



End User Agreement for LexisNexis® Digital Collection

This End User Agreement for LexisNexis Digital Collection ("Agreement") is entered into by and between LexisNexis, a division of Reed-Elsevier Inc. ("LN"), with offices at 7500 Old Georgetown Road, Suite 1300, Bethesda, Maryland, 20814-6126 and the institution listed below ("Subscribing Institution"). This Agreement must be signed by an authorized representative of the Subscribing Institution.

California Digital Library, Oakland, CA

Subscribing Institution Name, City, State or Country

DEFINITION OF TERMS

Effective Date:	September 1, 2009 <i>aw</i>
Subscribing Institution:	The following entities may be a Subscribing Institution: Higher Education Institutions, Public Library Systems, Government Institutions, Corporations, and Non-Profit Organizations.
Service:	The LN service(s) which includes Web-based access through LN's proprietary interface to the Materials available in a Historical Archive Collection, as indicated in a Subscription Order. The Service may also include access to the Materials in a Prospective Service if the Subscribing Institution so elected.
Materials:	The electronic archive (computer files) of all documents and related bibliographic records accessed through the Service(s) selected on a Subscription Order. The term Materials shall also include Archive Materials.
Historical Archive Collection:	The Materials included in the historical collection(s) elected by the Subscribing Institution on the Subscription Order.
Prospective Service:	A Prospective Service includes new Materials that are added to Historical Archive Collections as the Materials become available. The Subscribing Institution may elect a Prospective Service on the Subscription Order.
Incremental Earned Periods:	An Incremental Earned Period is a portion of a Prospective Service which will be added to a Historical Archive Collection in five year periods commencing with Materials from 2004 through 2010. In order to have an Incremental Earned Period added to a Historical Archive Collection, the Subscribing Institution must maintain a continuous subscription to the Prospective Service during the Incremental Earned Period and must pay all associated Subscription & Maintenance Fees and the Digital Archive Fee.
Subscription Period, ISP and RSP (collectively, "Subscription Periods"):	A Subscription Period is a period of time in which a Subscription Order is in place and for which the Subscribing Institution has paid the Subscription & Maintenance Fees for access to and use of the Services elected. The initial subscription period ("ISP") is for the length of time specified in the initial Subscription Order. Thereafter, this Agreement automatically renews for successive one year renewal subscription periods ("RSP") until terminated by either party as set forth in this Agreement.
Subscription Order:	A written document that is signed by both parties that expressly references this Agreement and that describes the Service(s) elected. The Subscription Order will also define the Subscription Period and the applicable fees and any other applicable terms and conditions. There will be a Subscription Order for the ISP and for each RSP. All Subscription Orders are incorporated into this Agreement by reference.
Subscription & Maintenance Fees	The fees set forth in the Subscription Order for the specified Subscription Period. The Subscribing Institution will have access to and use of the Service during the Subscription Periods, in exchange for payment of the Subscription & Maintenance Fees. The Subscription Fees cover charges for access to the Materials during the Subscription Period. The Maintenance Fees cover all charges associated with access to and use of the Service during the Subscription Period.

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Digital Archive Fee	The fees set forth in the Subscription Order for perpetual access to and use of the Historical Archive Collection (including any Earned Incremental Periods) in the format selected by the Subscribing Institution following termination of all Subscription Periods.
Authorized Users:	For purposes of this Agreement, Authorized Users are defined to include: Higher Education Institutions: Full and part time employees (including faculty, staff, and independent contractors) and students of Subscribing Institution, regardless of the physical location of such persons. Public Library Systems: Staff of the library system, registered patrons of the library, and walk-in users.* *Walk-in Users: Patrons not affiliated with Subscribing Institution who are physically present at Licensee's site(s) ("walk-ins"). Government Institutions: Staff and researchers working for the Government Institution. Corporations and Non-Profit Organizations: Staff, researchers, and volunteers working for a corporation or non-profit organization. A Subscribing Institution may request other individuals not defined above to be Authorized Users. The Subscribing Institution must obtain LN's prior written approval.
Remote Access:	Access to the Service by a Subscribing Institution's Authorized Users from a location other than the Subscribing Institution's buildings or campus. Remote Access entails reasonable efforts on the part of the Subscribing Institution to protect the Service from access by unauthorized persons by positively identifying remote users and using a secure authentication process to restricted access to Authorized Users only.

