JOURNALS LICENCE AGREEMENT FOR

ACM DIGITAL LIBRARY ACM OPEN READ AND PUBLISH

ASSOCIATION FOR COMPUTING MACHINERY (ACM), a company whose registered office is at 1601 Broadway, 10th Floor, New York, New York 10019, USA (“Publisher”)

OFFERS to you, (the “Institution”),

By entering into this Licence, the Institution and the Publisher seek to pilot a new type of Licence intended to facilitate a transition to open access publishing and transform the way that research is published, disseminated, and accessed. Specifically, through this Licence, the parties will cooperate in piloting a new type of Licence which will facilitate open access publishing for Affiliated Corresponding Authors by allowing them the choice to publish accepted articles in the Publisher’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 Licence aims to contribute to the advancement of open access publishing by aspiring to lead the Publisher to transition their entire portfolio of peer-reviewed scholarly publications to a fully open access model on a going forward basis.

This Licence shall also provide Authorised Users with access and perpetual rights to the contents of the ACM Digital Library in accordance with the terms listed below.

Through participation, both the Institution and the Publisher 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 Licence term.

Acceptance of this Licence will be by receipt of the Order Confirmation Email (as defined below) by the Publisher as part of Licence Subscriptions Manager (as defined below). Acceptance shall be acceptance of all terms and conditions of this Licence and no variation or counter offer will be accepted by the Publisher. In the event that no or partial compliance is made as to the manner or form described for acceptance, no licence will be granted and this offer is deemed withdrawn.

BACKGROUND

A. The ACM Digital Library is a collection of full-text articles and bibliographic records covering the fields of computing and information technology (“ACM Digital Library”).

B. ACM Digital Library and all intellectual property rights therein are owned by or duly licensed to the Publisher.
C. The Publisher has agreed with Jisc Collections (as defined below) to offer in accordance with the Offer (in Licence Annex 1) to provide access to and permit use of ACM Digital Library in accordance with this Licence.

D. This Licence is based on the PA/Jisc model licence for journals. It offers the rights to access and use the Licensed Material along with rights to publish Version of Record (as defined below) articles, the Publisher shall provide all Affiliated Corresponding Authors with the option to select the rights assignment option of their choice, including the option for all individual co-authors of the published article to retain the copyright to their article, provide the Publisher with an exclusive licence to publish their article, provide the Publisher with a non-exclusive licence to publish their article, and in the case of the Authors’ copyright retention, to make their published article shareable via the use of a Creative Commons license, with CC-BY as the default option. The Author shall determine which of the above options best meets their rights-related needs.

E. Jisc Collections (as defined below) has developed an online ordering service, ‘Licence Subscriptions Manager’, by which nominated persons can place, order, and manage subscriptions online on behalf of their institution, which will be used in connection with this Licence.

F. The Publisher has agreed with Jisc Collections in the ACM Digital Library Licence between Jisc Collections and the Publisher to use this Licence as the model for any Licence between the Publisher and a Subscribing Institution, as defined in ACM Digital Library Licence in relation to the Offer.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

“Access Services” means the Publisher’s obligations under Clause 5.1.

“Access Support Hours” means 8.00am to 6.00pm in the United Kingdom, on a Working Day.
“Affiliated Corresponding Authors”. means Corresponding Authors who correctly list themselves as affiliated with the Institution during the article submission process. Authors shall be deemed affiliated with the Institution if the email address they provide to the Publisher during the article submission process is part of the list of domain names provided by the Institution, or shall be identified through other means as agreed between the Institution and the Publisher.

“Article Processing Charge” (“APC”) means the fee paid to the Publisher for an article to be made freely available without charge to the general public in perpetuity, so called “Open Access”.

“Authentication Information” means passwords, user names and any other information necessary to access Licensed Material by means of the Secure Authentication.

“Authorised User” means an individual who is authorised by the Institution to have access to its information services via Secure Authentication and who is:

- a current student registered with the Institution (including undergraduates and postgraduates);
- an alumnus of the Institution;
- a contractor of the Institution; or
- a member of staff of the Institution (whether permanent or temporary, including retired members of staff and any teacher who teaches students registered with the Institution); or
- without prejudice to Clause 4.2, a Walk-In User.

“Calendar Year” means each year running from 1 January to 31 December.
“Commercial Use” means use for the purpose of earning monetary reward or generating profit (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, licence, hire or other form of exploitation of the Licensed Material, but, for the avoidance of doubt, excluding:

- use for which the Institution is entitled only to be reimbursed its costs (which may include overhead costs); and

- use of the Licensed Material in the course of research funded by a commercial or for-profit organisation.

“Confirmation Notice” means, in relation to a notice sent through the Jisc Ordering Platform, the email generated by the platform confirming receipt of the notice and sent to each of the Publisher and the Institution.

“Continuing Access Rights” means the access and licence rights set out in Clause 2.1.2 (in respect of Continuing Licensed Material).

“Continuing Licensed Content” means the Licensed Content in respect of which the Institution shall have Continuing Access Rights, as identified as such in Clause 13.

“Continuing Licensed Material” means the Continuing Licensed Content and all Metadata relating to Continuing Licensed Content.

“Continuing Use Period” means the indefinite period immediately following the expiry of the relevant Subscription Period (including following the Term of this Licence) during which the Institution and Authorised Users are permitted to access and use the Continuing Licensed Material.

“Corresponding Authors” means authors who are either sole authors or co-authors of articles accepted by PUBLISHER 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 PUBLISHER and is responsible for the completion of the PUBLISHER rights assignment process.
“Data Protection Laws” means the Data Protection Act 1998, the General Data Protection Regulation 2018, the Data Protection Act 2018 and any other law applicable to the UK relating to the protection of personal data and the privacy of individuals, including where applicable guidance and codes of practice issued by the Information Commissioner.

“Educational Purposes” means education, teaching, tuition, training, instruction, learning, private study and/or research, including distance learning and teaching.

"Eligible Author" means an Affiliated Corresponding Author of an article accepted in a Licensed Title.

“Eligible Body” means further and higher education institutions and research councils in the UK as listed at http://www.jisc-collections.ac.uk/Help-and-information/Jisc-Banding from time to time.

“Eligible Articles” means articles for which the Publisher normally charges an APC, generally consisting of peer-reviewed research articles from the Publisher journal or conference proceeding publications.

“Jisc Collections” means Jisc Services Limited (operating as Jisc Collections) (Company Number 2881024), a company limited by guarantee incorporated in England and Wales whose registered office is at One Castlepark, Tower Hill, Bristol BS2 0JA.

“Jisc Ordering Platform” means the platform providing Licence Subscriptions Manager.

“Licence Fee” means the fee payable for publishing rights, access to and use of the Licensed Material as set out in this Licence, and may comprise a fee (as the context requires):

- for access to and use during the Subscription Period of Licensed Material; and/or
- for archival access to and use after the end of the Subscription Period of Continuing Licensed Material (including archived articles); and/or
- for upgrading rights in Licensed Material which is not at the relevant time Continuing Licensed Material to be Continuing Licensed Material.
“Licence Subscriptions Manager” means the online subscription ordering service developed by Jisc Collections (Licence Subscriptions Manager can be found at https://subscriptionsmanager.jisc.ac.uk or any such service as may replace Licence Subscriptions Manager.

