



Association for
Computing Machinery

Advancing Computing as a Science & Profession

Client #: [REDACTED]

December 26, 2022

**2023-2025 ACM Digital Library Tiered-Band
Open Access Model Agreement Terms and Conditions**

This Agreement (the “Agreement”) is made between

Association for Computing Machinery, with its principal offices at 1601 Broadway, New York, NY 10019, USA (“ACM”),

And

University of California / California Digital Library, with its principal offices at 1111 Franklin St., Oakland, CA USA 94607 (the “Consortium”), on behalf of the institutions detailed in Schedule A of this Agreement, (each individually as the “University” and collectively as the “Universities”).



I. INTENT

By entering into this Agreement, the Universities and ACM seek a new type of agreement intended to facilitate a transition to open access publishing and transform the way that research is published, disseminated, and accessed. Specifically, through this Agreement, the parties will cooperate in a new type of agreement which will facilitate open access publishing for Affiliated Corresponding Authors by allowing them to publish accepted Eligible Articles in ACM's peer-reviewed scholarly publications on an Open Access basis with no fee charged to them while also offering them the option to retain copyright in their work.

Additionally, this Agreement aims to contribute to the advancement of open access publishing by aspiring to lead ACM to transition their entire portfolio of peer-reviewed scholarly publications to a fully open access model on a going forward basis.

This Agreement shall also provide Authorized Users with access and perpetual rights to the contents of the ACM Digital Library in accordance with the terms listed in Section 4, Article 1 below.

Through our participation, both the Universities and ACM commit to a joint process to implement and oversee the program, and to co-operate and address issues that may arise during the course of the Agreement term.

II. DEFINITIONS

1. **Authorized Users.** The following categories of users of the Licensed Materials are recognized as Authorized Users: persons affiliated with the Universities as full and part time students, faculty, registered users or employees, independent contractors, and persons physically present in the Universities' campus facilities.
2. **Affiliated Author(s).** Authors who correctly list themselves as affiliated with the Universities during the article submission process. Authors shall be deemed affiliated with the Universities if the email address they provide to ACM during the article submission process is part of the list of domain names provided by the Universities or shall be identified through other means as agreed between the Universities and ACM.
3. **Corresponding Author(s).** Authors who are either sole authors or co-authors of articles accepted by ACM for publication, who are designated by their co-authors to serve as the corresponding author for the accepted article. A corresponding author has the authority to represent their co-authors in all publication related matters with ACM and is responsible for the completion of the ACM rights assignment process.
4. **Affiliated Corresponding Authors.** Affiliated Authors who are Corresponding Authors.
5. **Eligible Articles.** Articles in the ACM Digital Library designated as research articles by ACM at time of publication, including articles commonly referred to as research articles, review articles and conference or proceedings papers, and any other article types in the Licensed Materials for which ACM would otherwise charge an Article Processing Charge (APC) during the term of this Agreement.
6. **Licensed Materials.** The complete contents of the ACM Digital Library (DL), including ACM's entire publication portfolio of journals, magazines, conference proceedings, newsletters, websites, and multimedia files, whose contents are listed at https://dl.acm.org/contents_dl.cfm, and the additional content made available to Universities as enumerated in Section 4, Article 1. This Agreement excludes ACM Books.

III. OPEN ACCESS TERMS (PUBLISHING TERMS)

1. ACM grants to all Affiliated Corresponding Authors the ability to publish their accepted Eligible Articles with ACM on an Open Access basis with no fee charged to them as from the initial publication date of their article in the ACM Digital Library in perpetuity.
2. Eligible Articles by Affiliated Corresponding Authors shall be eligible for open access publication under these terms if they are published on or after the Agreement Effective Date or accepted for publication prior to the



Agreement's Termination Date.

3. ACM shall provide all Affiliated Corresponding Authors with the option to select one of the two rights assignment options of their choice: the ACM License option where all individual co-authors of the published article retain the copyright to their article and provide ACM with an exclusive license to publish their article, or the ACM Permission Release option which provides ACM with a non-exclusive license to publish their article and which allows the authors to make their published article shareable via the use of a Creative Commons license with CC-BY as the default option. The Affiliated Corresponding Author shall determine which of the above options best meets the authors' rights-related needs. Notwithstanding the above, the ACM Permission Release option shall be presented as the default option to Affiliated Corresponding Authors.

ACM shall provide all Affiliated Corresponding Authors with the option to retain the copyright in their articles, including on behalf of all co-authors.