1. TERM; TERMINATION

This Agreement shall begin on the Effective Date and will continue until terminated by either party. The Subscribing Institution shall abide by the terms and conditions stated herein for the use of the Service. This Agreement may be terminated: (a) immediately upon written notice if there is a breach which remains uncured more than 30 days after the non-breaching party provides written notice of the specific breach to the breaching party; or (b) for convenience as of the last day of a Subscription Period upon at least 30 days prior written notice to the other party.

2. ACCESS TERMS

2.1 During Subscription Periods. In exchange for payment of the Subscription & Maintenance Fees, the Subscribing Institution will have access to and use of the Materials in the Service during Subscription Periods. Subscription & Maintenance Fees may increase annually, but not in excess of 5% per year, or 1% above the then current National Labor Consumer Price Index as published by the U.S. Department of Labor, Bureau of Statistics, whichever is less.

2.2 Perpetual Access: After termination of all Subscription Periods, the Subscribing Institution may continue to access the Materials in the Historical Archive Collection (including any Incremental Earned Periods Materials) (collectively "Archive Materials") on a perpetual basis access by paying the appropriate Digital Archive Fees specified in the Subscription Order in addition to being current on all past Subscription & Maintenance Fees, by requesting a copy of the Materials in a mutually agreeable format, or by accessing a trusted third party archive, such as Portico. Alternatively, the Subscribing Institution may continue to access the Archive Materials on a perpetual basis if at any time during a Subscription Period LN is unable or unwilling to maintain the Archive Materials and make them accessible to the Subscribing Institution through the Service. In either case, the Subscribing Institution's access to the Archive Materials will be in the format elected by the Subscribing Institution in accordance with Section 2.2.1 and will not be through LN's Web-based Service.

2.2.1 To obtain the Archive Materials pursuant to Section 2.2, or upon Subscribing Institution's request, the Subscribing Institution must send a written request to LN for such Archive Materials and include a signed copy of this Agreement. Upon receipt of the Subscribing Institution's written request and a copy of this Agreement, LN will provide the Archive Materials, at no additional cost, in an appropriate machine-readable format by means of an appropriate transfer method, as mutually agreeable to both parties (e.g., shipment of data storage media such as CD-ROMs, DVDs or electronic delivery using FTP). In such a case, the Subscribing Institution shall have the perpetual right to make the Archive Materials available to its Authorized Users in a manner consistent with this Agreement by whatever

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method it chooses. Subscribing Institution is authorized to make such further copies in perpetuity as it may deem necessary for purposes of archival preservation, refreshing, or migration, including migration to other formats, so long as the purpose of such copying is solely for continued access to and/or archival retention of the data and does not violate or extend the use rights contained in this Agreement or its successor.

2.2.2 If the Subscribing Institution has paid the Digital Archive Fee, but elects to terminate its maintenance subscription (i.e., not pay the Maintenance Fees) to the Historical Archive Collection, the Subscribing Institution may reactivate its maintenance subscription to the Historical Archive Collection without again paying the Digital Archive Fee so long as the reactivation occurs within 36 months from the date of termination. If the Subscribing Institution reactivates its maintenance subscription to the Historical Archive Collection more than 36 months after the termination date, the Subscribing Institution must first pay off the amount of any unpaid Subscription & Maintenance Fees due from prior Subscription Periods before it will be granted access to the Historical Archive Collection.

2.3 Digital Collections with a Historical Archive Collection and a Prospective Service will add Incremental Earned Periods every five year period commencing with Materials from 2004 through 2010, as set forth in the Subscription Order. If the Subscribing Institution has maintained a continuous subscription to a Historical Archive Collection and a Prospective Service and has paid all Subscription & Maintenance Fees and the Digital Archive Fees related thereto, then the Subscribing Institution shall be entitled to add the Incremental Earned Period into its Historical Archive Collection at the end of such Incremental Earned Period and will not be required to maintain a full Prospective Service subscription.

2.4 LN shall maintain the Archive Materials and Prospective Materials in the current format of XML and PDF. This format may change if the technology for storage and access changes.

2.5 If the Subscribing Institution has subscribed to the Historical Archive Collection by paying the Digital Archive Fee for the Historical Archive Collection and also maintains a continuous subscription to the Prospective Service, the annual Maintenance Fees for the Historical Archive Collection will be waived.

3. GRANT OF USE RIGHTS DURING SUBSCRIPTION PERIODS.

3.1 LN hereby grants to the Subscribing Institution and its Authorized Users a non-exclusive, perpetual, nontransferable, limited right to access and use the components of the Service for the period of time for which the Subscribing Institution has paid the Subscription & Maintenance Fees.