“Licensed Content” means those articles or other parts of a Licensed Title which form part of the content licensed in accordance with the Order (including all content published during the Subscription Period or other period specified in the Order to which access and use rights are granted under this Licence, and including all Previously Subscribed Material).

“Licensed Material” means the Licensed Content (e.g., published articles) forming part of the content of the Licensed Titles and all Metadata relating to Licensed Titles and Licensed Content.

“Licensed Title” means any one of the titles described in the Offer and as set out or referred to in Licence Schedule 2.

“Metadata” means textual and other data associated with the Licensed Titles and/or Licensed Content that describes the creation, content, and context of each part of the Licensed Titles or Licensed Content, such as the name of the Publisher, the name of the copyright owner, subject matter, the date of publication, the location of the digital file, and in relation to Licensed Content, additionally the name of the contributing author (or authors) and other authors.

“Mount” means to copy to or install on a computer, computer network or system.

“Open Access Article” means an article or other published content by an Eligible Author that is accessible or submitted on the basis that it will be accessible immediately to the general public, provided that the Eligible Author has chosen to select the Open Access option on an open access basis under CC BY terms.

“Order” means an order placed by the Institution in relation to Licensed Titles by means of completing the Subscription Order and Acceptance Form and submitting the same on the Jisc Ordering Platform.

“Order Confirmation” means the generation of the Order Confirmation Email to each of the Institution, Jisc Collections and Publisher.
“Order Confirmation Email” means, in the case of Orders placed on the Jisc Ordering Platform, the emails to each of the Institution, Jisc Collections and the Publisher automatically generated by the Jisc Ordering Platform after the Institution has placed an Order, confirming that the Institution has placed the relevant order, the start and end date of the Subscription Period and that the Institution has agreed to the terms and conditions of this Licence.

“Permitted Use” means use in accordance with Clause 3 subject to the restrictions in Clause 4.

“Personal Data” means personal data as defined in the Data Protection Laws.

“Previously Subscribed Material” means the journal titles subscribed to by the Institution under any previous or predecessor licence for PUBLISHER Digital Library.

“Prohibited Act” means, directly or indirectly (a) to offer, promise or give any person working for or engaged by any party to the Licence a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Licence; (c) committing any offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud; (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

“Publisher Platform” means the computing platform operated by or on behalf of the Publisher, including a cloud or virtual platform, on which the Licensed Material is hosted and can be accessed, and referred to in Licence Schedule 4.

“Secure Authentication” means access by UK Access Management Federation compliant technology, Internet Protocol (“IP”) ranges or by username and password provided by the Institution or by other authentication means reasonably agreed between the Publisher and the Institution.
“Secure Network” means a network or virtual network which or the relevant functionality of which is only accessible to Authorised Users by Secure Authentication.

“Service Levels” means the additional service levels, if any, to which the Access Services are to be provided, as set out in Licence Schedule 4.

“Service Level Requirements” means the requirements relating to the Service Levels, if any, as set out in Licence Schedule 4.

“Start Date” means the start date as specified in the Order.

“Subscription Order and Acceptance Form” means the form used for Orders placed on Licence Subscriptions Manager. A sample copy of the form is attached hereto in Licence Annex 2 to this Licence and may be modified as necessary. Once the completed form has been submitted by the Institution, the Jisc Ordering Platform automatically generates the Order Confirmation Emails.

“Subscription Period” means the period from the Start Date until the expiry date stated in an Order.

“Subscription Year” means the period from the Start Date until the expiry of the first Calendar Year, and each subsequent Calendar Year thereafter during the Subscription Period.

“Term” means the term of this Licence in accordance with Clause 15.

“Transaction Management Charge” means the fee payable to Jisc Collections in connection with arranging and managing this licence as set out in Licence Schedule 1.

“Version of Record” means the final typeset and edited version of the article published in a Licensed Title.

“Walk-In Users” means individuals, who are not otherwise Authorised Users, who are allowed by the Institution to access its information services from computer terminals or by other means (including wirelessly), from within the physical premises of the Institution.

“Working Day” means a day other than a Saturday, Sunday or public holiday in England when banks in London are not open for business.
Clause, Schedule and Annex headings shall not affect the interpretation of this Licence.

The Schedules and Annexes form part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Licence Schedules and Licence Annexes.

Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to writing or written includes email and any written submission made on the Jisc Ordering Platform.

Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words term preceding those terms.

References to web addresses in this Licence refer to the current web address, and any updated or replacement content/address.

PART 1: LICENCE TERMS FOR ACCESS AND USE OF THE LICENSED MATERIAL

2 LICENCE GRANT

The Publisher hereby grants to the Institution:

2.1.1 a non-exclusive, non-transferable right and licence for the Subscription Period:

(i) to access and make Permitted Use of the Licensed Material; and

(ii) to permit Authorised Users to access and make Permitted Use of the Licensed Material; and

2.1.2 in respect of Continuing Licensed Material (if any), a perpetual, irrevocable, non-exclusive rights and licence:

(i) to access and make Permitted Use of the Continuing Licensed Material; and

(ii) to permit Authorised Users to access and make Permitted Use of the Continuing Licensed Material.
2.2 Except as expressly provided in this Licence, such access shall be on the Publisher Platform through Secure Authentication.

3 PERMITTED USES

3.1 The Institution shall be entitled, for Educational Purposes only:

3.1.1 to Mount and use Metadata in bespoke or commercially available library information systems to manage library operations, including combining such Metadata with metadata from other sources and/or relating to other materials, and downloading, printing, communicating, displaying, supplying for use by others, and providing public access to the same;

3.1.2 to communicate, perform, display, download and print parts of, or extracts from, Licensed Content;

3.1.3 to provide Authorised Users with access to the Licensed Content for Educational Purposes via a Secure Network for the purposes set out in Clause 3.2;

3.1.4 to display, download and print the whole of, or parts of, or extracts from, Licensed Content for the purpose of promoting or testing, and training in the use of the Licensed Material;

3.1.5 to convert or adapt Licensed Material into Braille or other formats or forms suitable for providing access to, and use by, Authorised Users with impaired mental and/or physical abilities and to provide access to such converted or adapted form for the purposes of this Clause 3;

3.1.6 to supply to another library in the United Kingdom (whether by post, fax or, provided the electronic file is deleted immediately after printing, secure electronic transmission), a single copy of the whole of, or parts of or extracts from, Licensed Content, and to download such Licensed Content for such purpose;

3.1.7 to provide single printed or electronic copies of individual articles or other parts of Licensed Content to individual Authorised Users, at their request, for Educational Purposes;

3.1.8 to make and distribute copies of training, teaching or course material reproducing parts of Licensed Content, as may be required by the Institution for the purpose of using the Licensed Material in accordance with Clause 3.2; and

3.1.9 to provide access to and permit use, in accordance with this Licence of, any archived copies of the Licensed Material made in accordance with Licence Schedule 3 (1(c)) and/or 3 (1(d)), if and for so long as the Publisher so fails to
provide such access; and if no such archived copies are maintained, to make and
supply to a reasonably agreed recognised secure repository a copy of the Licensed
Material in electronic form, for the sole purpose of the repository retaining the same
for use by the Institution and its Authorised Users (without prejudice to any other
purpose for which the repository may be permitted by the Publisher to retain the
same).