4. Within thirty (30) days of Automatic Institutional Repository Deposit setup, ACM shall deposit copies, on a going forward basis for the term of this Agreement, of all published Eligible Articles authored by Affiliated Authors, with associated metadata, into the Universities' open repository for open dissemination. Such deposits shall include all Affiliated-Authored Eligible Articles, even if the author is not the Corresponding Author. When the article has been published on an open access basis, the deposit shall be of the final published version; when the article has been published on a subscription basis, the deposit shall be of the final accepted manuscript.
5. Open Access Reporting. ACM commits to providing data sufficient to assess the outcomes of the Tiered Band Open Access Model on an annual basis, and to a collaborative process for analyzing the data. Specifically, by **April 1 of 2024, 2025, and 2026**, ACM will provide the following information about the **2023, 2024, and 2025** years, including both annual and cumulative data:
 - i. the number of Open Access Articles published by ACM where the corresponding or non-corresponding author is affiliated with the Universities.
 - ii. details of all the Open Access Articles in the material by the Affiliated Author such as title, author name and DOI including funder information.

By institution and for all institutions:

- a) Adoption by institutions: number of institutions that have signed on to the program, by tiered band.
- b) Progress towards reducing costs Tier 10 institutions according to the schedule laid out by ACM (schedule B).
- c) Open licensing: what sort of author copyright licenses have been selected, in what number and proportion.
- d) Copyright retention: number of authors who have chosen to retain copyright and number who have chosen to grant copyright to ACM.
- e) Volume of OA: Proportion of OA articles overall and from universities involved in the program.
- f) Impact of the program on ACM's business and financial conditions: including number of deals closed, value of said deals, impact of the program on ACM revenues, increase or decline in ACM revenues overall, and a confidential report of cancellations received and their financial impact.
- g) Impact of the program on participating campus publishing volume: publishing output by universities in the program, including Affiliated Corresponding Authors as well as all Affiliated Authors.
- h) Other metrics as mutually identified and agreed upon between Universities and ACM.

At least once per year following the release of this data, program participants will be provided the opportunity to participate in a conference call regarding the data. ACM will make reasonable efforts to address reasonable requests to adjust or extend the type of data gathered.

6. Commitment to Open Access Transition. ACM represents in relation to this Tiered-Band Open Access Model Agreement Period that their strategic plan is to transition their entire portfolio of peer-reviewed scholarly publications to a fully open access model, as is acknowledged in Schedule B. Specifically, ACM represents



that the Tiered-Band Open Access model, with its foundation in “hybrid” open access – where some articles are paywalled and others published open access – is a temporary and transitional business model whose aim is to provide a mechanism to shift over time to full open access publication for all ACM journals. The full transition is expected to occur, depending on adoption of the Tiered-Band Open Access model by universities, within an estimated time period of 3-4 years. ACM commits to informing the Universities of progress towards this longer-term aim on an annual basis, and to adjusting Tiered-Band Open Access terms based on its progress towards full open access. It is understood that in the early years of the Open Access Transition, there are likely to be additional surpluses generated by the new Tiered-Band Open Access Model.

IV. READ ACCESS TERMS

1. This Agreement grants all Authorized Users online access to and use of the following ACM content (together, the Licensed Materials):
 - a. Online access to the complete contents of the ACM Digital Library (DL), including ACM’s entire publication portfolio of journals, magazines, conference proceedings, newsletters, websites, and multimedia files. Access to the ACM Books Collections (<https://dl.acm.org/acmbooks>) is not included in this Agreement but is available for purchase via separate agreement. An up-to-date list of the contents of the ACM Digital Library is posted at <https://dl.acm.org/about/content>.
 - b. Online access to all ACM Affiliated Publications, including approximately 70 journals, proceedings, and bulletins during the term of this Agreement.
 - c. Online access to the ACM Guide to Computing Literature, ACM’s bibliographic database and abstracting & indexing service, which is integrated into the ACM Digital Library platform.
 - d. Historical Archive. ACM shall provide complimentary access to the complete archive of all ACM Publications dating back to each publication’s first issue or volume.
 - e. Perpetual Access Rights. The Universities shall have perpetual access rights to all content in the ACM Digital Library published during the term of this Agreement as well as all ACM DL and other ACM content subscribed to by the Universities in previous Agreements (“Perpetual Access Content”).
2. License. ACM grants to the Universities and Authorized Users the non-exclusive right to search, browse, view, print, copy, and download the Licensed Materials for research, teaching, private study, and other non-commercial purposes. Universities and Authorized Users may not redistribute or make available access to the Licensed Materials for any commercial purposes unless approved by ACM in writing. The Licensed Materials shall not be made available to anyone who is not an Authorized User except as provided for elsewhere in this Agreement.
3. Access. Global access will be provided to the Universities based on IP Verification, unless otherwise agreed between the parties. The Universities will provide ACM with a complete list of current IP Addresses.
4. Alterations. Neither the Universities nor any Authorized Users may modify, adapt, transform, translate, or create any derivative work based on any of the materials in the Licensed Materials except as provided for in the licenses governing those materials. Any copyright notices, or other notices appearing in the licensed Materials may not be removed, obscured, or modified in any way. All rights, title, and interest in the contents of the Licensed Materials are the recognized property of the respective copyright holders and no ownership rights, title, or interest are transferred to the Universities as a part of this Agreement.
5. Redistribution. The Universities and Authorized Users may not republish individual articles contained within the Licensed Materials or post them on other servers, or redistribute them to lists, except in accordance with the license terms under which the articles are published. No wholesale duplication of all or substantial sections of the Licensed Materials is permitted under the terms of this Agreement, except to provide for the text and data mining access outlined in Section 4, Article 6. Furthermore, ACM reserves the right to suspend or terminate this Agreement in accordance with the Term and Termination clause below if systematic downloading of the Licensed Materials is discovered. Notwithstanding the foregoing, Universities are afforded text and data mining rights outlined in Section 4, Article 6.



