9500 Gilman Drive Mail Stop 0505
La Jolla, California 92093-0505
Telephone: (858) 822-3613
Fax: (858) 822-0883
Email: bbalderston@sdsc.edu

7. PER SECTION 32 OF THE AGREEMENT, THE UCSD REPRESENTATIVE RESPONSIBLE FOR APPROVING CHANGES OR ADDITIONS TO THIS AGREEMENT: Ted Johnson, Steve Carter, Shelby Mayoral or Sheila Paul - MC 0914; buscon@ucsd.edu.

END OF EXHIBIT A

EXHIBIT B

San Diego Network Access Point Membership

April 29th, 2016

San Deigo Unified School District
4100 Normal Street
San Diego, CA 92103

Background and Purpose

The SD-NAP is hosted by the San Diego Supercomputer Center (SDSC) on the campus of UCSD and was originally established in 1998. Connection to the SD-NAP is open to all data network service providers and research and educational organizations. The goal is to promote a robust, scalable global Internet infrastructure to facilitate efficient interconnection of Internet Protocol (IP) transit networks within California LATA 6. The terms and conditions for participation will be included in the service agreement with UCSD.

Participation Period

SDSC operates 24 hours per day, every day, with no holidays, except for maintenance downtime. The initial participation period is twelve months from the last signature date of the agreement. This Participation Agreement will expire at the end of the first annual period, unless the Member renews the agreement. Continued operation is dependent on availability of funding that subsidizes our programs.

Contact Persons:

Technical SDSC SD-NAP contact: Brian Balderston, (858) 822-3693; bbalderston@sdsc.edu

Business Office Contact SDSC SD-NAP contact: Farhat Taqui, (858) 534-5493; ftaqui@sdsc.edu

Participant contact: Bill Honaker, (619) 725-7481; bhonaker@sandi.net.

SDSC Space

Participants in the SD-NAP neutral interconnection facility may safely locate equipment in a climate-controlled, access-restricted area with conditioned power and 24-hour staffing available for rebooting equipment. Participants will require an SDSC escort to access the SD-NAP.

Peering

Participants providing routers must establish peering with the SDNAP route server and may privately peer with other NAP participants. This may be either bilateral or multilateral peering between network participants. All peering connections with the SD-NAP must be implemented with standard BGP-4 protocol. Private peering may utilize alternative protocols as specified in the private peering agreement. Participants agree to notify the SD-NAP of all peering arrangements. Arrangements for AS and IP address space will need agreement of interested parties.

Routing and Filtering

Participants are responsible for appropriately routing and filtering their customers' transit traffic as well as traffic which they originate themselves. Participants may provide transit service to the SD-NAP on behalf of other networks.

EXHIBIT B

San Diego Network Access Point Membership

Serving Content

Generally, it is against the policy of the SD-NAP to allow Participants to serve content from equipment co-located at the NAP facility. Networking appliances like DNS servers, testers and monitoring tools are allowed.

Networking Research

CAIDA monitors header information at SD-NAP. This information is "munged" to provide statistics only. No PACKET CONTENT is ever saved. See <http://www.caida.org/data/> for additional information.

NAP Connections

All connections between NAP participants are to be performed by NAP personnel only.
UCSD service contract must be signed with attachment A describing the statement of work.

EXHIBIT C

SDSC SD-NAP Rules

Introduction

The SD-NAP rules below are expected to maintain the safety, security, efficiency, and cleanliness of the SDSC San Diego Network Access Point (SD-NAP). The safe operation of SDSC's SD-NAP is a high priority, and we need the help of all those who access this space to ensure the safety and efficiency of the equipment and people within.

Operations contact info:

- phone **858-534-5090** Available 24 hours
- email **operator@sdsc.edu**

SD-NAP Rules

1. New equipment must be approved by and coordinated with the SDSC Enterprise Network Services group.

*The SDSC Enterprise Network Services group must approve all new equipment and moves from one location to another in the SD-NAP. Locations by floor tile quadrants must be recorded along with system name, owner, and contact information. Advanced notice is required in order to accommodate new equipment. Requests should be made to **noc@sdsc.edu**.*

2. Equipment should be unpacked outside the SD-NAP in the appropriate location (currently the old SDSC Auditorium).

*All boxes, packing materials, pallets, and other non-equipment materials (especially cardboard, wooden crates, and pallets) should not be taken into the data center. **All materials not clearly marked, beyond their removal date, or outside the staging area will be removed and discarded by SDSC Operations and/or Facilities Management staff daily. Any time spent cleaning up after violators will be recharged to the offending group (where applicable).***

3. Do not block aisles with chairs, mobile terminals, or other obstructions.

All mobile terminal carts must reside along the perimeter of the SD-NAP and must not be left unattended for extended periods of time. If they are found unattended for more than 24 hours, they will be removed. These items are both a safety hazard and an airflow obstruction.

4. All out-of-rack cable runs must be coordinated with SDSC Enterprise Network Services and follow correct procedures. Non-compliant or non-labeled cables risk removal during regular cleanups.

This process should occur prior to purchasing cables so paths can be determined and proper lengths acquired. All cables will be labeled at both ends with hostname, tile location (of host/patch panel), and destination port (i.e. it-stack-sw g1/0/1).