3.2 The Institution shall be entitled to permit Authorised Users, for Educational Purposes only:

3.2.1 to access the Licensed Material by Secure Authentication in order to search,
retrieve, display and view the Licensed Material;

3.2.2 to copy and paste, download, print and save electronic or print copies of parts of
or extracts from Licensed Material, for individual use or for use in tutorials or study
groups;

3.2.3 to copy and paste, download, print, save, convert or adapt copies or parts of or
extracts from Licensed Material for the purposes of criticism, review, caricature,
parody or pastiche. Authorised Users must specify the source, listing title and
author of the extract, title and author of the work, copyright notice, and each
publisher of the Licensed Material used in such ways unless this would not be
possible for reasons of practicality or otherwise;

3.2.4 to mark-up or comment (electronically or otherwise) parts of Licensed Material
(including by tagging, highlighting paragraphs and sentences, bookmarking,
inserting hyperlinks, exporting references, and writing personal commentary, and
saving the same);

3.2.5 to convert or adapt Licensed Material into formats or forms suitable for providing
access to, and use by, Authorised Users with impaired mental and/or physical
abilities and to make copies of such converted or adapted Licensed Material for
use in accordance with this Clause 3.2;

3.2.6 to incorporate parts of or extracts from the Licensed Content in printed or electronic
form in assignments, portfolios, theses, dissertations and other submissions
(“Academic Works”), and to make reproductions of the Academic Works for
personal use, library deposit and/or to provide to sponsors of the Academic Works.
Authorised Users must specify the source, listing title and author of the extract, title
and author of the work, copyright notice, and each publisher of the Licensed
Content used in the Academic Works;
3.2.7 to incorporate parts of or extracts from the Licensed Material in electronic or printed
course packs or management systems to be used in the course of instruction
and/or virtual learning and/or research environments hosted on a Secure Network.
Authorised Users must specify the title and copyright owner of the Licensed
Material used in the course packs;

3.2.8 to display publicly, communicate to the public or perform in public parts of the
Licensed Material as part of a presentation at a seminar, conference, or workshop,
or other similar event. Authorised Users must specify the source, listing title and
author of the extract, title and author of the work, copyright notice, and each
publisher of the Licensed Material used in such ways;

3.2.9 to save and/or deposit in perpetuity parts of the Licensed Material in electronic
repositories on a Secure Network operated by the Institution, access to and use of
which is limited to Authorised Users;

3.2.10 to download and make copies of the whole or any parts of the Licensed Material
for the purposes of, and to perform and engage in computational analysis
(including text and data mining) using the Licensed Material for the purpose of
research and other Educational Purposes but not for Commercial Use, and to
permit Authorised Users to distribute and display and otherwise use (publicly or
otherwise), other than for Commercial Use, the results, provided that such results
do not reproduce the whole or a substantial part of any Licensed Content. Copies
of Licensed Content made under this Clause 3.2.10 shall be deleted promptly after
the computational analysis has been completed;

3.2.11 to download Licensed Material in whole or in part for the Authorised User's
personal Educational Purposes onto personal computing devices including tablets,
e-book readers and laptops, and stand-alone computers, without any limit in
number. The Publisher makes no warranty as to the suitability of any Licensed
Material for use on such devices; and

3.2.12 to provide access to, communicate to, and share material resulting from any use
under this Clause 3.2 with other Authorised Users for their use in accordance with
this Licence.

3.3 The provisions of this Licence are without limitation to the rights of the Institution or Authorised
Users to do any act permitted under the Copyright, Design and Patents Act 1988, including
Chapter III (Acts Permitted in relation to Copyright Works) or permitted under any CC-BY or
other open access licence applicable to the Licensed Material or otherwise which, apart from
the rights granted under this Licence, would not infringe the intellectual property rights in the
Licensed Material and, notwithstanding any provision of this Licence, the Institution and Authorised Users shall remain entitled to do any such acts.

3.4 Unless expressly set out in this Clause 3, or in relation to specific Licensed Content or specific Permitted Uses in the Offer, there shall be no limit on the number of Authorised Users to which this Licence (including Clause 3.1 and Clause 3.2) applies.

4 RESTRICTIONS

4.1 Except where this Licence provides otherwise, the Institution shall not, and shall not grant an Authorised User the right to:

4.1.1 sell, resell, or sub-license the Licensed Material, in whole or in part, unless the Publisher has given permission in writing to do so;

4.1.2 remove, obscure or alter copyright notices, acknowledgements or other means of identification, or disclaimers, other than Metadata;

4.1.3 alter or adapt the Licensed Material (other than Metadata), including any alteration of the words of Licensed Content or their order, except to the extent necessary to make it perceptible on a computer screen;

4.1.4 display or distribute any part of the Licensed Material (other than Metadata) on any electronic network, including the internet, other than on a Secure Network;

4.1.5 make any Commercial Use of the Licensed Material (in whole or in part);

4.1.6 use the Licensed Materials (in whole or in part) other than for Educational Purposes;

4.1.7 provide access to and/or permit use of the Licensed Content by anyone, or transmit any part of the Licensed Material (other than Metadata) by any means to anyone, other than an Authorised User.

4.2 The Institution shall not provide access to Walk-In Users to the Licensed Content at a location other than the Institution’s premises (but, for the avoidance of doubt, may provide access on such premises by wireless means).

4.3 The restrictions in this Clause 4 are subject to Clause 3.3 (Acts permitted by legislation or other rights in relation to copyright works).

5 RESPONSIBILITIES OF THE PUBLISHER

5.1 The Publisher shall:
5.1.1 during the Subscription Period make the Licensed Material; and

5.1.2 during the Continuing Use Period, subject to Clauses 13.2 and 13.5, make the Continuing Licensed Material available through the Publisher Platform to the Institution and Authorised Users for access, download and Permitted Use.

5.2 During the Subscription Period and, subject to Clause 13, during the Continuing Use Period, the Publisher shall at all times:

5.2.1 allocate and use sufficient resources (including servers and communications and network equipment) to provide the Access Services in accordance with the terms of this Licence; and

5.2.2 subject to routine maintenance (which the Publisher shall use reasonable endeavours to conduct outside Access Support Hours and which the Publisher shall in any event conduct in such a manner to minimise disruption of the Access Services), provide the Access Services on a continuous and uninterrupted basis and shall, on any interruption or suspension of the Access Services occurring, restore the Access Services as soon as reasonably practicable.

5.3 At all times during the Subscription Period, the Publisher shall ensure that the Access Services meet the Service Levels, and that they comply with the Service Level Requirements.

5.4 During the Subscription Period, the Publisher, in respect of the Licensed Material made available under Clause 5.1:

5.4.1 shall not, without the Licence of the Institution, such Licence not to be unreasonably withheld, implement any digital rights management technologies or access management technologies which have a material adverse impact on the performance or usability of the Licensed Material in accordance with this Licence or on the exercise by the Institution of its rights under this Licence, for example by repeatedly requiring an Authorised User to provide active confirmation in relation to their use of or access to the Licensed Material, which impair the usability of DOIs or other links, or which require the downloading of software onto any platform used for accessing or using the Licensed Material;

5.4.2 shall provide support to Authorised Users by e-mail or by a telephone help desk, and assist Authorised Users with general enquiries in connection with the Licensed Material, including relating to access, use, functionality and content of the Licensed Material, during the Access Support Hours, and shall use reasonable endeavours to answer any such query within 24 hours of such query being made;
5.4.3 shall provide to the Institution electronic product documentation relating to the Licensed Material which is reasonably sufficient to enable Authorised Users to access and make use of the Licensed Material, which the Institution shall be entitled to copy and distribute, provided such documents are copied in full and such copies include an acknowledgement of the Publisher as the licensor of the Licensed Material;

5.4.4 shall provide the Institution with a monthly report detailing its performance in respect of the Service Levels; and

5.4.5 shall notify the Institution of any Licensed Material that is Open Access Material.

