

GALE DIGITAL SCHOLAR LAB SUBSCRIPTION AGREEMENT

This GALE DIGITAL SCHOLAR LAB SUBSCRIPTION AGREEMENT (the “Agreement”) is made as of the date of signature by Cengage (the “Effective Date”), by and between Cengage Learning, Inc., a Delaware corporation with offices at 5191 Natorp Boulevard, Mason, Ohio 45040 (“Cengage”), and the following Licensee:

Name of Licensee: California Digital Library on behalf of The Regents of the University of California (the “Licensee”)

Whereas Licensee desires to enable its Authorized Users (as defined in Section 1.0) to have access to and use of Digital Scholar Lab and Cengage desires to grant to Licensee the license to use Digital Scholar Lab.

The parties hereto agree as follows:

1.0 Definitions

- 1.1 **“Authorized Sites”** means all University of California campuses and other locations listed in Appendix A.
- 1.2 **“Authorized Users”** means full and part time employees (including faculty, staff, and independent contractors) and students of Licensee, regardless of the physical location of such persons. Authorized Users also include patrons not affiliated with Licensee who are physically present at Authorized Site(s).
- 1.3 **“Session”** means the cycle of activities by an Authorized User that starts when the Authorized User connects to a database and ends when the Authorized User connects to another database or exits Digital Scholar Lab either by logging out or by timeout due to inactivity.
- 1.4 **“Setup Fee”** means the fee paid to Cengage by Licensee for setting up and configuring Licensee’s access to Digital Scholar Lab.
- 1.5 **“Source Content”** means the primary source texts purchase from Cengage by Licensee and which is made available for access and analysis through Digital Scholar Lab.
- 1.6 **“Subscription Fee”** means the fee paid to Cengage by Licensee for Subscription Access to Digital Scholar Lab.

2.0 License

2.1. License Grant.

Authorized Users shall be identified and authenticated by the use of Internet Protocol (“IP”) addresses provided by Licensee to Cengage. The use of proxy servers is authorized as long as any proxy server IP addresses provided limit remote or off-campus access to Authorized Users. Authorized IP Addresses are listed in Appendix B. An updated list will be sent to Cengage on an annual or as needed basis.

Where Cengage provides alternative methods of access and authentication beyond the Licensee-administered methods described herein, e.g. by allowing users to establish a personal login from an on-campus IP address (thereby enabling access via username and password when logging in to a vendor website) or device authentication, which affiliates the device or application by use of a token, cookie, or vendor-managed proxy prefix, Licensee will not be responsible nor liable for claims of breach or validity of such use.

In consideration for the Setup Fee and Subscription Fee, Cengage hereby grants to Licensee a non-transferable, non-exclusive, limited license during the Term to access and use, and to permit Authorized Users to access and use, Digital Scholar Lab for purposes of personal, non-commercial, academic Text and Data Mining of Source Content. "Text and Data Mining" means the performance of automated searches of Source Content, the sorting, parsing, addition or removal of linguistic structures, and the selection and limited inclusion of content into an index or database for purposes of classification or recognition of relationships and associations for non-commercial research purposes only.

