



ASME INSTITUTIONAL LICENSE

This License Agreement ("Agreement") is made as of 1/1/2014 [DATE] (the "Effective Date") by and between The Regents of the University of California, a non-profit academic institution [NAME] located at The California Digital Library, University of California Office of the President, 415 20th Street, 4th floor, Oakland, CA 94612, USA [ADDRESS] ("Subscriber"), and the American Society of Mechanical Engineers, located at 2 Park Avenue, New York, NY 10016 ("ASME") concerning rights to the products designated in this Agreement. (Together, ASME and the Subscriber are referred to herein as the "Parties.") This Agreement is effective as of the Effective Date. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Definitions.

- A. **"Subscribed Products"** are the products and services identified in Appendix 1 that will be provided to the Subscriber pursuant to this Agreement, which Subscriber will have the right to provide to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.
- B. **Authorized Users/Sites** **"Authorized Users"** are the full-time and part-time employees, (including faculty, staff, researchers, and independent contractors) and students of the Subscriber and the institution of which it is part, regardless of the physical location of such persons, as listed on Attachment 1 (the **"Sites"**) and individuals within the facilities at the Sites permitted by the Subscriber to access the Subscribed Products ("walk-ins").
- C. **"Permitted Uses"** has the meaning described in Section 2.

II. Grant of Rights

- A. During the term of this Agreement (see Section 10), ASME grants Subscriber non-exclusive, non-transferable, worldwide, perpetual rights to the Subscribed Products and to provide the Subscribed Products to Authorized Users in accordance with this Agreement.

- B. **Delivery/Access Of Licensed Materials To Licensee.** ASME will provide the Subscribed Products to the Subscriber in the following manner:

Network Access. The Subscribed Products will be stored at one or more ASME locations in digital form accessible by telecommunications links between such locations and authorized locations of Subscriber.

- C. **Access by and Authentication of Authorized Users.** Subscriber and its Authorized Users shall be granted access to the Subscribed Products pursuant to the following:

IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Subscriber to ASME. 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.

- D. **Authorized Uses.** Subscriber and Authorized Users may make all use of the Subscribed Products as is consistent with the Fair Use Provisions of United States and international copyright laws.

In addition, the Subscribed Products may be used for purposes of research, education or other non-commercial use as follows:

1. Display. Subscriber and Authorized Users shall have the right to electronically display the Subscribed Products.
2. Digitally Copy. Subscriber and Authorized Users may download and digitally copy a reasonable portion of the Subscribed Products.
3. Print Copy. Subscriber and Authorized Users may print a reasonable portion of the Subscribed Products.
4. Recover Copying Costs. Subscriber may charge Authorized Users a reasonable fee to cover costs of copying or printing portions of Subscribed Products.
5. Archival/Backup Copy. Upon cancellation of subscription, Subscriber may request from ASME one (1) copy of the entire set of Subscribed Products paid for during the term of this agreement.
ASME acknowledges that Subscriber may engage the services of third-party trusted archives and/or participate in approved collaborative archiving endeavors to exercise Subscriber's rights under section XIII, 'Perpetual License', of this Agreement. ASME agrees to cooperate with such archiving entities and/or initiatives to make the Subscribed Products available for archiving purposes. Subscriber may perpetually use the third-party trusted system to access or store the Subscribed Products, so long as Subscriber's use is otherwise consistent with this Agreement. ASME further acknowledges and agrees that, in using the third-party archival system, Subscribed Products may be made available to other Authorized Users who indicate a right to those Subscribed Products.
6. Caching. Subscriber and Authorized Users may make local digital copies of the Subscribed Products in order to ensure efficient use by Authorized Users by appropriate browser or other software.
7. Collections of Information. Subscriber and Authorized Users shall be permitted to extract or use information contained in the Subscribed Products 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.
8. Course Packs. Subscriber and Authorized Users may use a reasonable portion of the Subscribed Products in the preparation of Course Packs or other educational materials.
9. Course Reserves (Print and Electronic). Subscriber and Authorized Users may use a reasonable portion of the Subscribed Products for use in connection with specific courses of instruction offered by the University of California.
10. 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 ASME does not use the OpenURL standard, ASME staff will provide information to Subscriber upon request to assist the Subscriber in creating links directly from UC's library catalogs and licensed resources to the content at the book, journal, issue and article levels.
11. Scholarly Sharing. Authorized Users may transmit to a third party in hard copy or electronically, minimal, insubstantial amounts of the Subscribed Products for personal use or scholarly, educational, or scientific research or professional use but in no case for resale or commercial purposes.
12. Interlibrary Loan. Using electronic, paper, or intermediated means, Subscriber at its discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Subscriber agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.