3.2 The above grant of rights includes for each Authorized User:

- a) The right to use the Service to identify and display Materials to oneself and to other Authorized Users.
- b) The right to print, store, display, reproduce, transmit, and publish (either in printed or machine-readable format), an insubstantial number of documents (or portions thereof) and bibliographic records retrieved from the Service.
- c) The right to incorporate an insubstantial number of documents (or portions thereof) and bibliographic records retrieved from the Service into printed documents or online resources such as articles, books, reports, and instructional materials, and temporary electronic reserves.

3.3 This does not limit the number of simultaneous users of the Service.

3.4 To the extent permitted by applicable copyright law, Authorized Users, may make copies of Materials retrieved from the Services and distribute the Materials and copies. Except as specifically provided in the above license, Authorized Users are prohibited from downloading, storing, reproducing, transmitting, displaying, copying, distributing, or using Materials retrieved from the Services.

3.5 To the extent permitted by applicable copyright law, the Subscribing Institutions may make copies (including digital copies) of Materials retrieved from the Service and distribute the Materials and copies as part of a formal inter-library loan (ILL) program, where this program is administered directly by the Subscribing Institution, restricted to official ILL partner libraries, and operated in accordance with generally accepted practices for such programs.

3.6 The rights set forth above relate to the Subscribing Institution and its Authorized User's use of the Service during Subscription Periods. Following the expiration of all Subscription Periods, if the Subscribing Institution has paid the Digital Archive Fee or is otherwise entitled the perpetual right to access or obtain the Historical Archive Collection Materials (including any Earned Incremental Periods) pursuant to Section 2, the Subscribing Institution shall have the perpetual right to access the Service Materials as set forth in Section 2.2.1.

4. OWNERSHIP OF THE SERVICE

4.1 All right, title, and interest (including all copyrights and other intellectual property rights) in the Services (in both print and machine-readable forms) belong to LN or its third party suppliers of Materials. The Subscribing Institution and its Authorized Users acquire no proprietary interest in the Services, Materials, or copies thereof except for the limited license rights set forth herein.

4.2 Neither the Subscribing Institution nor its Authorized Users may use the Services or Materials in any fashion that infringes the copyrights or proprietary interests therein. Authorized Users may not remove or obscure any copyright notices or other notices contained in the Materials.

4.3 LN may add or delete Materials to the Service and otherwise change the Service without notice provided such changes do not substantially reduce the value of the service as a research tool.

5. RESTRICTIONS

5.1 Neither Subscribing Institution nor its Authorized Users may use the Service or Materials to determine a consumer's eligibility for (a) credit or insurance for personal, family, or household purposes; (b) employment; or (c) a government license or benefit.

5.2 Notwithstanding the rights listed above, the Subscribing Institutions and its Authorized Users shall not create derivative products for resale, and shall not store, publish, or make available documents or bibliographic records retrieved from the Service in such a way as to compete with or undermine the efforts of LN to sell and sustain subscriptions to the Service. Nor shall the Subscribing Institution or its Authorized Users provide access to the Service, Materials, or any other form of assistance to any person for such purposes.

5.3 Providing Materials to persons who are not Authorized Users at the Subscribing Institution on an on-demand basis is forbidden, unless done as part of a formal inter-library loan program as described in Section 3 or agreed to in writing by LN.

5.4 Neither the Subscribing Institution nor its Authorized Users shall knowingly or negligently permit others to access or use the Services in any manner whatsoever by any means other than the user interface provided by LN or an LN approved third party supplier. Use of the Services is permitted only via manually conducted, discrete, individual search and retrieval activities. All access to and use of the Services via mechanical, programmatic, robotic, scripted or any other automated means is STRICTLY PROHIBITED without specific written permission from LN, regardless of which, LN shall retain the right to cancel or forbid such use at its discretion.

6. ACCESS AND USER AUTHENTICATION METHODS

LN shall provide access to the Service to the Subscribing Institution. The Subscribing Institution must strictly control access to the Service to Authorized Users by use of one or more of the following methods:

- Internet Protocol ("IP") domain address filtering, whereby the Subscribing Institution provides LN with IP addresses registered to the Subscribing Institution and vouchsafes that these IP addresses, as set forth on Rider No. 1, attached hereto and incorporated herein, are associated only with sites controlled by the Subscribing Institution.
- Proxy Server IP address filtering, whereby the Subscribing Institution provides LN with IP addresses of a proxy server belonging to or operated on behalf of the Subscribing Institution and vouchsafes that proxy server access is granted only to Authorized Users located at the Subscribing Institution or to remote users that have been authenticated as Authorized Users by the Subscribing Institution, using a secure patron authentication system.
- LN Remote Access Script, used by the Subscribing Institution under the terms and conditions of the Remote Access Addendum which must be signed and attached to this Agreement if Subscribing Institution wishes to use this method.
- Such other methods as mutually agreed by the parties in writing.