- a. Use of and access to Digital Scholar Lab shall be limited to the customary services provided to Authorized Users and shall not include providing access to non-subscribing libraries or third parties, unless specifically authorized by Cengage. Non-subscribing libraries and other third parties are required to enter into a separate agreement with Cengage for access and may not access Digital Scholar Lab remotely using Licensee's remote access to gain access without the prior express written permission of Cengage.
- b. Licensee and Authorized Users may only access Digital Scholar Lab using authentication methods supported by Licensee. Authorized Users may not share their authentication credentials with others.
- c. Licensee shall take all reasonable precautions to limit the usage of Digital Scholar Lab to Licensee and its Authorized Users and shall use reasonable efforts to inform its Authorized Users of the provisions of this Agreement. Licensee agrees to notify Cengage if it becomes aware of any of the following: (i) any loss or theft of Licensee's authentication credentials; (ii) any unauthorized use of any of Licensee's authentication credentials or of Digital Scholar Lab; or (iii) any breach of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement, Licensee shall work with Cengage to cure such breach. Notification of claims of copyright infringement regarding materials available or accessible on, through or in connection with Cengage's services may be sent to Cengage Learning, Inc., 20 Channel Center Street, Boston MA 02210, Attention: General Counsel.
- d. All rights in and to Digital Scholar Lab not specifically provided to Licensee hereunder shall remain the exclusive property of Cengage and its licensors.
- e. For the avoidance of doubts, the Licensee and its Authorized Users may use the full text of purchased and subscribed products in their own computer environments to perform and engage in text and/or data mining activities for the purposes of research, teaching or information services utilized or delivered within the Licensee's institution under the terms of previous agreements between the Licensee and Gale/Cengage. Nothing in this Gale Digital Scholar Lab Agreement removes or limits the Licensee's rights under those earlier agreements.

2.2 Limitations on License.

- a. Authorized Users may download, view and print and/or make paper or electronic copies of citations, abstracts, full text or portions of Source Content for educational research and

personal non-commercial use only; provided, however, that Authorized Users may download no more than One Thousand (1,000) Source Content documents per content set per Session.

- b. Licensee and Authorized Users shall not use Digital Scholar Lab or any output generated by Digital Scholar Lab as a component of, or a basis for, a directory, database or other publication prepared for sale, exchange, barter or transfer, rent, lease, loan, resold for profit, distributed, altered or in any other manner commercially exploiting any data or documentation derived from Digital Scholar Lab or the Source Content.
- c. Authorized Users may distribute the outputs of Text and Data Mining, provided, however, that (i) where snippets and/or bibliographic metadata are distributed, they must be accompanied by a DOI link that points back to the individual full text article or book chapter, (ii) where images or text excerpts are used, Authorized Users are solely responsible for securing any intellectual property or other rights for reuse from the relevant rights holder, and (iii) the distributed outputs must include a proprietary notice stating “Some rights reserved. This work permits non-commercial use, distribution, and reproduction in any medium, provided the original author and source are credited.”
- d. This license does not permit, and Licensee shall take reasonable steps to inform Authorized Users that this license does not permit, Authorized Users to:
 - (i) Use snippets of text from individual full text articles or book chapters that exceed Fair Use provisions.
 - (ii) Abridge, modify, translate or create any derivative work based on the Licensed Content included in the Digital Scholar Lab;
 - (iii) Remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the dataset;
 - (iv) Substantially download content sets beyond current download limits or redistribute them to Unauthorized Users as defined in this license agreement.
 - (v) Extract, develop or use the dataset in any direct or indirect commercial activity;
 - (vi) Utilize the Digital Scholar Lab output to create a product for use by third parties that would substitute and/or replicate any other existing Gale/Cengage products, services and/or solutions.
 - (vii) Use any robots, spiders or other automated downloading programs, algorithms or devices to search, screen-scrape, extract, or index any Cengage website or web application
- e. Licensee may provide electronic links to Digital Scholar Lab from Licensee’s web page(s) providing that Licensee may not allow non-subscribing institutions or any other third party

to link directly or indirectly from Licensee's website to Source Content made available through Digital Scholar Lab.

