

# **LICENSE AGREEMENT**

## **GLOBAL FINANCIAL DATA**

### **AND**

## **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

This License Agreement (this "Agreement") is made effective as of January 1, 2008 (the "Effective Date") between Global Financial Data , 784 Fremont Villas, Los Angeles, CA 90042 ("Licensor") and The Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 415 20<sup>th</sup> Street, 4<sup>th</sup> floor, Oakland, CA 94612, USA ("Licensee").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **I. CONTENT OF LICENSED MATERIALS; GRANT OF LICENSE**

The materials that are the subject of this Agreement shall consist of Global Financial Database (hereinafter referred to as the "Licensed Materials").

Licensee and its Authorized Users acknowledge that the copyright and title to the Licensed Materials and any trademarks or service marks relating thereto remain with Licensor. Neither Licensee nor its Authorized Users shall have right, title or interest in the Licensed Materials except as expressly set forth in this Agreement.

Licensor hereby grants to Licensee non-exclusive use of the Licensed Materials and to provide the Licensed Materials to Authorized Users in accordance with this Agreement.

### **II. DELIVERY/ACCESS OF LICENSED MATERIALS TO LICENSEE**

Licensor will provide the Licensed Materials to the Licensee in the following manner:

Network Access. The Licensed Materials will be stored at one or more Licensor locations in digital form accessible by telecommunications links between such locations and authorized locations of Licensee.

### **III. FEES**

Licensee shall make payment to Licensor for use of the Licensed Materials as follows:

See Appendix A.

All fees are due and payable by Licensee sixty (60) days after the date of invoice from Licensor.

#### **IV. AUTHORIZED USE OF LICENSED MATERIALS**

**Authorized Users.** "Authorized Users" are:

Persons Affiliated with the University of California. Full and part time employees (including faculty, staff, and independent contractors) and students of Licensee and the institution of which it is a part, regardless of the physical location of such persons. For campus locations see Appendix B.

Walk-ins. Patrons not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins").

**Access by and Authentication of Authorized Users.** Licensee and its Authorized Users shall be granted access to the Licensed Materials pursuant to the following:

IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor. The use of proxy servers is permitted as long as any proxy server IP addresses provided limit remote or off-campus access to Authorized Users.

**Authorized Uses.** Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international copyright laws. In addition, the Licensed Materials may be used for purposes of research, education or other non-commercial use as follows:

Display. Licensee and Authorized Users shall have the right to electronically display the Licensed Materials.

Digitally Copy. Licensee and Authorized Users may download and digitally copy a reasonable portion of the Licensed Materials.

Print Copy. Licensee and Authorized Users may print a reasonable portion of the Licensed Materials.

Recover Copying Costs. Licensee may charge a reasonable fee to cover costs of copying or printing portions of Licensed Materials for Authorized Users.

Archival/Backup Copy. Upon request of Licensee, Licensee may receive from Licensor and/or create one (1) copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of this Agreement, or as required to exercise Licensee's rights under section XII, 'Perpetual License', of this Agreement.

Licensor acknowledges that Licensee may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under section XII, 'Perpetual License', of this Agreement. Licensee agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee may perpetually use the third-party trusted system to access or store the Licensed Materials, so long as Licensee's use is otherwise consistent with this

Agreement. Licensor further acknowledges and agrees that, in using the third-party archival system, Licensed Materials may be made available to other system participants who indicate a right to those Licensed Materials.

Caching. Licensee and Authorized Users may make local digital copies of the Licensed materials in order to ensure efficient use by Authorized Users by appropriate browser or other software.

Collections of Information. Licensee and Authorized Users shall be permitted to extract or use information contained in the Licensed Materials for educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.

Course Packs. Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials.

Course Reserves (Print and Electronic). Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by the University of California.

Electronic Links. The University of California is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. If Licensor does not use the OpenURL standard, Licensor staff will provide information to Licensee upon request to assist the Licensee in creating links directly from UC's library catalogs and licensed resources to the content at the journal, issue and article levels.

