



Client # 1408231

DATE: April 1, 2022

2022-2024 ACM Digital Library Open Access Model Pilot 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 the institutions detailed in Schedule A of this Agreement (each individually as the “Licensee” and collectively as the “Licensees”), duly represented by the Norwegian Agency for Shared Services in Education and Research (Sikt), with its principal offices at Abels gate 5A, 7030 Trondheim, Norway (the “Consortium”).

The Consortium is duly authorised under a power of attorney to negotiate and sign this Agreement on behalf of the Licensees.



I. INTENT

By entering into this Agreement, the Consortium and ACM seek to pilot 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 piloting a new type of agreement which will facilitate open access publishing for Affiliated Corresponding Authors by allowing them to publish accepted Eligible Articles in ACMs 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 Consortium and ACM commit to a joint process to implement and oversee the pilot, 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 Licensees as students, faculty, registered users or employees, and persons physically present in the Licensees' campus facilities.
2. **Affiliated Author(s).** Authors who correctly list themselves as affiliated with the Licensee during the article submission process. Authors shall be deemed affiliated with the Licensee if the email address they provide to ACM during the article submission process is part of the list of domain names provided by the Consortium or shall be identified through other means as agreed between the Consortium and ACM.
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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 the Licensees as enumerated in Section 4, Article 1. This Agreement excludes ACM Books.

III. OPEN ACCESS PILOT 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 three rights assignment options of their choice; the traditional ACM Copyright transfers where ACM holds the rights to the paper; or the ACM License option where all individual co-authors of the published article to 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 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.
4. ACM shall provide all Affiliated Corresponding Authors with the option to retain the copyright in their articles, including on behalf of all co-authors.
5. ACM shall deposit copies, on a going forward basis for the term of this Agreement, of all Eligible Articles authored by Affiliated Authors, with associated metadata, into the Licensee's 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.
6. Open Access Reporting. ACM commits to providing data sufficient to assess the outcomes of the Open Access Model Pilot on an annual basis, and to a collaborative process for analyzing the data. Specifically, by April 1 of 2023, 2024, 2025 ACM will provide the following information about the 2022, 2023, 2024 pilot 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 Licensee.
 - 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 pilot.
- b) Progress towards reducing costs for non-publishing institutions.
- 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 Licensees involved in the pilot.
- f) Impact of pilot on ACM's business and financial conditions: including number of deals closed, value of said deals, impact of pilot on ACM revenues, increase or decline in ACM revenues overall, and a confidential report of cancellations received and their financial impact.
- g) Impact of pilot on participating campus publishing volume: publishing output by Licensees in pilot, including Affiliated Corresponding Authors as well as all Affiliated Authors.
- h) Other metrics as mutually identified and agreed upon between Consortium and ACM.



At least once per year following the release of this data, pilot 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.

7. **Commitment to Open Access Transition.** ACM represents in relation to this Open Access Model Pilot 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 Open Access Pilot 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 Open Access Pilot model by Licensees, within an estimated time period of 5-7 years. ACM commits to informing the Consortium of progress towards this longer-term aim on an annual basis, and to adjusting Open Access Pilot 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 Open Access Model.
8. **Reversion to Subscription Agreement.** The Consortium will have the option upon termination of the pilot to return to a subscription model at a cost that is equivalent to the Consortium’s most recent pricing under a subscription model and reasonable annual price caps to be mutually agreed between the parties. In the event of documented material change in relevant business conditions affecting the ACM Digital Library, the parties agree to negotiate an appropriate adjustment to the subscription terms in good faith.

IV. READ AND PERPETUAL 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.
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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.

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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.

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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.
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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 Licensees and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the



Licensee's locale. 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 Consortium, and (2) in ways and at times that minimize inconvenience to the Licensees 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, 2022 (the Effective Date) and extending through December 31, 2024 (the "Initial Term"). The specific terms and conditions of this Agreement shall only be in effect during the Initial Term and not for any period thereafter.
2. **Early Termination for Financial Hardship.** If sufficient funds are not provided, allocated, or allotted in future budgets of the Licensee for library acquisitions to permit Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement, the Licensee 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 Licensee shall be required to provide substantive proof that library budgets have been reduced by a minimum of 5% 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 pilot terms for Affiliated Corresponding Authors whose articles are accepted for publication through the end of that calendar year. Neither the Consortium nor the Licensees will 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 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 2022-2024 Open Access Pilot Agreement fee shall be no greater than \$144,606 US the first year (2022), no greater than \$148,944 US the second year (2023), and no greater than \$153,413 US the third year (2024). Payment will be delivered by the Consortium within net 60 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 pilot regarding how fees from the pilot 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 the Consortium's, Licensees' or Authorized Users' personally identifiable information in any form to any third party without 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 Consortium or its Authorized Users without the Consortium's 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 or patterns of use, ACM shall provide the Consortium with adequate prior written notice as soon as is practicable, so that Consortium or Authorized Users may seek protective orders or other remedies. ACM will notify Consortium and Authorized Users as soon as is practicable if ACM's systems are breached and the confidentiality of personally identifiable information is compromised.
2. **Governing Law.** The terms and conditions of this Agreement are governed by the laws of the State of New York of the United States of America, excluding any such laws that might direct the application of the laws of another jurisdiction.
3. **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.
4. **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.
5. **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

Digdis Kvalheim
Signature

Print Name

Title

05.04.2022
Date

ACM
Scott Delman
Signature

Scott Delman

Print Name

Director of Publications

Title

April 19, 2022

Date



Schedule A

1. Western Norway University of Applied Sciences
2. Norwegian University of Science and Technology, including St. Olav's University Hospital
3. Norwegian Defence Research Establishment
4. Oslo Metropolitan University
5. Kristiania University College
6. Ostfold University College
7. SINTEF
8. The Oslo School of Architecture and Design
9. University of Agder
10. University of Bergen, including Haukeland University Hospital
11. University of Oslo, including Oslo University Hospital
12. University of Tromsø, The Arctic University of Norway, including University Hospital of North Norway
13. Nord University
14. Norwegian Defence University College