- f. **Online Terms and Conditions.** In the event that Cengage requires Authorized Users to agree to additional terms relating to the use of Digital Scholar Lab (commonly referred to as "click-through" or "clickwrap" licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing Digital Scholar Lab, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through terms or online terms and conditions and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to this Agreement.
- g. Remote access to Digital Scholar Lab must not be made available online or via a workplace computer, except pursuant to this Agreement. Remote access shall be available for Authorized Users who remotely access Digital Scholar Lab for which proper security procedures are undertaken by Licensee that will prevent remote access by unauthorized users. No provision of this Agreement is intended to constitute a substitution for an institutional license by a non-subscribing institution or any third party. Remote access rights are designed for the provision of services to licensed Authorized Users only and not rights for the users of a non-subscribing institution.
- h. Cengage may suspend or terminate access to Digital Scholar Lab in the event Cengage (a) is required by judicial or governmental order to cease or suspend provision of Digital Scholar Lab, or (b) determines in its reasonable judgment to cease or suspend distribution of Digital Scholar Lab due to a threat of legal action or liability. Licensee shall receive a pro rata refund of any pre-paid fees in the event of (a) or (b).

3.0 Fees/Payment. In consideration for the license granted hereunder, Licensee shall pay Cengage the Setup Fee and Subscription Fee provided in Schedule 1. The Setup Fee and the Subscription Fee for the first year's subscription shall be due upon execution of this Agreement. Subsequent Subscription Fees shall be due annually upon the anniversary of the Effective Date of this Agreement. Licensee shall pay all fees in the form and manner specified on Schedule 1.

4.0 Warranties.

- a. Cengage warrants to Licensee that Cengage owns or otherwise has the right to make available Digital Scholar Lab to Licensee and Authorized Users, and that Digital Scholar Lab does not infringe the copyright or any other proprietary or intellectual property rights of any third party.
- b. Cengage shall use commercially reasonable efforts to provide continuous availability of Digital Scholar Lab, subject to periodic unavailability due to maintenance of server(s), the installation or testing of software, the loading of data and downtime related to equipment and the failure of communications networks or services outside of control of Cengage. Scheduled downtime shall be performed at a time to minimize inconvenience to licensees worldwide.

- c. Although Cengage believes Digital Scholar Lab to be reliable, Cengage does not guarantee or warrant any information or materials contained in or produced by Digital Scholar Lab or the accuracy, completeness or reliability thereof. Any data or information contained in or provided in connection with Digital Scholar Lab may be incomplete or condensed. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, CENGAGE PROVIDES DIGITAL SCHOLAR LAB ON AN “AS IS” BASIS WITHOUT WARRANTY OF ANY KIND AND CENGAGE DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- d. IN NO EVENT SHALL CENGAGE OR ANY OF ITS LICENSORS BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING FOR LOST PROFITS, LOST DATA OR OTHERWISE, INCLUDING ARISING OUT OF THE USE OF OR INABILITY TO USE DIGITAL SCHOLAR LAB OR FOR THE LOSS OR DAMAGE OR CORRUPTION OF DATA, LOSS OF PROGRAMS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE, OR INABILITY TO USE DIGITAL SCHOLAR LAB, INCLUDING WITHOUT LIMITATION LOSSES ARISING FROM ANY ERRORS, OMISSIONS OR OTHER INACCURACIES IN OR CORRUPTION CAUSED WHETHER BY TRANSMISSION PROCESSING OR OTHERWISE TO THE SOURCE CONTENT MADE ACCESSIBLE THROUGH DIGITAL SCHOLAR LAB OR ANY OUTPUT GENERATED BY DIGITAL SCHOLAR LAB. IN NO EVENT SHALL CENGAGE’S OR ITS LICENSORS’ LIABILITY UNDER THIS AGREEMENT WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE SUBSCRIPTION FEES RECEIVED BY CENGAGE FROM LICENSEE FOR DIGITAL SCHOLAR LAB UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED.