7. WARRANTY

7.1 LN represents and warrants that it has the full right and authority to make the Service and Materials available to the Subscribing Institution and its Authorized Users pursuant to the terms of this Agreement.

7.2 EXCEPT FOR THE FOREGOING WARRANTY, THE SERVICE AND MATERIALS ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND LN, AND EACH THIRD PARTY SUPPLIER OF MATERIALS EXPRESSLY DISCLAIM ALL

OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.3 LN 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 Materials as they become available, and downtime related to the failure of equipment or services outside the control of LN, 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 Subscribing Institution and its Authorized Users.

8. LIMITATION OF LIABILITY

8.1 LN shall indemnify, defend and hold Subscribing Institution 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 Materials by the Subscribing Institution or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. LN shall have no obligation under this Section 8.1 if use by the Subscribing Institution or an Authorized User was in violation of the terms of this Agreement or applicable law. The Subscribing Institution will promptly notify LN of any such claims.

The indemnifying party shall have the sole right to investigate, defend and settle 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.

Should the Service or the operation thereof become, or in the opinion of LN is likely to become, the subject of a claim of infringement, Subscribing Institution shall permit LN, at its option and expense, either; (i) to procure for Subscribing Institution the right to continue using the Service; (ii) to replace or modify the same so that it becomes non-infringing; or, (iii) to terminate the Agreement upon notice to Subscribing Institution and grant Subscribing Institution a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.

8.2 A Covered Party (as defined below) shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) the content of the Service including any errors in or omissions from the Service or any Materials available or not included therein, (b) the unavailability or interruption of the Service or any features thereof, (c) the Subscribing Institution's and its Authorized User's use of the Service (regardless of whether they received any assistance from a Covered Party in using the Services), (d) the Subscribing Institution's and its Authorized User's use of any equipment in connection with the Service, or (e) any delay or failure in performance beyond the reasonable control of a Covered Party.

8.3 "Covered Party" means (a) LN, its affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of LN or its affiliates; and (b) each third party supplier of Materials, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of Materials or any of their affiliates.

8.4 EXCEPT FOR LN'S OBLIGATIONS PURSUANT TO SECTIONS 8.1 AND 9, THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY OTHER CLAIM ARISING OUT OF OR RELATING TO THE SERVICE OR MATERIALS SHALL NOT EXCEED THE AMOUNT OF FEES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. THE SUBSCRIBING INSTITUTION'S RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES, WHICH IT MAY HAVE AGAINST ANY COVERED PARTY.

8.5 THE COVERED PARTIES SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE SERVICES, MATERIALS, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS, REGARDLESS OF ANY NEGLIGENCE OF ANY COVERED PARTY.

9. MISCELLANEOUS

9.1 Subscribing Institution shall not be liable for breach of any of the terms of this Agreement by any Authorized User provided that Subscribing Institution; i) is not in breach of its obligations under this Agreement; ii) did not intentionally assist in or encourage such breach or permit such breach to continue after receiving notification; and (iii) provided Subscribing Institution reasonably cooperates with LN to prevent misuse.

9.2 This Agreement and any addenda, attachments or exhibits hereto constitute the entire agreement between the parties with respect to the subject matter herein and supersedes any and all prior written or oral agreements and understandings.

In the event of a conflict or inconsistencies between this Agreement and the terms set forth in a Subscription Order, the terms set forth in this Agreement will control.

9.3 These terms and conditions may only be modified in a writing signed by the parties. Either party may terminate this agreement in the event of a material breach. The effective date of termination will be 30 days from the date notice of the specific breach is provided. In the event the Subscribing Institution fails to honor the obligations in Sections 3, 4, 5 or 6, LN reserves the right to immediately suspend the Subscribing Institution's access to and use of the Service without notice.

9.4 If LN (a) terminates or suspends its business, (b) becomes subject to any bankruptcy or insolvency proceeding under any Federal or State statute, or (c) becomes insolvent or subject to direct control by a trustee, receiver, or similar authority, the Subscribing Institution may, in addition to its other rights and remedies under this Agreement, terminate this Agreement on 30 days notice to LN and take possession of Materials pursuant to Section 2.2.