6. **Computational Access.** Authorized Users may use the Licensed Materials to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining (“TDM output”) with research collaborators, and in their scholarly work and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials. Authorized users may include TDM Output as part of original works of scholarship, e.g. articles that describe, analyze, and interpret research, presentations at academic conferences, and inclusion in an academic thesis.

ACM will cooperate with Universities and Authorized Users as reasonably necessary in making the Licensed Materials available in a manner and form most useful to the Authorized Users for computational access. ACM shall provide this access without any additional fees. Universities and Authorized Users shall be able to conduct TDM by An API provided by Vendor or a mutually agreed third-party provider.

In all cases where Licensed Materials offers both HTML/XML and PDF versions of the Licensed Materials, both versions shall be accessible for TDM.

The Licensed Materials provided for TDM shall be provided in such a manner as to be useful to Authorized Users. For example, there will be no rate or volume limits placed on TDM by ACM unless there has been evidence of disruption of ACM’s normal services, and any such limits shall be communicated to Universities in advance of taking effect.

Uses of TDM Output: It is mutually understood that Licensed Materials and “TDM Output” (the result of any Text and Data Mining activity or operation, capable of fixation, reproduction and/or communication in any form) provided or generated under this Agreement may be retained by Authorized Users throughout the full lifecycle of the TDM project, including for publication, and as necessary for replication and validation of research results.

7. **Scholarly Sharing.** Authorized Users may transmit to a third-party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User’s own scientific, scholarly and educational works. Universities and Authorized Users may use metadata and abstracts in lists of publications on faculty and institutional web pages.
8. **Authors’ Rights to Use Their Own Work.** Notwithstanding any terms or conditions to the contrary in any author agreement between Authors and ACM and rights granted to all ACM authors in Section 2.5 of ACM’s Copyright Policy, see <https://www.acm.org/publications/policies/copyright-policy>, the following rights will be retained by Affiliated Authors:

All Affiliated Authors whose work (“Content”) is accepted for publication within the Licensed Materials on an open access basis shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including immediate self-archiving or the agreed-to deposit of the Published Version of Record (VoR) of the Content in institutional, subject-based, national or other repositories or archives (including the author’s own web pages or departmental servers), in non-commercial repositories and to comply with all grant or institutional requirements associated with the Content.

Affiliated Authors whose work (“Content”) is accepted for publication within the Licensed Materials and whose articles have not been published on an open access basis shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including immediate self-archiving or the agreed-to deposit of the Accepted Manuscript Version (AM), but not the Published Version of Record (VoR) of the Content in institutional, subject-based, national or other repositories or archives (including the author’s own web pages or departmental servers), in non-commercial repositories and to comply with all grant or institutional requirements associated with the Content.

For the avoidance of doubt, it is the intent of the parties to this agreement that Affiliated Authors are beneficiaries of this provision of the Agreement.