E. 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.

III. Prohibitions on Certain Uses

Subscriber and Authorized Users may not knowingly use the Subscribed Products except as permitted in Section 2. Consequently, Subscriber and Authorized Users may not knowingly do any of the following, except as permitted in Section 2:

- A. alter, modify or republish content from the Subscribed Products except as permitted in Section 2;
- B. engage in systematic or programmatic copying or downloading of Content from the Subscribed Products, including printing, downloading or copying an entire, or substantial portions of any, issue of any Subscribed Products;
- C. download portions of the Subscribed Products for purposes of creating pre-loaded systematic and persistent local copies (not including transient, dynamic caches of individually requested material) for redistribution purposes;
- D. reproduce or distribute electronic copies of Content from the Subscribed Products to persons or entities other than Subscriber and Authorized Users in a manner that violates the terms of this Agreement;
- E. remove, obscure or modify any copyright or other notices included in the Subscribed Products or portion thereof;
- F. sell or offer fee-for-service use of the Subscribed Products;
- G. engage in service bureau redistribution services with respect to the Subscribed Products;
- H. override, circumvent or disable any access control systems for the Subscribed Products or use ASME or any third party's systems or services to gain unauthorized access to any other system or network;
- I. provide or authorize access to the Subscribed Products, such as through the sharing of passwords, to persons or entities other than Authorized Users; or

IV. Subscriber Obligations

- A. Subscriber is responsible for establishing and maintaining computer hardware and software and Internet access necessary to provide Authorized Users with access to the Subscribed Products.
- B. Access to the Subscribed Products is controlled by ASME through the use of IP Addresses and, at ASME's sole discretion, passwords. Subscriber is responsible for verifying the status of Authorized Users, updating sets of IP Addresses as necessary and providing proxy server information. Subscriber will implement commercially reasonable access control and security measures to ensure that the Subscriber's IP addresses are used to access the Subscribed Products only by Authorized Users. Subscriber will cooperate with ASME's efforts to implement additional security procedures as they are developed.
- C. Subscriber must use commercially reasonable efforts to inform Authorized Users of the terms and conditions governing their access to and use of the Subscribed Products.
- D. Subscriber shall use reasonable efforts to protect the Subscribed Products from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Subscribed Products by an Authorized User, (a) ASME may terminate such offending Authorized User's access to the Subscribed Products, (b) ASME may terminate the access of the Internet Protocol ("IP") address(es) from which such

unauthorized use occurred, and/or (c) Subscriber shall terminate such Authorized User's access to the Subscribed Products upon ASME's request.

E. Provision of Notice of Intellectual Property Right to Authorized Users. Subscriber shall make reasonable efforts to provide Authorized Users with notice of any applicable Intellectual Property or other rights applicable to the Subscribed Products. Subscriber shall make reasonable efforts to prevent the infringement of any Intellectual Property or other rights of ASME in the Subscribed Products. Subscriber shall promptly notify ASME of any infringement that comes to Subscriber's attention, and take appropriate steps to avoid its recurrence.

