

LICENSE AGREEMENT

This License Agreement is made this 20th day of October, 2003 by and between ASM International, 9639 Kinsman Road, Materials Park, Ohio 44073 (the "Publisher") 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 20th Street, 4th Floor, Oakland, CA 94612 USA (the "Licensee");

WHEREAS, Publisher holds right, title, and interest in and to certain publications;

WHEREAS Licensee desires to obtain access in electronic format to those publications; and

WHEREAS Publisher consents to grant to Licensee a license to obtain such access for the Fee, subject to the terms and conditions of this license;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, Publisher and Licensee agree as follows:

1. KEY DEFINITIONS

1.1 In this License, the following terms shall have the following meanings:

- | | |
|-------------------------|---|
| Authorized Users | Current members of the faculty, staff, and individuals who are currently studying at a Member's institution who are permitted to access the Secure Network from within the Library Premises or from such other places where Authorized Users work or study and who have been issued a password or other authentication, and members of the public who are physically present at Licensee site. |
| Commercial Use | Use for the purposes of monetary reward, whether by or for the Licensee or an Authorized User, by means of sale, resale, loan, transfer, hire, or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Licensee from Authorized Users, nor use by the Licensee or by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization, is deemed to be Commercial Use. |
| Course Packs | A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff or |

Course Packs	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff or faculty of Licensee for use by students in a class for the purposes of instruction.
Electronic Reserve	Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the Licensee for use by students in connection with specific courses of instruction offered by Licensee to its students.
Fee	The Fee set out in Schedule 2 or in appended Business Terms to this License which may be agreed by the parties from time to time.
Licensed Materials	The electronic material as set out in Schedule 2 or in new Schedules to this License that may be agreed by the parties from time to time.
Secure Network	A network, whether a standalone network or a virtual network within the Internet, which is only accessible to Authorized Users approved by Licensee whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Licensee.
Server	The server, either the Publisher's server or a third party server designated by the Publisher, on which the Licensed Materials are mounted and may be accessed.
Subscription Period	The period of time listed in Schedule 2, during which authorized users can access the content, regardless of the actual date of publication.

2. AGREEMENT

- 2.1 The Publisher agrees to grant to the Licensee the non-exclusive and non-transferable right, throughout the world, to give Authorized Users access to the Licensed Materials via a Secure Network for the purposes of research, teaching, and private study, subject to the terms and conditions of this License, and the Licensee agrees to pay the Fee to the Publisher.
- 2.2 This License shall commence on January 1, 2003 and shall remain in effect until December 31, 2003, with annual renewal if the parties agree in writing to mutually agreeable terms..

- 2.3 On termination of this License, the Publisher shall provide continuing access for Authorized Users to that part of the Licensed Materials which was published and paid for within the Subscription Period, either from the Server or in another mutually agreeable electronic medium. Such uses shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.
- 2.4 Upon request, Licensor will provide one 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 2.3 of this Agreement.

3. USAGE RIGHTS

- 3.1 The Licensee, subject to clause 6 below, may:
- 3.1.1 load the Licensed Materials on the Licensee's server on the Secure Network;
 - 3.1.2 make such back-up copies of the Licensed Materials as are reasonably necessary;
 - 3.1.3 make such temporary local electronic copies by means of caching or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Licensee and by Authorized Users;
 - 3.1.4 allow Authorized Users to have access to the Licensed Materials from the Server via the Secure Network;
 - 3.1.5 use the Licensed Materials as part of an OpenURL compliant integrated information service for Authorized Users that will include links between the Licensed Materials and Licensee's own indexes, third party abstracting and indexing services, and other information resources utilized by the Licensee;
 - 3.1.6 provide single printed or electronic copies of single articles at the request of individual Authorized Users;
 - 3.1.7 display, download, or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.
- 3.2 Authorized Users may, in accordance with the copyright law of the United States of America and subject to clause 6 below,:

- 3.2.1 search, view, retrieve, and display the Licensed Materials;
 - 3.2.2 electronically save individual articles or items of the Licensed Materials for personal use;
 - 3.2.3 print off a copy of parts of the Licensed Materials;
 - 3.2.4 distribute a copy of individual articles or items of the Licensed Materials in print or electronic form to other Authorized Users.
- 3.3 Nothing in this License shall in any way exclude, modify, or affect any of the Licensee's statutory rights under the copyright laws of the United States of America.