9. Inter-Library Loans. Facsimile images that are exact representations of the print pages or of printouts from the electronic database may be provided for interlibrary loan in accordance with Section 108 of the U.S. Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means and distributed in paper, fax, or digital form.
10. Course Reserves. Libraries may include copies of digital content from the Licensed Materials in local print or electronic course reserve systems limited to use of Authorized Users of current classes.
11. No Diminution of Rights. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be interpreted to diminish the rights and privileges of the Universities or Authorized Users with respect to any of the Licensed Materials, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under 17 U.S.C. §107. Use of content within the Licensed Materials that is made available under a Creative Commons or other open license shall be governed by the provisions of that license.
12. Post-Cancellation Perpetual Access. Upon termination of this Agreement, and upon written request from the Universities, ACM will provide the Universities and its Authorized Users with access to the full text of the Perpetual Access Content as granted under Section 4(1)(e) by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights. The full text of the electronic files may not be resold at any time; this remains in effect in perpetuity. Continuing post cancellation access is subject to the terms and conditions of use in this Agreement.
13. Quality of Service. ACM shall use commercially reasonable efforts to ensure that the ACM's server or servers have sufficient capacity and rate of connectivity to provide the Universities and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Universities' locale. ACM 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 server maintenance; software installation or testing; loading or making available additional materials licensed under this Agreement as they become available; and unavailability because of service or equipment failure outside the control of ACM (including problems with public or private telecommunications services, or Internet nodes or facilities). ACM may schedule brief unavailability periods but shall do so only where (1) it has given at least forty-eight (48) hour notice to the Universities, and (2) in ways and at times that minimize inconvenience to the Universities and its Authorized Users, regardless of when notice has been given.
14. Accessibility Requirements. ACM warrants that the materials licensed under this Agreement comply with governmental disabilities laws and regulations and conform to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA. ACM agrees to promptly respond to and resolve any complaint regarding accessibility of materials licensed under this Agreement.

V. TERM AND TERMINATION

1. Term. The term of this Agreement shall be three (3) years, commencing on **January 1, 2023** (the Effective Date) and extending through **December 31, 2025**.
2. Early Termination for Financial Hardship. If sufficient funds are not provided, allocated, or allotted in future budgets of the Universities for library acquisitions to permit Universities, in the exercise of its reasonable administrative discretion, to continue this Agreement, the Universities may upon demonstration of the same via appropriate documentation, elect to renegotiate or cancel its participation in this Agreement beginning on January 1st of such subsequent year without further duty or obligation, provided that ACM is notified by November 1st of the preceding year of such cancellation or renegotiation. The Universities shall be required to provide substantive proof that library budgets have been reduced by a minimum of 20% in order for this Early Termination clause to be valid.
3. In the event of termination or expiration, financial obligations under this Agreement shall survive the termination of this Agreement through the end of the calendar year currently in force only, and ACM will honor the open



access program terms for Affiliated Corresponding Authors whose articles are accepted for publication through the end of that calendar year. The Universities will not be entitled to any refund or prorated portion of the current year's Licensing Fees.

4. Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall so promptly notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. If this Agreement ends for breach, ACM may terminate access to the Licensed Materials subject to Section 4, Article 12. Authorized copies of the Licensed Materials made by Authorized Users may be retained for educational, research and scholarly purposes and used subject to the terms of this Agreement.

VI. FEES

1. The 2023-2025 Tiered-Band Open Access Agreement fee shall be [REDACTED] the first year (2023), [REDACTED] the second year (2024), and [REDACTED] the third year (2025). These fees are ACMs publicly accessible Tiered-Band Open Access Agreement Publish + Read Licensing Tier-based Fee structure, as stated on Schedule A below. Payment will be delivered by the Universities within net 30 days of receipt of an invoice from ACM.
2. In addition to reporting requirement in Section 3, Article 6 above, ACM commits to collaborative conversations during the period of the program regarding how fees from the program have been directed, and more broadly, how future fees can be set to extend this effort to make transparent how library-based payments are directed within ACM's organization.

VII. GENERAL TERMS

1. User privacy. ACM undertakes to comply with the NISO Consensus Principles on Users' Digital Privacy in Library, Publisher, and Software-Provider Systems (NISO Privacy Principles), <https://www.niso.org/publications/privacy-principles>. As a minimum, ACM shall not provide Universities' personally identifiable information in any form to any third party without the Universities' written authorization, unless the third party owns rights in the Licensed Materials. In all cases, the disclosure of such data shall fully protect the anonymity of individual users and the confidentiality of their searches and will comply with all applicable privacy laws. ACM shall not disclose or sell to third-parties usage data or information about the Universities or its Authorized Users without the Universities' written permission or as required by law. ACM agrees that no personally identifiable information, including but not limited to log-ins recorded in system logs IP addresses of patrons accessing the system, saved searches, usernames and passwords, will be shared with third parties, except in response to a subpoena, court order, or other legal requirement. If ACM is compelled by law or court order to disclose personally identifiable information of Authorized Users of patterns of use, ACM shall provide the Universities with adequate prior written notice as soon as is practicable, so that Universities or Authorized Users may seek protective orders or other remedies. ACM will notify Universities and Authorized Users as soon as is practicable if ACM's systems are breached and the confidentiality of personally identifiable information is compromised.