5.0 Term and Termination.

- a. Term. This Agreement shall commence on the Effective Date and shall continue for one year unless terminated earlier as provided herein (the “Initial Term”). This Agreement shall automatically renew at the end of the Initial Term for subsequent one-year renewal terms (each a “Renewal Term”) unless either party provides the other with written notice of termination at least thirty (30) days prior to the end of the Initial Term or then-applicable Renewal Term. In the event this Agreement is renewed for a Renewal Term, the Subscription Fee shall be the same as for the Initial Term. The Initial Term and Renewal Terms shall collectively be referred to as the “Term”.
- b. Termination.
Early Termination for Financial Hardship. Licensee may terminate this Agreement without penalty if sufficient content acquisitions funds are not allocated to enable the Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, Licensee will notify Cengage of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than

thirty (30) days prior to next payment date, and this transaction shall terminate on the last day of the subscription period for which payment has been made without penalty of expense to the Licensee of any kind whatsoever, except as to the portions of payments herein agreed for which funds shall have been appropriated and budgeted or otherwise available.

Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Once this Agreement ends, by early termination or otherwise, Cengage may terminate access to the Digital Scholar Lab by Licensee and Authorized users

Refunds. In the event of early termination permitted by this Agreement, except for termination for a material breach by the Licensee, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement from the date of termination

- c. Effect of Expiration or Termination. Upon expiration or termination of this Agreement, Licensee shall immediately cease to have Subscription Access to Digital Scholar Lab and to make available Digital Scholar Lab to Authorized Users, and shall remove all links to Digital Scholar Lab.

6.0 Indemnity. Cengage shall indemnify and hold harmless the Licensee and Authorized Users for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, that arise from any third party claim that alleges copyright infringement or other intellectual property infringement arising from the use of the Digital Scholar Lab by the Licensee or any Authorized User, Provided use of the Digital Scholar Lab was in accordance with this Subscription Agreement. **NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.** This Section 6.0 shall survive the termination of this Agreement.

7.0 General

- a. Privacy. Digital Scholar Lab does not require the entering or capturing of personally identifiable user information. Cengage makes no representation as to whether any federal, state or local laws may regulate your administration of Authorized Users' access to Digital Scholar Lab or require you to obtain consent from any Authorized Users (in the case of minors, the parent or guardian of such user).
- b. Assignment. Neither party may assign this Agreement, or any of its rights or obligations hereunder without the other's prior written consent which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Cengage shall be permitted to assign this Agreement to an affiliate, a successor in interest or in connection with a change of control or transfer of assets to which this Agreement relates, without consent of

Licensee. Licensee may terminate this Agreement and receive a pro rata refund of any prepaid fees in the event that any such assignment results in a material degradation in the operation or support of the Digital Scholar Lab. All provisions of this Agreement shall be binding upon and inure to the benefit of each party's successors in interest and permitted assigns.

Cengage must provide both composite systemwide use data and itemized data for individual campuses and labs, on a monthly basis. Statistics shall meet or exceed the most recent project Counting Online Usage of NeTworked Electronic Resources (COUNTER) Code of Practice Release, including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Codes of Practice is issued, Cengage shall comply with the implementation time frame specified by COUNTER to provide use statistics in the new standard format. Cengage shall not provide Licensee's usage statistics in any form to any third party without the Licensee's written authorization, unless the third party owns rights in the licensed materials. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches, and will comply with all applicable privacy laws. Cengage shall not disclose or sell to other parties usage data or information about the Licensee or its Authorized Users without the Licensee's written permission or as required by law.

- c. Force Majeure. Neither party shall be liable for any delay or failure in performing its obligations hereunder if caused by a factor beyond such party's reasonable control, including, without limitation, acts of God, acts of terrorism, acts of government, fire or other casualty, provided the affected party makes every effort to promptly resume performance. In the event that the affected party cannot resume performance within thirty (30) days, then the other party may, without penalty or liability, terminate this Agreement upon written notice.
- d. Interruption of Service. Neither Cengage nor its licensors shall be liable or deemed in default of this Agreement for any failure or delay or interruption in the provision of Digital Scholar Lab or any failure of any equipment or telecommunications resulting from any cause or circumstances beyond the reasonable control of Cengage or its licensors.
- e. Notice. Any and all notices and other communications to either party hereunder shall be in writing and deemed delivered (i) upon receipt if by hand, or overnight courier; (ii) five (5) days after mailing by first class, certified mail, postage prepaid, return receipt requested, to the addresses set forth above or to such other address for a party as shall be specified by like notice and (iii) by email or fax when receipt thereof is expressly acknowledged by the receiving party, provided that any notices for breach of this Agreement or for termination of this Agreement must be by notice as specified in clauses (i) or (ii) of this Section 7.e.
- f. Counterparts; Electronic Signatures. The parties may sign this Agreement in several counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument. This Agreement shall be considered signed when the signature of a party is delivered by scanned image as an email attachment, and any such scanned