Scholarly Sharing. Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes.

### **Amount of Authorized Use.**

Unlimited Access. Subject to the terms of this Agreement, Licensee and its Authorized Users shall have unlimited access to the Licensed Materials.

## **V. SPECIFIC RESTRICTIONS ON USE OF LICENSED MATERIALS**

Unauthorized Use. Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

Modification of Licensed Materials. Licensee shall not modify, manipulate, or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes. Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials, fee-for-service use of the Licensed Materials, or bulk reproduction or distribution of the Licensed Materials in any form;

nor may Licensee impose special charges on Authorized Users for use of the Licensed Materials beyond reasonable printing or administrative costs.

## **VI. MUTUAL PERFORMANCE OBLIGATIONS**

User Surveys. Licensee and Licensor shall cooperate on the preparation and provision of user surveys to solicit feedback on the Licensed Materials from Authorized Users.

Confidentiality of User Data. Licensor and Licensee agree to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

Implementation of Developing Security Protocols. Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

## **VII. LICENSOR PERFORMANCE OBLIGATIONS**

Availability of Licensed Materials. Upon the Effective Date of this Agreement, Licensor shall make the Licensed Materials available to Licensee and Authorized Users.

Documentation. Licensor will provide and maintain help files and other appropriate user documentation.

Training and Support. Licensor will offer installation support, including assisting with the implementation of any Licensor software. Licensor will provide appropriate training to Licensee staff relating to the use of the Licensed Materials and any Licensor software. Licensor will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensor will make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

Quality of Service. Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement,

Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement. Notification of Modifications of Licensed Materials. Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted from by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give a ninety (90) day notice of any such changes to Licensee. Failure by Licensor to provide such notice shall be grounds for immediate termination of the Agreement by Licensee.

Completeness of Content. Licensor shall use reasonable efforts to ensure that the online content is at least equivalent to print versions of the Licensed Materials, represents complete, faithful and timely replications of the print versions of such Materials, and will cooperate with Licensee to identify and correct errors or omissions.

Continued Training. Licensor will provide regular system and project updates to Licensee as they become available. Licensor will provide additional training to Licensee staff made necessary by any updates or modifications to the Licensed Materials or any Licensor software.

Notice of Terms of "Click-Through" License Terms. In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

Usage Statistics. Licensor must provide both composite use data for the system-wide CDL and itemized data for individual campuses, on a monthly basis. Use data should be at the level of detail required for objective evaluation of both product performance and satisfaction of user needs, including title-by-title use of journals. Providers should follow the International Coalition of Library Consortia (ICOLC) "Guidelines for Statistical Measures of Usage of Web-Based Information Resources" or provide information in compliance with COUNTER or other recognized international standard.

Compliance with Americans with Disabilities Act. Licensor shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA).

## **VIII. LICENSEE PERFORMANCE OBLIGATIONS**

Provision of Notice of License Terms to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Materials as set forth in this Agreement.

Provision of Notice of Intellectual Property Right to Authorized Users. Licensee shall make reasonable efforts to provide Authorized Users with notice of any applicable Intellectual Property or other rights applicable to the Licensed Materials. Licensee shall make reasonable efforts to prevent the infringement of any Intellectual Property or other rights of the Licensor in

the Licensed Materials. Licensee shall promptly notify Licensor of any infringement that comes to Licensee's attention, and take appropriate steps to avoid its recurrence.

Protection from Unauthorized Use. Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall terminate such Authorized User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing a sixty (60) day notice to Licensee and cooperation with the Licensee to avoid recurrence of any unauthorized use.

Maintaining Confidentiality of Access Passwords. Where access to the Licensed Materials is to be controlled by use of passwords, Licensee shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party.

## **IX. TERM**

This Agreement shall continue in effect for three (3) years commencing on the Effective Date.

## **X. RENEWAL**

This agreement shall be renewable at the end of the current term for successive one-year terms unless either party gives written notice of its intention not to renew thirty (30) days before expiration of the current term.

## **XI. EARLY TERMINATION**

In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice 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.