V. Mutual Performance Obligations

A. User Surveys. Subscriber and ASME shall cooperate on the preparation and provision of user surveys to solicit feedback on the Subscribed Products from Subscriber's Authorized Users.

B. Confidentiality of User Data. ASME and Subscriber agree to maintain the confidentiality of any data relating to the usage of the Subscribed Products by Subscriber and its Authorized Users. Such data may be used solely for purposes directly related to the Subscribed Products 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.

VI. ASME PERFORMANCE OBLIGATIONS

A. Availability of Subscribed Products. Upon the Effective Date of this Agreement, ASME shall make the Subscribed Products available to Subscriber and Authorized Users.

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

C. Training and Support. ASME will provide appropriate training to Subscriber staff relating to the use of the Subscribed Products and any ASME software. ASME will offer reasonable levels of continuing support to assist Subscriber and Authorized Users in use of the Subscribed Products. ASME will make its personnel available by email, phone or fax during regular business hours, Monday through Friday for feedback, problem-solving, or general questions.

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

E. ASME 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 Subscribed Products as they become available, and downtime related to the failure of equipment or services outside the control of ASME, 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 Subscriber and its Authorized Users.

F. If the Subscribed Products fail to operate in conformance with the terms of this Agreement, Subscriber shall immediately notify ASME, and ASME shall promptly use reasonable efforts to restore access to the Subscribed Products as soon as possible. In the event that ASME fails to repair the nonconformity in a reasonable time, ASME shall reimburse Subscriber in an amount that the nonconformity is proportional to the total Fees owed by Subscriber under this Agreement.

G. Notification of Modifications of Subscribed Products. Subscriber understands that from time to time the Subscribed Products may be added to, modified, or deleted from by ASME and/or that portions of the Subscribed Products may migrate to other formats. ASME shall give a ninety (90) day notice of any such changes to Subscriber. Failure by ASME to provide such notice shall be grounds for immediate termination of the Agreement by Subscriber.

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

I. Continued Training. ASME will provide regular system and project updates to Subscriber as they become available. ASME will provide additional training to Subscriber staff made necessary by any updates or modifications to the Subscribed Products or any ASME software.

J. Notice of Terms of "Click-Through" License Terms. In the event that ASME requires Authorized Users to agree to terms relating to the use of the Subscribed Products before permitting Authorized Users to gain access to the Subscribed Products (commonly referred to as "click-through" licenses), the terms of this Agreement shall prevail.

K. Usage Statistics. ASME 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.

L. Compliance with Americans with Disabilities Act and FAIR. ASME shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Subscriber current completed Voluntary Product Accessibility Template (VPAT).

VII. Fees

Unless otherwise set forth on Appendix 4 ("Consortia"), Subscriber will pay ASME for the grant of rights set forth on Appendix 1 ("Subscribed Products")

A. After the Effective Date, ASME will issue an invoice to Subscriber based on the Subscribed Products selected in Appendix 1 ("Subscribed Products"). Subscriber must pay all applicable subscription fees within thirty (30) days receipt of ASME's invoice. Thereafter, ASME will issue annually an invoice for the Subscriber's renewal fees for the selected Subscribed Products. ASME's subscription fees are subject to annual increases.

B. Subscriber is solely responsible for all costs associated with establishing access to the Subscribed Products, including but not limited to any hardware, telecommunications or other charges imposed by carriers, proprietary network operators and Internet access providers and all costs associating with printing from the Subscribed Products. The Subscriber must also pay any taxes (including but not limited to any applicable value added taxes, sales taxes, and import taxes) other than taxes on ASME's net income, arising out of the Subscriber's use of the Subscribed Products.

VIII. Delivery

ASME will make the Subscribed Products available to Subscriber and Authorized Users within a reasonable time from the Effective Date provided that Subscriber has provided ASME with the required IP information in Attachment 1 (the "Sites").