signature shall be treated in all respects as having the same effect as an original signature, except that either party may require the exchange of original signatures.

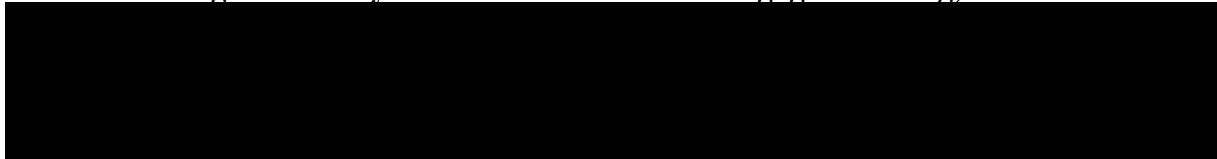
- g. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.
- h. Waiver. The failure by either party to insist upon strict enforcement of any terms and conditions of this Agreement shall not be construed as a waiver of such right or of any other right hereunder.
- i. Relationship of the Parties. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture or similar relationship or to subject the parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein. Neither party shall have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.
- j. Choice of Law/Venue. The Agreement and any documents entered into pursuant hereto shall be construed according to, and governed by, the laws of the State of California , without application of its conflict of law provisions which would require the application of the laws of another jurisdiction. Licensee hereby consents to the jurisdiction of courts situated in California in any action arising under this Agreement.
- k. Copyrighted Works. Except for the specific rights granted herein, all right, title and interest in and to Digital Scholar Lab, including the worldwide copyright, are owned exclusively by Cengage and its licensors. All rights in respect thereof are reserved to Cengage and such licensors. Through this Agreement Licensee obtains certain limited rights to Digital Scholar Lab, but Licensee does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with to Digital Scholar Lab. All such copyrights and intellectual property rights remain the property of Cengage and its licensors.
- l. Confidentiality. Licensee shall exercise due diligence to maintain all of Cengage's confidential and proprietary information disclosed to Licensee in confidence to the extent permitted by laws and regulations regulating such provisions and information, and shall use the Information solely in connection with the purposes of this Agreement. Pricing and fee information is not confidential. "Due diligence" shall mean at least the same precautions and standard of care Licensee would use to safeguard its own confidential and proprietary information and those of its other vendors. Notwithstanding the foregoing, the terms and conditions of this Agreement may be disclosed by Licensee as part of normal reporting and/or evaluation procedures to those persons within Licensee's organization who have a reasonable need to know the information and who have been informed of and agree to abide by the restrictions relating to such provisions and information described herein.

m. Entire Agreement. This Agreement and any documentation entered into pursuant hereto constitute the entire agreement and understanding between the parties with respect to the subject matter of the Gale Digital Scholar Lab and supersede all prior and contemporaneous agreements and understandings, whether written or oral, regarding such subject matter. There are no other understandings, agreements, representations or warranties relied upon by either party with respect to the subject matter herein, which are not included herein. This Agreement may be modified only by a writing signed by both parties.

AGREED TO AND ACCEPTED

California Digital Library

Cengage Learning, Inc.



Title: Associate Executive Director, CDL

Title: Sr VP Sales

Date: 08/09/2019

Date: 8-12-2019

SCHEDULE 1
Fees

Authorized Sites listed below are invited to join Gale's advisory board/steering committee so that they could affect future development of Digital Scholar Lab.