5.5 During the Continuing Use Period, the Publisher in respect of the Continuing Licensed Material made available under Clause 5.1.2 shall not implement any digital rights management technologies.

Withdrawal of publications

5.6 The Publisher reserves the right at any time to withdraw from the Licensed Material any Licensed Material (including any Licensed Title or Licensed Content or part of Licensed Content) ("Withdrawn Material"):  

5.6.1 which the Publisher is no longer entitled to publish; or

5.6.2 which has converted to full open access and is no longer offered under the subscription model; or

5.6.3 which the Publisher has reasonable grounds to believe infringes copyright or is unlawful.

5.7 The Publisher shall promptly give written notice of such withdrawal to the Institution.

5.8 Subject to Clause 5.7, if the Publisher withdraws Licensed Material or Licensed Content then the Publisher shall, at the Institution’s option:

5.8.1 reimburse such part of the Licence Fee attributable to the Withdrawn Material in respect of the period up to the date of withdrawal as is reasonable in the circumstances having regard to the use made of that material compared with other Licensed Material the subject of this Licence; and reduce the Licence Fee attributable to the period following the date of such withdrawal by such amount as is reasonably attributable to the Withdrawn Material in respect of such remaining period; or

5.8.2 provide a substitute for the Withdrawn Material acceptable to the Institution.
5.9 If, in the Institution’s reasonable opinion, the withdrawal of the Withdrawn Material results in all Licensed Material which is the subject of this Licence, or any collection of Licensed Materials which are licensed as a collection under this Licence, or any Licensed Title no longer being useful to the Institution or the Authorised Users, the Institution may, by notice to the Publisher, terminate this Licence to all the Licensed Material, or its application to such collection, or Licensed Title as the case may be, with immediate effect. In such case the Publisher shall, within sixty (60) days after the date of such notice, reimburse to the Institution such part of the Licence Fee as is reasonably attributable to the Licensed Material for period following such withdrawal, or in the case of a collection or Licensed Title, reasonably attributable to the collection or Licensed Title for such period following such withdrawal.

6 RESPONSIBILITIES OF THE PUBLISHER: AUTHORISED USERS

6.1 The Publisher shall not require Authorised Users to enter into an end user licence or other terms and conditions of use in connection with their access to or use of the Licensed Material under this Licence or otherwise impose any restrictions on an Authorised User’s use of the Licensed Material other than provided in this Licence. No such end user licence or terms or conditions or restrictions sought to be imposed shall be of any effect; provided that, where the licence the Publisher has in relation to specific Licensed Content has more restricted rights than Permitted Use, it shall make that clear in the Offer and in the Metadata for the Licensed Title or Licensed Content and notify the Authorised User on access to the Licensed Content.

6.2 The Publisher shall not, and shall not seek to, collect Personal Data in relation to any Authorised User other than as is reasonably and properly required for the administration of this Licence, and shall fully comply with its obligations under the applicable Data Protection Laws in relation to the collection, use and retention, and any other processing of any such Personal Data.

7 RESPONSIBILITIES OF THE PUBLISHER: INFORMATION AND LIBRARY MANAGEMENT STANDARDS

7.1 During the Subscription Period, the Publisher shall implement the standards and other provisions of Error! Reference source not found.

8 RESPONSIBILITIES OF INSTITUTION

8.1 The Institution shall:

8.1.1 provide passwords and other confidential Authentication Information only to Authorised Users and take reasonable steps to prevent Authorised Users from providing such Authentication Information to anyone else;
8.1.2 provide to the Publisher lists of valid IP addresses for the purpose of managing access to the Licensed Material and update those lists regularly as agreed by the parties from time to time;

8.1.3 use reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Material;

8.1.4 inform the Authorised Users about the conditions of use of the Licensed Material provided for in this Licence and to the extent that such terms apply to them, use reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence; and

8.1.5 configure the computer system through which the Licensed Material used by the Institution and Authorised Users, and put in place procedures, in accordance with reasonably appropriate accepted standards, for the purpose of preventing access to the Licensed Material by any person other than an Authorised User.

8.2 The Institution shall use reasonable efforts to monitor compliance with the terms of this Licence and shall promptly notify the Publisher, providing full particulars (to the extent that it is not prohibited by law or contractual obligation from doing so), on becoming aware of any of the following:

8.2.1 any unauthorised access to or use of the Licensed Material or unauthorised use of Authentication Information; or

8.2.2 any act by an Authorised User which gives rise to a breach of this Licence.

8.3 As soon as the Institution is aware of any breach of the terms of this Licence, the Institution shall:

8.3.1 take reasonable steps to investigate such breach for the purpose of ensuring that the relevant activity ceases and preventing any recurrence; and

8.3.2 if the Institution considers this appropriate, take steps against the individual concerned in accordance with the Institution’s disciplinary procedure

but the Institution shall not have any other liability for any breach relating to the security of the Secure Network or use by Authorised Users of any Licensed Material.
PART 2: RIGHTS TO PUBLISH OPEN ACCESS MATERIAL

9 OPEN ACCESS PUBLISHING

9.1 In consideration for the Publisher agreeing to permit Eligible Authors to publish accepted articles in the Licensed Titles on the basis of the terms of this Licence, the Institution agrees to pay the Licence Fee.

9.2 The Publisher grants to all Affiliated Corresponding Authors the ability to publish their accepted APC Eligible Articles with the Publisher 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. Open access will be presented as a default choice for Affiliated Corresponding Authors, with the option to publish on a closed access basis, if they so choose.

9.3 Eligible Articles by Affiliated Corresponding Authors shall be eligible for open access publication under these terms if they are published on or after the Effective Date and are published by the Publisher in the ACM Digital Library prior to the Licence’s Termination Date.

9.4 The Publisher shall provide all Affiliated Corresponding Authors with the option to select the rights assignment option of their choice, including the option for all individual co-authors of the published article to retain the copyright to their article, provide the Publisher with an exclusive licence to publish their article, provide the Publisher with a non-exclusive licence to publish their article, and in the case of the Affiliated Corresponding Authors’ copyright retention, to make their published article shareable via the use of a Creative Commons licence, with CC-BY as the default option. The Affiliated Corresponding Author shall determine which of the above options best meets their rights-related needs.

9.5 Authors’ Rights to Use Their Own Work. Notwithstanding any terms or conditions to the contrary in any author Licence between Affiliated Corresponding Authors and the Publisher and rights granted to all ACM authors in Section 2.5 of the Publisher’s Copyright Policy, see https://www.Publisher.org/publications/policies/copyright-policy, the following rights will be retained by Affiliated Corresponding Authors:

- All Affiliated Corresponding Authors whose work (“Content”) is accepted for publication within the Licensed Materials shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including self-archiving or depositing 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), including both commercial and non-commercial repositories.