9.5 If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the same shall not affect any of the other provisions of this Agreement and the parties will endeavor to replace the provision with a valid, lawful or enforceable one that most closely embodies the original intentions of the parties. Failure or delay by either party in exercising any right or power hereunder shall not operate as a waiver of such right or power.

9.6 Neither party shall bear any responsibility or liability for any losses arising out of any delay or interruption of their performance of obligations under this Agreement due to any act of God, act of governmental authority, act of the public enemy, or due to war, riot, flood, civil commotion, insurrection, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power, malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party delayed.

9.7 Headings are for the convenience of the parties and have no legal effect.

9.8 If any state or local sales, use, or similar taxes are applicable to the Subscription Order, Subscription & Maintenance Fees and/or Digital Archive Fee, such taxes shall be charged to Subscriber's account. If Subscriber is exempt from any such taxes, the tax shall not be charged to Subscriber upon receipt of a certificate of exemption.

9.9 Subscribing Institution may not assign this Agreement without the prior written consent of LN, which consent will not be unreasonably withheld. LN may freely transfer or assign this Agreement, without notice, to i) any affiliate of LN, including, without limitation, any parent company, division or subsidiary, or ii) any person or entity who acquires all or substantially all of the business or assets of LN that relate to this Agreement.

9.10 Neither party may bring an action against the other party beyond 2 years after the cause of action has occurred.

9.11 The following clauses shall survive the cancellation, expiration, or other termination of this Agreement: 7, 8, and 9.

9.12 In the event that LN utilizes any type of digital rights management technology to control the access or the usage of Materials, LN agrees to notify Subscribing Institution of the name, contact information and any technical specifications for the digital rights management technology utilized.

9.13 If LN utilizes any type of digital watermarking technology for any element of the Materials, LN agrees that watermarks 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, LN agrees to notify Subscribing Institution of the name, contact information, and any technical specifications for the technology used.

9.14 LN agrees that upon agreement between LN and WorldCat Local (OCLC), LN will make relevant MARC record sets available to WorldCat Local (OCLC) so that Subscribing Institution's users have centralized access to Materials. This requires that LN allow harvesting or indexing of their article-level metadata by WorldCat Local, or alternatively, make their

records available to WorldCat Local for searching via metasearch.

AGREED TO AND ACCEPTED BY:

Regents of the University of California
SUBSCRIBING INSTITUTION

BY: TEXT DELETED

NAME: _____

TITLE: Executive Director

DATE: 8-26-09

LexisNexis, a division of Reed Elsevier Inc.

TEXT DELETED

BY: _____

NAME: _____

TITLE: Finance Manager

DATE: 9/1/09

Business Terms

Licensed Materials

Lexis-Nexis Congressional Hearings Digital Collection Retrospective, Part A (1824-1979)

Unlimited simultaneous use of Materials and perpetual rights granted.

Price Information

Purchase cost: **TEXT DELETED** to be paid in four payments, per payment schedule below, and as agreed in the Deferred Payment Agreement simultaneously executed between the parties:

June 2009 **TEXT DELETED**
2010
2011
2012

Access fee to begin in 2013: **TEXT DELETED**

Billing Contact

TEXT DELETED
CDL Acquisitions Coordinator
Geisel Library
University of California
9500 Gilman Drive 0175A
La Jolla, CA 92093-0175
cdl-acquisitions@ucop.edu
Tel. **TEXT DELETED**

Licensing Contact

TEXT DELETED
Licensing Manager
California Digital Library
300 Lakeside Drive, Suite 701
Oakland, CA 94612
TEXT DELETED
Tel. **TEXT DELETED**

Technical Contact

TEXT DELETED
California Digital Library
University of California
415 20th Street, 4th Floor
Oakland, CA 94612
Tel. **TEXT DELETED**
TEXT DELETED

CAMPUSES OF THE UNIVERSITY OF CALIFORNIA

University of California, Berkeley (including Lawrence Berkeley Lab)

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, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President

Rider No. 1

University of California IP Addresses

UC Berkeley (including Lawrence Berkeley Laboratory)

TEXT DELETED

UC Davis

TEXT DELETED

UC Irvine

TEXT DELETED

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UC Los Angeles
TEXT DELETED

UC Merced
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UC Riverside
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UC San Francisco
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UC Santa Barbara
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UC Santa Cruz
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UC San Diego
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UC Office of the President - California Digital Library
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