1. Governing Law. The terms and conditions of this Agreement are governed by the law of the State of California of the United States of America, excluding any such laws that might direct the application of the laws of another jurisdiction.

2. Warranties. ACM warrants that it has copyright ownership and/or permission to use all of the materials in the Licensed Materials and to extend the licenses provided herein.

3. Assignment. This Agreement 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, for which consent shall not be unreasonably withheld.



Amendments. All amendments and modifications to this Agreement shall be made in writing and be signed by duly authorized representatives of both parties.

The parties hereby agree to the above terms,

Signatures

On behalf of the

Consortium

ACM

Signature

DocuSigned by:
[Redacted Signature]

Signature

DocuSigned by:
[Redacted Signature]

Print Name

[Redacted Print Name]

Print Name

[Redacted Print Name]

Title Director of Shared Collections,

Title Director of Publications

Date 5/14/2024

Date 5/14/2024



Schedule A

The following tier-based pricing schedule shall remain in effect through **December 31, 2025**. Tiering is based on the average article output for each institution from the three most recent complete calendar years.

For the purposes of this Agreement, the Universities will be treated as collection of institutions with individually assigned tiers, which are based on the average articles published annually from **2019-2021**. During the term of this Agreement, the Universities shall remain at the below mentioned tiers and pricing shall be frozen at each assigned tier annually for the three-year term of this Agreement. Six months prior to the completion of the three-year term, ACM shall provide the Universities with the new tier-based pricing schedule along with detailed article output data and an updated three-year article output average from which pricing will be determined.

Tier Pricing in Effect until December 31, 2025

INSTITUTION	2019-2022 ACM Open Tier	2023-2025 ACM Open Tier	2023 OA Tier List Price	2023 Price	2024 Price	2025 Price
UC San Diego	3	1				
UC Berkeley	3	1				
UC Irvine	3	3				
UC Los Angeles	5	3				
UC Santa Cruz	5	4				
UC Santa Barbara	5	4				
UC Riverside	5	4				
UC Davis	6	6				
UC Lawrence Berkeley National Laboratory	9	7				
UC Merced	9	8				
UC San Francisco	10	10				
TOTALS:			0	0	0	0



Tiering Determination

Tier	Avg. Article Output Range
1	75+
2	60 - 74
3	40 - 59
4	30 - 39
5	20 - 29
6	16 - 19
7	12 - 15
8	8 - 11
9	4 - 7
10	0 - 3



Schedule B

The end goal of the Tiered-Band OA Model is a full transition to OA for all peer-reviewed research content in the ACM Digital Library (both journal articles and conference proceedings). As institutions choose to participate in this model, the percentage of research content that is available OA in the ACM DL increases. As this percentage reaches certain thresholds, pricing will be decreased for those institutions that publish very little or no peer-reviewed research articles, so called Tier 10 institutions according to the following thresholds:

- At 20% of research content available OA, the pricing level for Tier 10 drops to \$7000.
- At 30% of research content available OA, the pricing level for Tier 10 drops to \$6000.
- At 40% of research content available OA, the pricing level for Tier 10 drops to \$5000.
- At 50% of research content available OA, the pricing level for Tier 10 drops to \$4000.
- At 65% of research content available OA, the pricing level for Tier 10 drops to \$2500.
- At 65% the “read fee” for institutions that do not publish with ACM at all shall be fixed at \$2500.
- At 80% of research content available OA, ACM will have achieved financial sustainability and the full flip can occur for all peer-reviewed research content in the ACM Digital Library, as follows:
 - Corresponding authors from institutions that do not participate in the Tiered Band OA Model will be required to pay an APC to publish in the ACM Digital Library to make their article OA.
 - An ACM Digital Library subscription option shall no longer be available for any institutions that have published at least one article with ACM over the previous three calendar years.
 - All future peer-reviewed research content in the ACM Digital Library will be made OA.
 - Future content that is not APC eligible (i.e. content other than peer-reviewed research content) may or may not be made OA at the discretion of ACM; access to such non-OA content, if any, would be restricted to ACM Tiered-Band OA Model participants and to institutions that choose to contribute funding in order to maintain access to non-APC eligible content, and to benefit from other value-added features that ACM may develop or offer.