- All non-corresponding authors affiliated with the Institution whose work (“Content”) is accepted for publication within the Licensed Materials shall retain the non-exclusive,
irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including self-archiving or depositing 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), provided those repositories are non-commercial. For the avoidance of doubt, it is the intent of the parties to this Licence that Authors are beneficiaries of this provision of the Licence.

9.6 Commitment to Open Access Transition. The Publisher represents in relation to this PUBLISHER Open Model that their strategic plan is to transition their entire portfolio of APC Eligible Publications to a fully open access model, as is acknowledged in this Licence. Specifically, the Publisher represents that this 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 this Open Access Pilot model by universities, within an estimated time period of 7-10 years. The Publisher commits to informing the Institution of progress towards this longer-term aim on an annual basis, and to adjusting the Open Access Pilot terms based on its progress towards full open access. If annual progress towards full open access is not made in a given year, pricing terms for the Open Access Pilot for the Institution will not increase. It is understood that in the early years of the Open Access Transition, there is likely to be additional surpluses generated by the new Open Access Model. The Institution and the Publisher agree that 20% of the fees from this Licence shall be allocated to one or more of the menu of options listed in the Offer under “Milestones”. The Institution shall direct PUBLISHER as to which of those options shall be utilized during the term of this Licence. It is agreed that as the transition to OA continues, it may no longer be necessary to allocate this percentage of fees from future versions of this Licence.

9.7 Reversion to Subscription Licence. The Institution will have the option upon termination of the 3-year Licence to return to a subscription model at a cost that is dependent upon the then current subscriber and revenue base across PUBLISHER’s entire Digital Library licensing program.

10 RESPONSIBILITIES OF THE PUBLISHER

10.1 The Publisher agrees to publish Open Access Articles, under the following conditions:

10.1.1 all Open Access Articles shall be made immediately Open Access, as the Version of Record in a Licensed Title on the Publisher website with no embargo period from the initial publication date in the PUBLISHER Digital Library in perpetuity;
10.1.2 the Eligible/Corresponding Author agrees to make the article Open and accepts that it will be published under 10.1.1. Author choice determines which articles will be made Open under this Licence.

10.1.3 the Publisher shall provide all Affiliated Corresponding Authors with the option to retain the copyright in their articles, regardless of whether the articles are published on an open access basis or on a subscription basis.

10.2 The Publisher will provide the Institution (either directly or via Jisc Collections) with a report every six months detailing the Open Access Articles published, containing the following information:

(i) Journal Title
(ii) Article Title
(iii) Affiliated Corresponding Author
(iv) Institution Name
(v) DOI

11 RESPONSIBILITIES OF THE INSTITUTION

11.1 The Institution agrees to inform Eligible Authors that this Licence is in place and that their articles can be made Open Access Articles on acceptance in the Licensed Titles.

11.2 The Institution shall ensure that Eligible Authors shall identify themselves as being eligible by using an appropriate institutional email address throughout the submission process.

11.3 The Institution shall use all reasonable efforts to make its authors aware that to become Eligible Authors and for the Institution therefore to benefit most from the Licence, they should be prepared to take on the responsibilities of Corresponding Author.

11.4 The Institution understands that for an article to be made Open Access under this Licence, the Affiliated Corresponding Author must choose to make that Article Open by selecting that option in the rights assignment form.

12 EDITORIAL INDEPENDENCE

12.1 All parties acknowledge that while the Institution has financial obligations toward the Publisher, that the Institution is in no way involved with the editorial process.
12.2 Nothing herein contained shall oblige the Publisher to publish any article submitted to the Publisher by an Eligible Author. The Institution acknowledges that the selection of material to be published on the Publisher Platform is entirely at the discretion of the Publisher. The Institution waives any claim it may have against the Publisher in the event that the Publisher refuses or declines to publish any material (or part thereof) submitted by an Eligible Author.

PART 3: GENERAL TERMS

13 CONTINUING LICENSED MATERIAL

13.1 The Institution shall have Continuing Access Rights in respect of:

13.1.1 all Licensed Content published in any Licensed Title during the Subscription Period;

13.1.2 all other Licensed Content published in any Licensed Title to which archival or continuing access rights apply as identified in the Order; and

13.1.3 all Previously Subscribed Material.

13.2 No later than the end of the Subscription Period or other termination or expiry of this Licence, the Publisher shall make the Continuing Licensed Material (including Continuing Licensed Content) available for access and Permitted Use by the Institution and its Authorised Users without charge, at the Institution’s option by:

13.2.1 by means of the Publisher Platform; or

13.2.2 on a third party archive platform in accordance with paragraph 1(c) of Licence Schedule 3, reasonably agreed with the Institution, full details (including sufficient authority and information to access the same) of which the Publisher shall have provided to the Institution; or

13.2.3 otherwise within five Working Days after the date of such notice at any time, by providing to the Institution the electronic copies in reasonably agreed industry standard format of the Continuing Licensed Material.

The Institution may give notice to the Publisher from time to time which option it elects at that time, and, subject to Clause 13.5, the Publisher will promptly give effect to that election.

13.3 Continuing Licensed Content made available under Clauses 15.2.2 or 13.2.3 may omit additional online features not provided with the print versions of such content.

13.4 On receipt by the Institution of copies of the Continuing Licensed Material under Clause 13.2.3, the Institution shall be entitled, for the Continuing Use Period, to:
13.4.1 Mount the Continuing Licensed Material on a Secure Network operated by or on behalf of the Institution for the purposes set out in Clause 2.1.2; and

13.4.2 make such copies of, and/or re-format, the Continuing Licensed Material to ensure that access and Permitted Use of the Continuing Licensed Material can continue uninterrupted throughout the Continuing Use Period.

13.5 If the Publisher gives written notice that it will no longer provide access on the Publisher Platform in accordance with Clause 13.2.1, or on an alternative archive platform in accordance with 13.2.2, the Publisher shall continue to make the Continuing Licensed Material available by means of the Publisher Platform until the earlier of (a) the expiry of 30 Working Days after the date of any notice or (b) written notice by the Institution that it no longer requires the Publisher to make the Continuing Licensed Material available by means of the Publisher Platform.

13.6 At the start of the Continuing Use Period the Publisher shall provide the Institution with a list confirming all Continuing Licensed Content and all Continuing Licensed Material.

14  FEES AND PAYMENT

14.1 The Institution shall pay to the Publisher (via Jisc Collections if so selected) the Licence Fee in the amounts set out in, or calculated in accordance with, Licence Schedule 1. In the event that the Institution has chosen to pay via Jisc Collections, it shall pay to Jisc Collections the Transaction Management Charge in accordance with Schedule 1.

14.2 Upon receipt of the Order Confirmation and on each other date (if any) set out in the Order Confirmation, the Publisher (or Jisc Collections) shall issue an invoice to the Institution for the relevant Licence Fee(s) or applicable part of the Licence Fee(s).

14.3 The Institution shall pay the Licence Fee within 45 days on receipt by the Institution of the Publisher’s (or Jisc Collections’) invoice.

14.4 All sums specified under this Licence, unless otherwise stated, are exclusive of VAT and any other similar or equivalent taxes or duties, where applicable, and any applicable VAT will be payable in addition.

15  TERM AND TERMINATION

15.1 The term of this Licence shall be three (3) years, commencing on January 1, 2020 (the “Effective Date”) and extending through December 31, 2022 (the “Termination Date”), unless terminated earlier in accordance with this Clause 15.