IX. Proprietary Rights

A. Subscriber acknowledges that the Subscribed Products are owned by ASME or third parties and are protected by the intellectual property laws of the United States and of other countries, including copyright and applicable database protection laws. Subscriber will not, during the term of this Agreement or thereafter, dispute or contest, directly or indirectly, ASME's rights in the Subscribed Products or its (or any third party's) rights, nor assist others in doing so.

B. ASME, ASME INTERNATIONAL, the titles of individual Subscribed Products and other indicators of source that ASME uses in connection with the Subscribed Products are registered trademarks or otherwise owned by ASME (the "ASME Trademarks"). Subscriber and Authorized Users may not use the ASME Trademarks in connection with any product or service that does not belong to ASME, in any manner likely to cause confusion about the source of any product or service, or in a manner that implies ASME endorses any third-party product or service or that disparages or discredits ASME.

X. Representations, Covenants and Warranties

A. Each party represents, covenants and warrants that it has the right to enter into this Agreement and the person signing on its behalf is authorized to do so.

B. Subject to the Limitations set forth elsewhere in this Agreement:

ASME warrants that it has the right to license the rights granted under this Agreement to use Subscribed Products, that it has obtained any and all necessary permissions from third parties to license the Subscribed Products, and that use of the Subscribed Products by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

C. ASME warrants that the physical medium, if any, on which the Subscribed Products is provided to Subscriber will be free from defects for a period of ninety (90) days from delivery. Subscriber represents, covenants and warrants that (i) the list of IP addresses provided to ASME on Attachment 1 is accurate and valid and Subscriber will use commercially reasonable efforts to maintain sufficient security with respect to such IP Addresses such that no one other than Authorized Users is or will be able to access the Subscribed Products; (ii) all IP Addresses are affiliated with the locations identified on Attachment 1 and not with any remote campuses, institutions or offices;

XI. Indemnification

ASME shall indemnify and hold Subscriber 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 Subscribed Products by the Subscriber 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 sole 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. This indemnity shall survive the termination of the agreement.

XII. Term and Termination

A. The term of this Agreement shall commence on the Effective Date and continue until **12/31/2016**, After which This Agreement will be automatically renewed for successive one-year terms, subject to appropriate adjustments to the fee section, unless either party gives notice to the other by thirty (30) days prior to the end of the then current term that it does not intend to renew.

B. If either party believes that the other party has materially breached any of its obligations, representations or warranties under this Agreement, it will notify the breaching party in writing. The breaching party has sixty (60) days from receipt of such notice to cure the alleged breach and notify the other party of its cure in writing. If the alleged breach is not cured within the sixty-day period, the non-breaching party may, in its sole discretion, terminate this Agreement immediately upon written notice to the other party. Failure to pay the subscription fee is a material breach of this Agreement to which the sixty-day cure provision does not apply.

Upon Termination of this Agreement, for cause, online access to the Subscribed Products by Subscriber and Authorized Users shall be terminated. Authorized copies of Subscribed Products may be retained by Subscriber or Authorized Users and used subject to the terms of this Agreement.

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

XIII. Perpetual Rights

Notwithstanding anything else in this Agreement, ASME hereby grants to Subscriber a nonexclusive, royalty-free, perpetual license to use any Subscribed Products that were accessible during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Subscriber shall have access to such Subscribed Products shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

XIV. Failure of Performance

Once ASME makes the Subscribed Products available, the Subscriber and Authorized Users will be permitted to attempt online access to the Subscribed Products at any time. ASME is not liable for any claims arising out of any loss, injury, liability or damage of any kind resulting from the unavailability of the Subscribed Products due to any delay, downtime, transmission error, software or equipment incompatibilities, force majeure event (such as any act of God or government, fire, natural disaster, labor stoppage, war or terrorism, failure of communications systems or power systems) or any other failure of performance. If the Subscribed Products fails to operate in any material respect, Subscriber shall immediately notify ASME and ASME will use commercially reasonable efforts to correct any material performance problem in the Online Platform brought to its attention.