In the event of early termination permitted by this Agreement, 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.

## **XII. [CLAUSE WITHDRAWN]**

## **XIII. WARRANTIES**

Subject to the Limitations set forth elsewhere in this Agreement:

Licensor warrants that it has the right to license the rights granted under this Agreement to use

Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

Licensor warrants that the physical medium, if any, on which the Licensed Materials is provided to Licensee will be free from defects for a period of ninety (90) days from delivery.

#### **XIV. LIMITATIONS ON WARRANTIES**

Notwithstanding anything else in this Agreement:

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

Licensor makes no representation or warranty, and expressly disclaims any liability with respect to the content of any Licensed Materials, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

Except for the express warranties stated herein, the Licensed Materials are provided on an "as is" basis, and Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Licensor makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Licensor further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

#### **XV. INDEMNITIES**

The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by the Licensee or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims.

The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

## **XVI. ASSIGNMENT AND TRANSFER**

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

## **XVII. GOVERNING LAW**

This Agreement shall be interpreted and construed according to, and governed by, the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction. The federal or state courts located in California shall have jurisdiction to hear any dispute under this Agreement.

## **XVIII. DISPUTE RESOLUTION**

In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

Mediation. In the event that the parties cannot by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within five (5) working days after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

Arbitration. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

#### **XIX. FORCE MAJEURE**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, strikes or other work stoppages, and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **XX. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

#### **XXI. AMENDMENT**

No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

#### **XXII. SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### **XXIII. WAIVER OF CONTRACTUAL RIGHT**

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

#### **XXIV. NOTICES**

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) business days after mailing if sent by registered or

certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

**If to Licensor:**

Global Financial Data  
784 Fremont Villas  
Los Angeles, CA 90042

**If to Licensee:**

University of California Office of the President  
California Digital Library  
415 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Licensing Dept.

**XXV. Notice of the Use of Digital Rights Management Technology**

In the event that Licensor utilizes any type of digital rights management technology to control the access or the usage of Licensed Product, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized.

**XXVI. Notice of the Use of Digital Watermarking Technology**

If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Product, Licensor agrees that watermarks will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain user-related information such as account number or IP address. If digital watermarking technology is used, Licensor agrees to notify Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

**XXVII. Funding Contingency (multi-year agreements)**

The University of California reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this Agreement and hereby covenants that it will do all things lawfully within its power to obtain, maintain, and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is the University of California's intent to make payments for the full term of this transaction. The University of California represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

In the event no funds or insufficient funds are appropriated and budgeted and are not otherwise legally available by any means whatsoever in any fiscal period for payments due under this transaction, the University of California will immediately notify Licensor of such occurrence 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 University of California 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. In the event of such termination the University of California shall maintain its perpetual right to materials licensed under the subscription periods for which it has fully paid.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

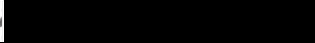
**LICENSOR:**

BY:  DATE: Nov 29, 2008  
Signature of Authorized Signatory of Publisher

Print Name:

Title: C.O.O

Address: 4137 Castro Risco, San Clemente CA 92673

Telephone No.:  or 1877 328 2999

E-mail: 

**LICENSEE:**

BY:  DATE: 10.15.08  
Signature of Authorized Signatory of Licensee

Print Name: 

Title: Interim Executive Director

Address: 415 20<sup>th</sup> Street, 4<sup>th</sup> Floor

Telephone No.: 

E-mail: 

## APPENDIX A

### Licensed Materials: Global Financial Data

Content: Financial and economic data provided in Excel or ASCII format  
20,000 data series – historical and current data  
Includes US Stock Market Database (currently listed stocks back to 1990) for  
UCB, UCI, UCLA, and UCR.

### Terms:

Unlimited simultaneous users.