15.2 Without affecting any other right or remedy available to it, either party may terminate this Licence with immediate effect by giving written notice to the other party if:
15.2.1 the other party becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvency petition in bankruptcy or an order to that effect;

15.2.2 the other party commits a material or persistent breach of any term of this Licence which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.

15.3 Without affecting any other right or remedy available to it, the Institution may terminate this Licence with immediate effect by giving written notice to the Publisher if the Publisher:

15.3.1 has committed a breach of Clause 5 and fails remedy that breach within a period of sixty (60) days after being notified in writing to do so; or

15.3.2 is no longer entitled to make the Licensed Material available for access and Permitted Use by the Institution and Authorised Users.

15.4 Without affecting any other right or remedy available to it, the Publisher may terminate this Licence with immediate effect by giving written notice to the Institution if the Institution:

15.4.1 fails to pay any undisputed amount due under this Licence on the due date for payment and remains in default for not less than sixty (60) days after being notified in writing to make such payment;

15.4.2 wilfully and repeatedly infringes, or wilfully permits Authorised Users repeatedly to infringe, the copyright in the Licensed Material; or

15.4.3 has committed a breach of Clause 4 (Restrictions) or Clause 8.1 (Responsibility of Institution) and fails remedy that breach within a period of sixty (60) days after being notified in writing to do so.

15.5 For the avoidance of doubt the Institution shall not be deemed to be in breach of this Licence on the grounds that an act of an Authorised User, if carried out by the Institution, would have been a breach of this Licence, without prejudice to any express obligations applicable to the Institution under this Licence.

16 CONSEQUENCES OF TERMINATION

16.1 On expiry or termination of this Licence for any reason and subject to any express provisions set out elsewhere in this Licence (including Clauses 2.1.2 (Licence Grant/Continuing Licensed Material) and 13 (Continuing Licensed Material)): 
16.1.1 all rights and licences granted pursuant to this Licence shall cease and the Institution shall cease to access and use, and permit access to and use of, the Licensed Material; and

16.1.2 the Publisher shall cease to make available Licensed Material for access and use by the Institution and Authorised Users

provided that the Institution may retain and use, and permit the use of, Metadata, and that copies of parts of the Licensed Material made by the Institution or Authorised Users in accordance with this Licence may be retained, subject to the terms of Clauses 3 and 4 to the extent that these are applicable.

16.2 On any termination by the Institution under Clause 15.13 or Clause 15.34 the Publisher shall reimburse such part of the Licence Fee which has been paid by the Institution and is in respect of any remaining part of the Subscription Period.

16.3 Any provision of this Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Licence (including Clauses 2.1.2, 2.2, 4, 5.1.2, 5.2, 5.5 to 5.9, 6, 8, 13, and 16 to 26) shall continue in force.

16.4 Termination or expiry of this Licence shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Licence which existed at or before the date of termination or expiry.

17 ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

17.1 Subject to Clause 17.2, the Institution acknowledges that all copyright in the Licensed Material are the exclusive property of the Publisher or its licensors and that this Licence does not assign or transfer to the Institution any right, title or interest in such copyright except for the right to access and use the Licensed Material in accordance with the terms and conditions of this Licence.

17.2 The Publisher hereby acknowledges that any copyright and database rights arising from any computational analysis (including any text mining/data mining) of the Licensed Material referred to in Clause 3.2.9 shall, as between the Institution and Authorised User on the one hand, and the Publisher (and any licensor of the Publisher or other rights holder in the Licensed Materials), on the other, be the property of the relevant Authorised Users or the Institution, as the case may be.

17.3 For the avoidance of doubt, the Publisher hereby acknowledges that any database rights created by the Institution as a result of exercising any rights in relation to Metadata under
Clause 3.1.1 or Mounting the Licensed Material as referred to in Clause 13.4 shall be the property of the Institution.

18 REPRESENTATION, WARRANTIES AND INDEMNITIES

18.1 The Publisher warrants to the Institution that:

18.1.1 all intellectual property rights in the Licensed Material are owned by or validly licensed to the Publisher and that the Permitted Use of the Licensed Material will not infringe any intellectual property of any person; and

18.1.2 the content of the Licensed Material is not unlawful.

18.2 The Publisher shall indemnify the Institution (for itself and for the benefit of any Authorised Users) against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Institution or Authorised Users arising out of or in connection with any claim by or action brought by any third party that the access and Permitted Use by the Institution or by any Authorised User in accordance with this Licence infringes the intellectual property rights of that third party.

18.3 In relation to any claim made or action brought to which Clause 18.2 applies, the Institution shall:

18.3.1 promptly give the Publisher written notice;

18.3.2 give the Publisher immediate and complete control of the defence and settlement of such claim provided that the Publisher gives the Institution reasonable security in respect of any liability the Institution may have in respect of such claim or action and any indemnity to which the Institution may be entitled under Clause 18.2; and

18.3.3 give the Publisher all reasonable assistance with the defence and settlement of such claim.

18.4 The indemnity in Clause 18.2 will not apply to the extent that the relevant claim arises as a result of any change, alteration or amendment in any way to any Licensed Material by the Institution or any Authorised User.

18.5 While the Publisher has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material the Publisher makes no representation and gives no warranty, express or implied, with regard to the information contained in or in any part of the Licensed Material including the fitness of such information or part for any purposes whatsoever.
and, subject to Clause 18.2 the Publisher accepts no liability for loss suffered or incurred by the Institution or Authorised Users as a result of their reliance on the Licensed Material.

18.6 In relation to any claim or action referred to in Clause 18.2, or any other claim by a third party of which the Institution becomes aware, that the access to or use of any Licensed Material infringes any copyright, the Publisher may at its option and expense, and on written notice to the Institution (and without prejudice to the Institution’s rights under Clause 5.6 (Withdrawing Material) or Clause 18.2 (Infringement Indemnity), remove such Licensed Material from the Licensed Material or obtain for the Institution the right to continue accessing and using such Licensed Material in accordance with this Licence.

18.7 Nothing in this Licence shall make the Institution liable for any act by any Authorised User which gives rise to a breach of the terms of this Licence, provided that the Institution did not cause or knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

18.8 Except as provided for in Clause 18.1 or 18.2, neither the Institution nor any Authorised User nor the Publisher will be liable to the other in contract or negligence or otherwise for:

18.8.1 any special, indirect, incidental, punitive or consequential damages; or

18.8.2 loss of direct or indirect profits, business, contracts, revenue or anticipated savings; or

18.8.3 for any increased costs or expenses.

18.9 No party excludes or limits its liability under this Licence for:

18.9.1 death or personal injury to the extent it results from its negligence, or that of its employees or agents in the course of their engagement; or

18.9.2 its own fraud or that of its employees or agents in the course of their engagement.

19 **FORCE MAJEURE**

19.1 Without prejudice to Clause 18.2, neither party shall have any liability under or be deemed to be in breach of this Licence for any failure to perform any term or condition of this Licence which result from circumstances beyond the reasonable control of such party, including war, strikes, flood, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities not arising from an act or omission of such party or its employees or contractors (“Force Majeure Event”).