EXHIBIT C

5. Proper safety procedures and equipment must be used for moving and installing heavy equipment.

Carts and dollies are available. Use proper lifting techniques and seek help with heavy items.

6. No food or drink is allowed in the SD-NAP.
7. Do not block electrical panels.

No materials (boxes, chairs, tables, equipment, etc.) are to be left in front of any electrical panel. 36 inches of clearance is to be maintained at all times both above and below the raised floor.

8. Persons entering the SD-NAP are REQUIRED to wear close-toed footwear.
9. SDSC staff and others who have or are granted access to the SDSC SD-NAP are expected to report immediately any hazardous condition or safety incident to SDSC Operations. First aid kits are located in Operations.

Authorized individuals include any person who has SD-NAP access or any individual authorized by Enterprise Network Services. All authorized individuals agree to abide by these machine room rules.

Reasonable care must be taken to keep people who are given access from wandering the SD-NAP in any unescorted manner, pressing buttons, or leaning against equipment. Any incidents (accidental or not) should be immediately reported by the host to the Operations staff. SDSC Operations staff will record the incident in the Incident Log and take any other appropriate actions.

SDSC Services Standards & User Responsibilities

SDSC Regular Business Hours

- We have defined “Regular Business Hours” as **Monday through Friday from 0800 to 1700, Pacific Time**. Campus holidays are not included in regular business hours.

Advanced Notifications of Scheduled Downtime

- For non-critical maintenance, SDSC will provide a minimum 14 calendar days advance notification via email to opsnotice@sdsc.edu. Some notification messages may include maintenance windows where downtime is not required.
- Customer will communicate the scheduled maintenance with their user community as appropriate.
- Customer contact information will be added to the appropriate mailing lists.

Communication Regarding Unscheduled Downtime

- If critical security patches are released that will require downtime and pose an immediate security threat, SDSC will provide as much advance notice as is feasible, however a non-standard emergency downtime may be taken to maintain system integrity and security.
- Upon resolution of an emergency downtime due to security or other unplanned outage, SDSC will attempt to notify affected groups within 4 business hours.
- Within one business day, SDSC will provide a written post-incident summary (high-level, 1 page, 1-3 paragraphs) to opsnotice@sdsc.edu including:
 - What went wrong
 - Solution
 - Recommended preventative measures and other lessons learned

Technical Support Procedures

- Low Priority Issues
 - *Examples: User configuration problems, issues affecting single-users, issues with most research systems during off hours.*
 - Submit via email to support@sdsc.edu
 - Automated receipt acknowledged within 1 hour.
 - SDSC technical team follow-up by close of following business day.
- High Priority Issues
 - *Examples: Issues affecting entire user communities, issues with production resources on which there are multiple dependencies from other services.*
 - Submit via phone call to SDSC Operations: (858) 534-5090.
 - SDSC Operations will take pertinent information, including incident details and response phone number, create a support ticket, provide the tracking number to the customer, and telephone on-call member of SDSC technical team supporting the project.
 - SDSC technical team follow-up by phone as soon as possible – response goal: 4 hours.

SDSC Services Standards & User Responsibilities

- Critical Priority Issues
 - *Examples: Service downtime affecting entire user communities that require immediate access to the service, Downtime of resources on which there are multiple dependencies from other services.*
 - Submit via phone call to SDSC Operations: (858) 534-5090.
 - SDSC Operations will take pertinent information, including incident details and response phone number, create a support ticket, provide the tracking number to the customer, and telephone on-call member of SDSC technical team supporting the project.
 - SDSC technical team follow-up by phone as soon as possible – response goal: 1 hour.

User Responsibilities

Users of SDSC's services shall insure that the following conditions are met:

- **Appropriate Data:** Customer shall insure that all data stored at SDSC is consistent with the stated Customer's data description in the service agreement. Data and programs of a personal or pornographic nature are inappropriate for storage at SDSC. PII (Personally Identifiable Information) and Information protected by HIPAA (Health Insurance Portability & Accountability Act) privacy rules are inappropriate for storage within the SDSC Storage Services facility without proper encryption and coordination with SDSC Security.
- **Use and Distribution of Data Stored at SDSC.** It is Customer's responsibility to ensure that Customer has all required rights (copyrights, licenses, etc.) to possess copies of data to be stored at and further distributed from SDSC. Storage and/or distribution of data at SDSC to which Customer does not have full rights will be considered a violation of this agreement and grounds for immediate termination.
- **Security:** Customers are responsible for the security of their systems, services, and data. Systems and services hosted at SDSC shall be maintained by the customer unless otherwise coordinated and described in the customer's service agreement. Users are required to protect their password(s). Passwords must **never** be shared. A customer who believes a password has been compromised should change that password immediately and inform SDSC as soon as possible.
- **Backups of Critical Customer Data:** Customers are responsible for backing up critical data. File systems and archival storage systems are very reliable; however, data can be lost or damaged due to media failures, hardware failures, and human mistakes. For these reasons, SDSC strongly encourages Customers to maintain multiple copies of critical data: at least one copy at the customer's site (or other offsite, non-SDSC site) and one or two copies at SDSC. "Dual" copies referred to in storage service agreements are for two copies at SDSC and do not imply offsite storage of any kind.