XV. Disclaimer of Warranties

THE SUBSCRIBED PRODUCTS AND THE ONLINE PLATFORM ARE PROVIDED ON AN "AS-IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ASME DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SUBSCRIBED PRODUCTS, THE ONLINE PLATFORM, AND THE ACCESS SOFTWARE, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF QUALITY, ORIGINALITY, SUITABILITY, SEARCH ABILITY, OPERATION, PERFORMANCE, COMPLIANCE WITH ANY COMPUTATIONAL PROCESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF THAT PURPOSE HAS BEEN DISCLOSED. ASME MAKES NO WARRANTIES RESPECTING ANY HARM THAT MAY BE CAUSED BY THE

TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB OR OTHER TYPE OF MALICIOUS COMPUTER PROGRAM.

XVI. Limitation of Liability

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 SUBSCRIBED PRODUCTS.

ASME MAKES NO REPRESENTATION OR WARRANTY, AND EXPRESSLY DISCLAIMS ANY LIABILITY WITH RESPECT TO THE CONTENT OF ANY SUBSCRIBED PRODUCTS, 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.

XVII. Notices.

Unless otherwise provided in this Agreement, any notice provided for or permitted under this Agreement must be in writing and addressed to Subscriber or to ASME at the following address, unless a change has been made under this Section 17, and will be treated as having been given when: (A) delivered to the party to whom such notice is addressed on the next business day after the day on which it is sent; (B) mailed to such person by postage-prepaid certified mail, return receipt requested, on the fifth business day after its date of posting; (C) delivered via professional courier service with written verification of receipt, on the next business day after its delivery to the courier during normal business hours; or (D) delivered by fax on the date of transmission (for which the transmitting party must receive proof of successful transmission on a business day during normal business hours):

If to ASME: c/o ASME Service Center
MS NO3, 22 Law Drive
P.O. Box 2900, Fairfield, NJ 07007-2900
asmedigitalcollection@asme.org
Tel: 1-973-244-2239
Fax: 973-882-1717

If to Subscriber:

The California Digital Library
University of California Office of the President
415 20th Street, 4th floor
Oakland, CA 94612, USA

XVIII. 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.

XIX. 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.

XX. General

Entire Agreement. This Agreement, Appendices 1-4 and Attachment 1, which are incorporated in this Agreement, constitute the entire agreement and understanding of the parties and supersede all prior agreements and understandings between the parties, whether oral or written, concerning its subject matter. Waiver of Contractual Right. A waiver of any term or condition or breach of this Agreement must be in writing and no waiver of any term or condition or of any breach should be deemed a waiver of any other term or condition or breach.

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

Severability. If any term or provision of this Agreement is found to be illegal or unenforceable, the validity of the remainder will remain in full force and effect.

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.

Headings. The headings used in this Agreement are for convenience only and are not to be considered in construing the terms of this Agreement. The word, "including," should be interpreted as illustrative and not limiting.

This Agreement may be signed in counterparts, each of which is deemed an original and both of which together constitute one document; signatures sent by facsimile transmission are valid and binding.

XXI. Notice of the Use of Digital Rights Management Technology

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

XXII. Notice of the Use of Digital Watermarking Technology

If ASME utilizes any type of digital watermarking technology for any element of the Licensed Product, ASME agrees that these watermarks shall not contain user-related information such as an account number or IP address, and that they will not infringe on any usability or visibility of the content for authorized users.