19.2 Each party shall promptly notify the other party in writing of any Force Majeure Event which is causing delay or failure in performance of such party’s obligations under this Licence, or will or
is likely to do so, including the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Licence, and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.3 Provided it has complied with Clause 19.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Licence by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this Licence or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.4 If a Force Majeure Event prevents, hinders or delays the Affected Party’s performance of its obligations for a continuous period of more than 60 (sixty) days, the party not affected by the Force Majeure Event may terminate this Licence by giving 14 days’ written notice to the Affected Party.

20  ASSIGNMENT

20.1 Subject to Clauses 20.2 and 20.3, this Licence is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Licence, without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed.

20.2 If the Institution merges with any other Eligible Body or transfers the whole or part of its activities as an Eligible Body to another Eligible Body, the Institution or successor Institution (as the case may be), and the Authorised Users who were Authorised Users through the Institution, shall be entitled to receive the benefit of this Licence, subject to remaining bound by the obligations under this Licence:

20.2.1 in respect of the Licensed Material, for the remainder of the current Subscription Period; and

20.2.2 in respect of the Continuing Licensed Material, in perpetuity.

20.3 If the Publisher is subject to any merger or acquisition, or if the Publisher or any licensor or other owner of any rights in any Licensed Material relevant to the licences or rights granted under this Licence transfers or grants any rights inconsistent with the Institution’s rights under this Licence, this Licence shall continue in effect, and the Publisher shall procure that any such transfer or grant of rights is subject to the Institution’s rights under this Licence or that the Institution is compensated in such amount as may be fair and reasonable in the circumstances in respect of the loss of any such rights which cannot be preserved for the Institution.
20.4 In any assignment to which the other party has given consent under Clause 20.1, the assigning party shall procure and ensure that the assignee shall assume all rights and obligations of the assigning party under this Licence and agrees to be bound to all the terms of this Licence.

21 GOVERNING LAW AND JURISDICTION

21.1 This Licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

21.2 The parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the courts of England and Wales.

22 DISPUTE RESOLUTION

22.1 If any dispute arises out of or in connection with this Licence or the performance, validity or enforceability of it ("Dispute"), the parties shall attempt to settle it by negotiation. To this end they shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between the Managing Director (or equivalent position) of the Publisher, or its nominated representative, and the current Vice Chancellor (or equivalent post) of the Institution, or their nominated representative.

22.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in Clause 22.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

22.3 Where the parties agree that a Dispute would best be resolved by the decision of an independent expert, they will use reasonable efforts to agree upon the nature of the expert required, on the appointment of the expert and, with the expert, the terms of his appointment.

22.4 Any person to whom a reference is made under Clause 22.3 shall act as expert and not as an arbitrator and his decision (which shall be given by the expert in writing and shall state the reasons for the decision) shall be final and binding on the parties except in the case of manifest error or fraud.

22.5 Each party shall provide such expert with such information and documentation as the expert may reasonably require for the purposes of forming his or her decision.
22.6 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

22.7 Subject to Clause 22.1, except where urgent interim measures are sought, and 22.4, nothing in this Clause 22 shall prevent either party commencing or continuing court proceedings in relation to the Dispute under Clause 21.

23 **NOTICES**

23.1 Any notice given to a party under or in connection with this Licence shall be in writing and shall be delivered by hand or email, or by pre-paid first-class post or other next Working Day delivery service at its address set out below:

23.1.1 if to the Publisher: Scott Delman
   Director of Publications
   Association for Computing Machinery
   1601 Broadway
   10th Floor
   New York, New York 10019 USA
   scott.delman@hq.acm.org

23.1.2 if to the Institution: as stated in the Subscription Order and Acceptance Form

23.2 Any notice or communication shall be deemed to have been received:

23.2.1 if delivered by hand, on signature of a delivery receipt; or

23.2.2 if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

23.2.3 if sent by email, on delivery of the email (as evidenced by a delivery receipt) if delivered during working hours on a Working Day, and otherwise on the first Working Day following delivery; or

23.2.4 if sent via the Jisc Ordering Platform (if any), on delivery of the Confirmation Notice.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
24 **PREVENTION OF FRAUD AND CORRUPTION**

24.1 Each party represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or contractors have at any time prior to the Start Date:

24.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

24.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

24.2 Neither party during the term of this Licence shall offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing any act in relation to the obtaining or execution of this Licence or for showing or refraining from showing favour or disfavour to any person in relation to this Licence.

24.3 Each party shall take all reasonable steps in accordance with good industry practice to prevent fraud by its employees, and the party (including its shareholders, members and directors), in connection with this Licence and shall notify the other party in writing immediately if it has reason to suspect that any fraud is occurring or is likely to occur.

24.4 If a party or its staff engages in conduct prohibited by Clause 24.1.1 or commits fraud in relation to this Licence, the other shall be entitled to:

24.4.1 terminate this Licence and recover from the first party the amount of any loss suffered resulting from the termination, including the cost reasonably incurred by making other arrangements for the provision of access to the Licensed Material and any additional expenditure incurred by the other party throughout the remainder of this Licence; and

24.4.2 recover in full from the first party any other loss sustained in consequence of any breach of this clause.

25 **THIRD PARTY RIGHTS**

25.1 Except as expressly provided elsewhere in this Licence, a person who is not a party to this Licence is not intended to have any rights to, and shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.

25.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Licence are not subject to the consent of any other person, and a person who is not a party to this Licence shall not be entitled to require its consent to any amendment.
26 **GENERAL**

26.1 This Licence its Schedules and Annexes constitute the entire agreement between the parties and supersede all prior communications, promises, assurances, warranties, representations and understandings and agreements (whether written or oral) relating to its subject matter, but without prejudice to any continuing rights and obligations arising under any prior formal licence agreements between the Institution and the Publisher.

26.2 This Licence may not be amended or modified except by agreement of both parties in writing.

26.3 Nothing in this Licence shall be construed to create any relationship of partnership, agency or employment between any of the parties.

26.4 If any provision or part-provision of this Licence is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Licence.

26.5 The rights of the parties arising under this Licence shall not be waived except in writing. Any waiver of any of a party’s rights under this Licence or of any breach of this Licence by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Licence shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
LICENCE SCHEDULE 1

FEES

The offer:

• All research articles and conference proceedings with a corresponding author from the participating institution are made OA upon publication, with the corresponding author being given the option of selecting a CC-BY license for article sharing and reuse.

• The participating institutions retain access to all subscription content in the ACM Digital Library (DL), including research articles and conference proceedings which are not OA, archived content, and non-peer-reviewed content.

• The participating institution is eligible for additional benefits, including:

  o Localized branding signifying OA support
  o Provision of institution-specific usage statistics
  o Access to an API and TDM access to the historical archive
  o Automatic deposit of articles and metadata publishing by affiliated authors to the campus repository and/or the repository required by a funding agency.
  o Discounts off other paid ACM products or services

Pricing

Pricing for ACM OPEN is based on yearly relevant article output, averaged over the previous three years.