Pricing for California Digital Libraries

- Digital Scholar Lab (DSL) Subscription at [REDACTED] per year for the following five campuses

UC Berkeley

UC Davis

UC Los Angeles

UC Riverside

UC San Diego

- One time onsite onboarding Setup Fee of [REDACTED] listed above.
- Access Granted August 8, 2019 with renewal date of August 31,2020
- **Total Cost to CDL Year 1 = [REDACTED]**

APPENDIX A

Authorized Sites

University of California, Berkeley (including Lawrence Berkeley National Laboratory)

University of California, Davis

University of California, Los Angeles

University of California, Riverside

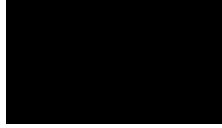
University of California, San Diego

University of California Office of the President

APPENDIX B

Berkeley (UCB)

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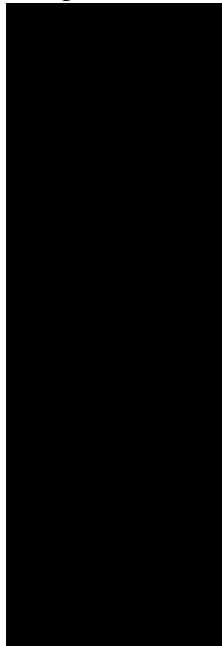


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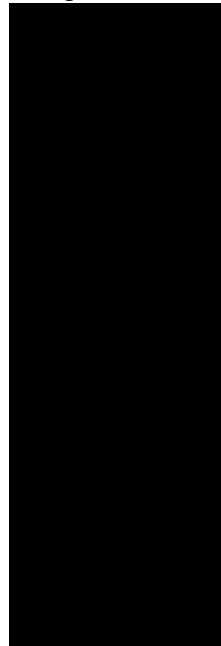


Lawrence Berkeley National Laboratory (LBL)

Range Start

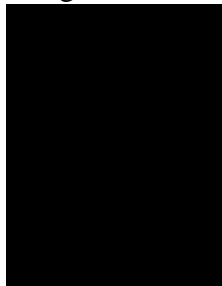


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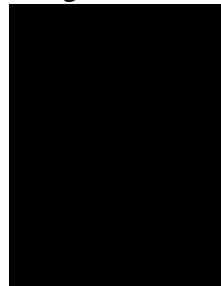


Davis (UCD)

Range Start



Range End



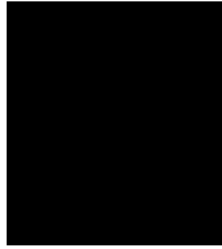
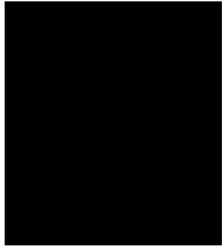
Los Angeles (UCLA)

Range Start



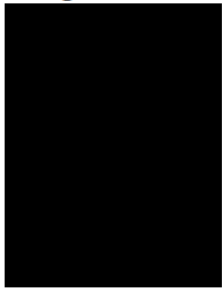
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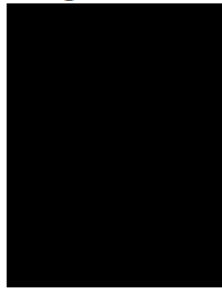


Office of the President (UCOP)

Range Start



Range End



Riverside (UCR)

Range Start

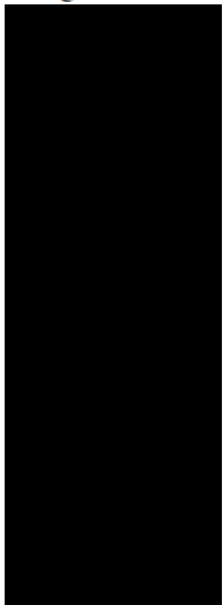


Range End



San Diego (UCSD)

Range Start



Range End