XXIII. 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 ASME 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.

XXIV. Shared Print Archive

At Subscriber's request, ASME will provide to Subscriber a single print archival copy of the titles selected from the Subscribed Products, on a mutually agreed upon schedule, shipped to a single ship-to address of Subscriber or third party agent, at no additional cost. This term does not apply if ASME ceases to produce paper editions of such titles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below the signing party's

Signature _____
Subscriber: _____

Name: _____

Title: AVL for Research Resources

Signature: UC Irvine

Date: 1 APRIL '14

ASME: _____

ASME
Second Assistant Treasurer

Name: _____

Title: _____

Signature: _____

Date: 6/30/14

Completed forms and signed Agreement should be sent to the attention of: ASME Customer Service Office at asmedigitalcollection@asme.org or phone 1-973-882-2239. Fax: 973-882-1717 or ASME Service Center, MS NO3, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007-2900

Appendix 1 ("Subscribed Products")

This Agreement applies to the following ASME Digital Content. Please check off the package or titles that you are requesting and those that pertain to your account. This Appendix is effective as of the date indicated below.

Journals

☐ **Package 1: ALL 25 ASME Transactions Journals Package**

- | | |
|--|--|
| <input type="checkbox"/> Journal of Applications in Thermal Science and Engineering | <input type="checkbox"/> Journal of Fuel Cell Science and Technology |
| <input type="checkbox"/> Journal of Applied Mechanics | <input type="checkbox"/> Journal of Heat Transfer |
| <input type="checkbox"/> Journal of Biomechanical Engineering | <input type="checkbox"/> Journal of Manufacturing Science and Engineering |
| <input type="checkbox"/> Journal of Computational and Nonlinear Dynamics | <input type="checkbox"/> Journal of Mechanical Design |
| <input type="checkbox"/> Journal of Computing and Information Science in Engineering | <input type="checkbox"/> Journal of Mechanisms & Robotics |
| <input type="checkbox"/> Journal of Dynamic Systems, Measurement, and Control | <input type="checkbox"/> Journal of Medical Devices |
| <input type="checkbox"/> Journal of Electronic Packaging | <input type="checkbox"/> Journal of Micro and Nano-Manufacturing |
| <input type="checkbox"/> Journal of Energy Resources Technology | <input type="checkbox"/> Journal of Nanotechnology in Engineering and Medicine |
| <input type="checkbox"/> Journal of Engineering for Gas Turbines and Power | <input type="checkbox"/> Journal of Offshore Mechanics and Arctic Engineering |
| <input type="checkbox"/> Journal of Engineering Materials and Technology | <input type="checkbox"/> Journal of Pressure Vessel Technology |
| <input type="checkbox"/> Journal of Fluids Engineering | <input type="checkbox"/> Journal of Solar Energy Engineering |
| | <input type="checkbox"/> Journal of Tribology |
| | <input type="checkbox"/> Journal of Turbomachinery |
| | <input type="checkbox"/> Journal of Vibration and Acoustics |

X Package 2: ALL 25 ASME Transactions Journals and Applied Mechanics Reviews

UC Campuses participating:

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 Santa Barbara

Journal Archives (1960-1999)

☐ Package 1A: All Transaction Journal Archives ☐ subscription, or X one-time + annual maintenance fee

UC Campuses participating:

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

X Package 2A: All Transaction Journal Archives + Applied Mechanics Reviews Archives ☐ subscription, or X one-time + annual maintenance fee

UC Campuses participating:

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

☐ Conference Proceedings Packages:

X Package 3: Current Conference Proceedings (2008-Current)

UC Campuses participating:

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

X Package 3A: Conference Proceedings Archives (2002-2007) ☐ subscription, or X one-time + annual maintenance fee

UC Campuses participating:

University Of California Davis; University Of California Irvine; University Of California Los Angeles; University Of California Riverside

Combination Packages:

☐ Package 8: Online only Journal package 1 and Conference Proceedings Package 3

☐ Package 9: Online only Journal package 2 and Conference Proceedings Package 3

eBooks

X EBooks: Option 1 Annual subscription

UC Campuses participating:

University Of California Berkeley; University Of California Davis; University Of California Los Angeles; University Of California Merced

☐ EBooks: Option 2 One-time purchase

ASME uses commercially reasonable efforts to make available all volumes of each ASME Online Journal beginning with the 2000 subscription year. Your rights to one or more Subscribed Products may be limited to only a subset of the total publication years available online. ASME is not obligated to provide access to any Subscribed Products to any person or entity located in a country to which their export is forbidden by U.S. laws or regulations.