4. SUPPLY OF COPIES TO OTHER LIBRARIES

- 4.1 Members may, subject to clause 6 below, supply to an Authorized User of another library, for the purposes of research or private study and not for Commercial Use, a paper copy of an electronic original of an individual document being part of the Licensed Materials.

5. COURSE PACKS AND ELECTRONIC RESERVE

Members may, subject to clause 6 below, incorporate parts of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at a Licensee institution, but not for Commercial Use. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the work, and the publisher. Copies of such items shall be deleted by the Authorize User when they are no longer used for such purpose.

6. PROHIBITED USES

- 6.1 Neither the Licensee nor Authorized Users may:
- 6.1.1 remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
 - 6.1.2 systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose;

- 6.1.3 mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network.
- 6.2 The Publisher's explicit written permission must be obtained in order to:
 - 6.2.1 use all or any part of the Licensed Materials for any Commercial Use;
 - 6.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users;
 - 6.2.3 publish, distribute, or make available the Licensed Materials, works based on the Licensed Materials, or works which combine them with any other material, other than as permitted in this License;
 - 6.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorized Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

7. PUBLISHER'S UNDERTAKINGS

- 7.1 The Publisher warrants to the Licensee that the Licensed Materials used as contemplated by this License do not infringe the copyright or any other proprietary or intellectual property rights of any person. The Publisher shall indemnify and hold the Licensee harmless from and against any loss, damage, costs, liability, and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Licensee claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this License for any reason. This indemnity shall not apply if the Licensee has amended the Licensed Materials in any way not permitted by this License.
- 7.2 The Publisher shall:
 - 7.2.1 make the Licensed Materials available to the Licensee from the Server in the media, format, and time schedule specified in Schedule 1. The Publisher will notify the Licensee at least sixty (60) days in advance of any anticipated specification change applicable to the Licensed Materials. If the changes render the Licensed Materials less useful in a material respect to the Licensee, the Licensee may within thirty (30) days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4;

- 7.2.2 use reasonable endeavours to make available the electronic copy of each journal issue in the Licensed Materials within thirty (30) days of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with such reasons;
 - 7.2.3 provide the Licensee, within thirty (30) days of the date of this License, with information sufficient to enable the Licensee to access the Licensed Material;
 - 7.2.4 use reasonable endeavours to make the Licensed Materials available to the Licensee and to Authorized Users at all times and on a twenty-four hour basis, save for routine maintenance.
- 7.3 The Publisher reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawal results in the Licensed Materials being no longer useful to the Licensee, the Licensee may within thirty (30) days of such notice treat such changes as a breach of this License under clause 10.1.2 and 10.4.
- 7.4 The Publisher undertakes to provide or to make arrangements for a third party to provide an archive of the Licensed Materials for the purposes of long term preservation of the Licensed Materials, and to permit Authorized Users to access such archive after termination of this License.
- 7.5 Collection and analysis of data on the usage of the Licensed Materials will assist both the Publisher and the Licensee to understand the impact of this License. The Publisher shall provide to the Licensee, or facilitate the collection and provision to the Licensee, of usage data by journal title and by campus, on a monthly basis for the Publisher's and the Licensee's private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws and as may be agreed between the parties from time to time, and the anonymity of individual users and the confidentiality of their searches shall be fully protected. In the case that the Publisher assigns its rights to another party under clause 11.3, the Licensee may at its discretion require the assignee either to keep such usage information confidential or to destroy it.
- 7.6 Except as expressly provided in this License, the Publisher makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability, or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is.'

- 7.7 Except as provided in clause 7.1, under no circumstances shall the Publisher be liable to the Licensee or any other person, including but not limited to Authorized Users, for any special, exemplary, incidental, or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials. Regardless of the cause or form of action, the Licensee may bring no action arising from this License more than twelve (12) months after the cause of action arises.