Annual Fees: 2008: [REDACTED] (US Stock Market Database) = [REDACTED]

For 2008-2010: [REDACTED] annual increases

Global Financial Data shall send the invoice for the above referenced content to:

[REDACTED]  
CDL Acquisitions – Geisel Library  
University of California  
9500 Gilman Drive, Dept. 0175A  
La Jolla, CA 92093-0175

### Technical Contact:

[REDACTED]  
California Digital Library  
415 20<sup>th</sup> Street, 4<sup>th</sup> Floor  
Oakland, California 94612 USA

## **APPENDIX B**

### Participating Campuses

University of California, Berkeley, including Lawrence Berkeley Laboratory

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, Santa Barbara

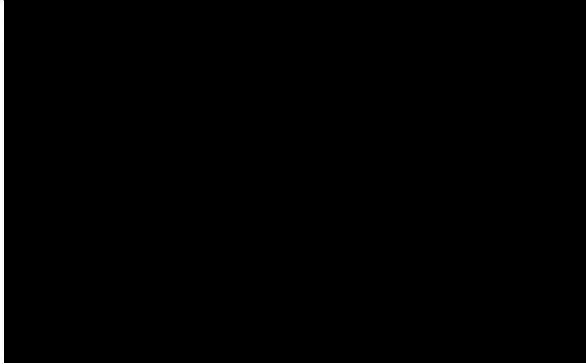
University of California, Santa Cruz

University of California Office of the President

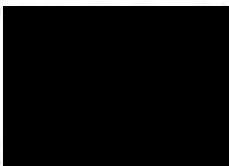
## APPENDIX C

### University of California IP Addresses by Campus

UC Berkeley including Lawrence Berkeley Laboratory:



UC Davis

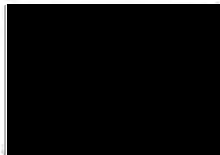


UC Irvine

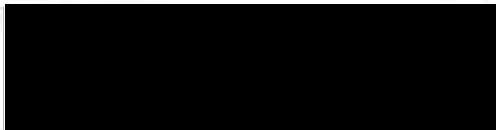




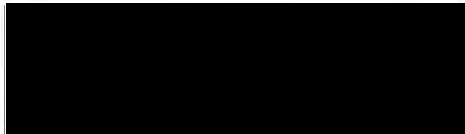
UC Los Angeles



UC Merced



UC Riverside



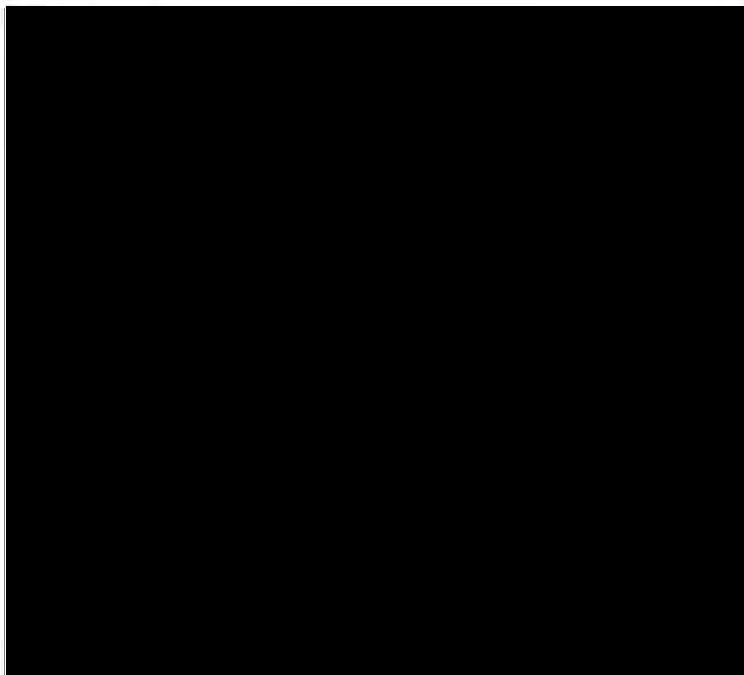
UC Santa Barbara



UC Santa Cruz



UC San Diego



[REDACTED]

UC Office of the President - California Digital Library

[REDACTED]

[REDACTED]