Appendix 2 ("Fees")

A	B	C	D	E	F	G	H	I	J
Product Line	Berkeley	Davis	Irvine	Los Angeles	Merced	Riverside	San Diego	Santa Barbara	Totals
ASME Journals - 2014									
ASME Journals - 2015									
ASME Journals - 2016									
ASME Journal Archive	0								
Conf Papers - 2014							0		
Conf Papers - 2015							0		
Conf Papers - 2016							0		
Conf Papers Backfile	\$0				\$0		\$0		
eBooks - 2014			0			0	0	0	
eBooks - 2015			0			0	0	0	
eBooks - 2016			0			0	0	0	
Total Subs over 3 yrs, not including backfiles									
Total subs to be billed - 2014 not including backfiles									
Payments already made in 2014 / Outstanding Credits					\$0	\$0	\$0	\$0	

Total due with 2014 Payments/ Outstanding Credits Applied, but not including the backfiles**	\$0								
1x backfiles - April 2014*	0							0	
Full bill for 2014 - includes subscriptions & 1x backfiles/packages	\$0								
Credits remaining from 2014		0	\$0	0	0	\$0	\$0	0	
Total to be billed - 2015									
Total with 2014 payments/credits applied - 2015 bill									
Total to be billed - 2016									
TOTAL Value- UC 2014-16 w/backfiles due									
*credits accruing from overpayment of subscription content for journals or conference papers can not be applied to backfiles - adjusted on next year's bill	** pertains to only subscription content - no backfiles	Final Total for Payment							

Berkeley Contact

Davis Contact

11/12/2013

Los Angeles Contact [REDACTED] 11/18/2013
Merced Contact [REDACTED] 11/15/2013
Riverside Contact [REDACTED] 11/12/2013
San Diego Contact [REDACTED] 11/12/2012
Santa Barbara Contact [REDACTED] 11/18/2013

Please note: Santa Cruz and San Francisco did not subscribe to any publications.

Please note: Santa Cruz and San Francisco did not subscribe to any publications.

**Appendix 3 (the "Authorized Sites")
Sites/Subscriber**

ASME Account No. (if known): 000100641789

Name and Address of Authorized Sites:	FTE:	IP Range: please identify any Proxy Servers
See Attachment 1		

Subscriber Information

Subscriber: __University of California__

Name of Subscriber contract manager: [REDACTED]

Address: __University of California Irvine, PO Box 19557, Irvine CA 92623-9557__

Subscriber Administrator

Name: [REDACTED] Acquisitions Coordinator, California Digital Library

E-mail address: [REDACTED]
(Notification that online access to the ASME Digital Content is active will be sent by e-mail)

Agent Information

If subscribing through an agency, please give name of agency: __N/A__

Agency contact person responsible for administering ASME Digital Content:

Name: _____

E-mail address: _____

The Subscriber shall promptly notify ASME of any changes to any of the contact information above.

Appendix 4 – Consortia

CONSORTIA PRICING TERMS

[ASME TO REFER TO APPENDIX 2 WITH SPECIAL RATES IF SUBSCRIBER IS PART OF LICENSING CONSORTIUM]

CONSORTIA HIERARCHY

[Subscriber to provide Consortia Structure – For COUNTER 3 setup]

California Digital Library – requires access to content, as this is the entity that will manage the account, set up, and access

Participating campuses:

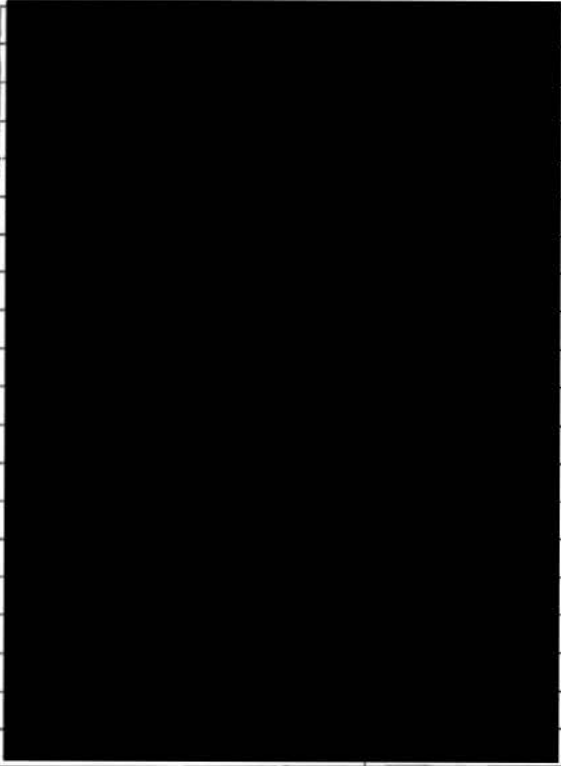
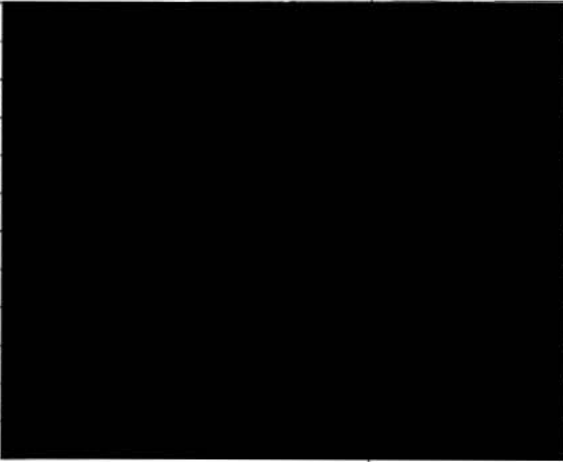

University Of California Berkeley
University Of California Davis
University Of California Irvine
University Of California Los Angeles
University Of California Merced
University Of California Riverside
University Of California San Diego
University Of California Santa Barbara

ATTACHMENT 1 - IP RANGES by CAMPUS

Berkeley (UCB)		
Range Start	Range End	Type
		IP
		IP
		IP
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		IP
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		IP
		IP
		IP
		IP
		VPN
		VPN
IP		
IP		
IP		
IP		
(formerly Lawrence Berkeley National Laboratory (LBL))		
Range Start	Range End	Type
		IP
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		IP
<u>Davis (UCD)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
		VPN
		VPN
		VPN
		IP
		IP
		Proxy
		IP
<u>Irvine (UCI)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
		IP
		IP
		VPN
		IP
		IP
		VPN
<u>Los Angeles (UCLA)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
		IP
		IP
		IP
		IP
		IP
		VPN
		IP
		VPN
		VPN
		IP
		IP
<u>Merced (UCM)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
		VPN
		IP

		IP
		IP
<u>Office of the President (UCOP)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
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		VPN
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		IP
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		IP
<u>Riverside (UCR)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
		VPN
		IP
		VPN
		IP
		IP
<u>San Diego (UCSD)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		IP
		IP
		IP
		IP
		IP
		Proxy
		Proxy
		Proxy
		Proxy
		IP
		IP
		VPN
		IP
		IP

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		<u>IP</u>
		<u>IP</u>
<u>Santa Barbara (UCSB)</u>		
<u>Range Start</u>	<u>Range End</u>	<u>Type</u>
		<u>IP</u>
		<u>VPN</u>
		<u>VPN</u>
		<u>IP</u>