8. LICENSEE'S UNDERTAKINGS

8.1 The Licensee shall:

- 8.1.1 use reasonable endeavours to ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and of the sanctions which each campus imposes for failing to do so;
- 8.1.2 use reasonable endeavours to notify Authorized Users of the terms and conditions of this License and take steps to protect the Licensed Materials from unauthorized use or other breach of this License;
- 8.1.3 use reasonable endeavours to monitor compliance and immediately upon becoming aware of any unauthorized use or other breach, inform the Publisher and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
- 8.1.4 provide the Publisher, within thirty (30) days of the date of this Agreement, with information sufficient to enable the Publisher to provide access to the Licensed Material in accordance with its obligation under clause 7.2.3. Should the Licensee make any significant change to such information, it will notify the Publisher not less than thirty (30) days before the change takes effect.
- 8.1.5 keep full and up-to-date records of all Authorized Users and their access details and provide the Publisher with details of such additions, deletions, or other alterations to such records as are necessary to enable the Publisher to provide Authorized Users with access to the Licensed Materials as contemplated by this License;
- 8.1.6 use reasonable endeavours to ensure that only Authorized Users are permitted access to the Licensed Materials.

- 8.2 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.

- 8.3 The Licensee shall, in consideration for the rights granted under this License, pay the Fee within thirty (30) days of signature and, if applicable, within thirty (30) days of receipt of invoice relating to each subsequent Subscription Period. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added, or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

9. UNDERTAKINGS BY BOTH PARTIES

- 9.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party to the fullest extent of state law.

10. TERM AND TERMINATION

- 10.1 In addition to automatic termination, unless renewed, under clause 2.2, this License shall be terminated:
- 10.1.1 if the Licensee defaults in making payment of the Fee as provided in this License and fails to remedy such default within sixty (60) days of notification in writing by the Publisher;
 - 10.1.2 if the Publisher commits a material or persistent breach of any term of this License and fails to remedy the breach, if capable of remedy, within sixty (60) days of notification in writing by the Licensee;

- 10.1.3 if the Licensee commits a wilful material and persistent breach of the Publisher's copyright or other intellectual property rights or of the provisions of clause 3 in respect of usage rights or of clause 6 in respect of prohibited uses, and that such breach has not been remedied to the satisfaction of Licensor within sixty (60) days;
- 10.1.4 if either party becomes insolvent or becomes subject to receivership, liquidation, or similar external administration.
- 10.2 On termination all rights and obligations of the parties automatically terminate except for obligations in respect of Licensed Materials to which access continues to be permitted as provided in clause 2.3.
- 10.3 On termination of this License for cause, as specified in clauses 10.1.1 and 10.1.3, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorized Users and shall return to the Publisher or destroy all Licensed Materials locally mounted pursuant to clause 3.1.1 and 3.1.2 except as provided in clause 2.3.
- 10.4 On termination of this License by the Licensee for cause, as specified in clause 10.1.2 above, the Publisher shall forthwith refund the proportion of the Fee that represents the paid but un-expired part of the Subscription Period.

11. GENERAL

- 11.1 This License and any mutually agreed upon amendments or addenda to this license constitute the entire agreement of the parties and supersede all prior communications, understandings, and agreements relating to the subject matter of this License, whether oral or written.
- 11.2 Alterations to this License and to the Schedules to this License are only valid if they are recorded in writing and signed by both parties.
- 11.3 This License may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 11.4 If rights in all or any part of the Licensed Materials are assigned to another publisher, the Publisher shall use its best endeavours to ensure that the terms and conditions of this License are maintained.
- 11.5 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set

out in this License or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

- 11.6 Neither party's delay or failure to perform any provision of this License, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this License.
- 11.7 The invalidity or un-enforceability of any provision of this License shall not affect the continuation or enforceability of the remainder of this License.
- 11.8 Either party's waiver, or failure to require performance by the other, of any provision of this License will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 11.9 This License shall be governed by and construed in accordance with the laws of the State of California, U.S.A. The parties irrevocably agree that any dispute arising out of or in connection with this License will be subject to and within the jurisdiction of the courts of the State of Ohio, U.S.A.

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER:
[Signature]



Technical Director
ASM International

Date: 10/20/03

FOR THE LICENSEE:
[Signature]



Deputy Univ. Librarian
California Digital Library

Date: 11/07/03

SCHEDULE 1

UNIVERSITY OF CALIFORNIA CAMPUSES

A schedule dated September 12, 2003 to the License dated September 2003 between ASM International and The Regents of the University of California.

University of California, Berkeley
 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

AS WITNESS the hands of the parties the day and year below first written

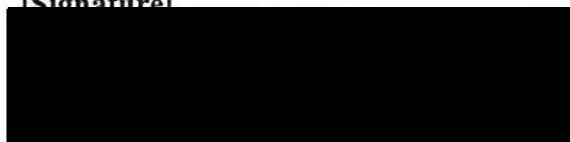
FOR THE PUBLISHER:
 [Signature]



Technical Director
 ASM International

Date: 10/20/03

FOR THE LICENSEE:
 [Signature]



Deputy Univ. Librarian
 California Digital Library

Date: 11/02/03

BAA

SCHEDULE 2**LICENSED MATERIALS, [SUBSCRIPTION PERIOD] AND ACCESS METHOD**

A schedule dated September 12, 2003 to the License dated September 2003 between ASM International and The Regents of the University of California.

THE LICENSED MATERIALS

Journal of Materials Engineering & Performance
Journal of Phase Equilibria
Journal of Thermal Spray Technology
Metallurgical and Materials Transactions A
Metallurgical and Materials Transactions B

List of Licensed Material, for each item list title, [initial Subscription Period, including, where relevant, the start date and end date,] format, delivery schedule (if applicable) and Fee [for the initial Subscription Period]. If back files are provided free of charge as part of the License, these should be listed specifically.

ACCESS METHOD

- ☐ Authentication via User ID/password and IP Address
☒ Authentication via IP address

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER:

[Signature]

Technical Director
ASM International

Date: 10/20/03

FOR THE LICENSEE:

Deputy Univ. Librarian
California Digital Library

Date: 11/03/03

SCHEDULE 3

LIBRARY PREMISES OF EACH OF THE MEMBERS

A schedule dated September 12, 2003 to the License dated September 2003 between ASM International and The Regents of the University of California.

Internet Protocol Addresses

A schedule dated September 12, 2003 to the License dated September 2003 between ASM International and The Regents of the University of California.

The California Digital Library (CDL) creates and maintains persistent identifiers to link entries in catalogs to licensed resources. This is done so that when a URL for a resource changes, we need only to update our persistent identifier (PID) and need not make changes in catalog records.

As part of the maintenance process, the CDL will periodically validate all PIDs to assure that they still resolve to the correct URLs. This will be done not more than once per week, and will appear to your server as a normal HTTP access. However, because the process is automated, it is considered a 'robot' or 'spider', as opposed to human-initiated retrieval. If your site maintains a robots.txt entry indicating that it does not permit programmatic access to the site, the CDL assumes permission to run its validation tool for the PIDs that the CDL has assigned to the licensed content. No reconfiguration of your robots.txt file is needed; our tool can be configured to bypass the robots.txt file. Please contact the CDL's Technical Coordinator if you have any questions or concerns about this process: [REDACTED]

[illegible]

Age Group	Percentage of Respondents
18-29	85%
30-39	75%
40-49	65%
50-59	55%
60-69	45%
70+	15%

OK

[REDACTED]

[REDACTED]

BAF

[Redacted Signature]

[Redacted Signature]

AS WITNESS the hands of the parties the day and year below first written

FOR THE PUBLISHER:

[Signature]

[Redacted Signature]

Technical Director
ASM International

Date: 10/20/03

FOR THE LICENSEE:

[Signature]

[Redacted Signature]

Deputy Univ Librarian
California Digital Library

Date: 11/03/03

BAS