Annual Pricing levels:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Average Article Output Range</th>
<th>Pricing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>1</td>
<td>75+</td>
<td>$30,000</td>
</tr>
<tr>
<td>2</td>
<td>60 – 74</td>
<td>$30,000</td>
</tr>
<tr>
<td>3</td>
<td>40 – 59</td>
<td>$30,000</td>
</tr>
<tr>
<td>4</td>
<td>30 – 39</td>
<td>$25,000</td>
</tr>
<tr>
<td>5</td>
<td>20 – 29</td>
<td>$15,000</td>
</tr>
<tr>
<td>Tier</td>
<td>Range</td>
<td>Price 2022</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>------------</td>
</tr>
<tr>
<td>6</td>
<td>16–19</td>
<td>$25,000</td>
</tr>
<tr>
<td>7</td>
<td>12–15</td>
<td>$17,500</td>
</tr>
<tr>
<td>8</td>
<td>8–11</td>
<td>$12,500</td>
</tr>
<tr>
<td>9</td>
<td>4–7</td>
<td>$10,000</td>
</tr>
<tr>
<td>10</td>
<td>0–3</td>
<td>$8,000*</td>
</tr>
</tbody>
</table>

* Tier 10 pricing decreases as the portion of content published OA increases; see the Transition to OA section below.

**Pricing parameters**

- Institutions are expected to indicate a long-term commitment to this model by entering into multi-year agreements.
  - The minimum agreement term is three years; however, longer agreements are available (potentially with discounts)
  - An institution’s tier is set at the start of the multi-year agreement, and does not change throughout the term of the agreement.
  - Institutions that face a significant cost increase may negotiate a pricing ramp-up period over the course of the multi-year agreement (provided the agreement is a minimum of three years or longer).
- It is understood that tiers may need to evolve over time:
  - Prices may increase incrementally due to inflation; multi-year agreements would guarantee a fixed rate but once expired, may be subject to renewal increases.
  - Article Output Ranges may change over time to keep the tiers properly balanced.

- Institutions are free to choose to participate in the ACM OPEN model or continue with the traditional subscription (read only) model. Articles published by authors affiliated with institutions that choose the traditional subscription model will not be made OA, unless authors chose to pay APCs to unlock articles by ACM’s Hybrid Open Access option or another Open Access option is offered by ACM. These articles will only be made available to institutions with either a traditional subscription or a commitment to ACM OPEN.

**Transition to OA**

**Milestones**

The end goal of ACM OPEN 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 in the ACM Digital Library as Open Access content increases. As this percentage reaches certain thresholds, pricing will be decreased for those institutions that publish very little or no peer-reviewed research articles but wish to continue having access to all the contents of the ACM Digital Library. For this group (which is categorized in the pricing chart above as Tier 10 institutions) pricing would gradually be reduced to a base level (~$2,500) that shall be fixed as the minimum annual licensing payment to be paid by institutions wishing to have access to all the contents of the DL, including the full-text archive and all non-peer reviewed research articles. The following details approximate pricing for the long tail Tier 10 institutions as certain OA thresholds are reached:

- 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:
  - All future peer-reviewed research content in the ACM Digital Library is made 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.
  - Corresponding authors from institutions that do not participate in ACM OPEN will be required to pay an APC to publish in the ACM Digital Library to make their article OA.

Please note that all these milestones represent percentages of ACM’s total global research output, thus they are fully dependent on the commitment across the global academic community to Open Access. As a result, this means that the model must be opt-in for all institutions and cannot be made mandatory until the 80% fully flipped milestone is reached (see above).
Transaction Management Charge (payable if the Institution has elected to pay its Licence Fee via Jisc Collections):

<table>
<thead>
<tr>
<th>Licence Fee payable by Institution (p/a) exc VAT*</th>
<th>Transaction Management Charge (p/a) exc VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;£1,000</td>
<td>£100</td>
</tr>
<tr>
<td>£1,000 to £10,000</td>
<td>£150</td>
</tr>
<tr>
<td>&gt;£10,000</td>
<td>£200</td>
</tr>
</tbody>
</table>

*USD equivalent at time of ordering.
LICENCE SCHEDULE 2

LICENSED TITLES

A complete list of Licensed Titles can be found here:

The Publisher agrees to implement the following industry standards to enhance access and use of the Licensed Material and shall:

(a) provide the Institution with usage statistics compliant with the most recent release of the COUNTER Code of Practice (www.projectcounter.org), organised by month, every three months;

(b) implement the Standardized Usage Statistics Harvesting Initiative (SUSHI) protocol (www.niso.org/workrooms/sushi);

(c) archive the Licensed Material to ensure that it is preserved for future scholarship in at least one of the following archiving solutions: Portico, Clockss or Lockss, and inform the Institution in which of the archiving solutions the Licensed Material may be found;

(d) subject to paragraph 1(c), provide the means for the Institution to continue to access the Licensed Material via an archiving service for use only in the event that the Publisher ceases trading or any of the provisions of Clauses 15.3 or 15.4 apply to the Publisher, and inform the Institution where the Licensed Material has been archived, and provide the Institution with sufficient authority and information to enable the Institution to access such Licensed Material for the purposes of Clause 3.1.9 (Access where Publisher fails to provide it);

(e) use all reasonable efforts to meet the W3C standards (www.w3.org/WAI/Resources/#in) to ensure that the Licensed Material is accessible to all Authorised Users;

(f) use all reasonable efforts to meet the Open URL Standard (https://www.niso.org/publications/z3988-2004-r2010) to ensure that Authorised Users can search for and find the Licensed Titles and Licensed Content;

(g) use all reasonable efforts to keep to the Code of Practice of Project Transfer (www.projecttransfer.org) to ensure that journal content remains easily accessible by the Institution and its Authorised Users when there is a transfer of material between parties, and to ensure that the transfer process occurs with minimum disruption;

(h) provide link-resolver vendors and other library systems suppliers quarterly with full details of the Licensed Material in accordance with the most current KBART standard (http://www.uksg.org/kbart/s5/guidelines); and also with related data of (i) the first and
final year, volume, and issue and (ii) the algorithm or syntax for constructing an article-level link from an article’s metadata within the Licensed Material;

(i) provide relevant information to third party discovery tools (such as Scopus, Summon), in accordance with NISO recommendations (https://groups.niso.org/apps/group_public/download.php/14820/rp-19-2014_ODI.pdf); and

(j) meet any other reasonable standards that are generally agreed for adoption amongst the United Kingdom Higher Education Institutions during the Term.

2 The Publisher shall provide the Institution with:

(a) the digital object identifier (DOI) relating to the Licensed Titles and Licensed Content, at the title, journal, and article, and chapter levels promptly following the Start Date, and

(b) any updates or amendments thereto, at least once every three months thereafter (and otherwise promptly on request by the Institution).

3 The Publisher shall during the Subscription Period collect, and promptly provide the Institution with, all other statistics and other information reasonably requested by the Institution in relation to the activities of Authorised Users under this Licence.

* urls and web addresses are for guidance and may change
LICENCE SCHEDULE 4
SERVICE LEVELS and SERVICE LEVEL REQUIREMENTS (if applicable)

1 Definitions:

“Scheduled Maintenance” means the non-availability of the Licensed Material and/or the Publisher Platform which is scheduled by the Publisher outside Access Support Hours at least a week in advance and notified to the Institution at least a week in advance, for the purpose of carrying out maintenance actions that are aimed at the prevention of unscheduled breakdown or downtime.

2 The Publisher Platform and Licensed Material will be available 24 hours a day, 365 days a year with the exception of Scheduled Maintenance and subject to Paragraphs 4 and 6 below.

3 For the Publisher Platform to be considered available the following functionality should be available on the platform:

<table>
<thead>
<tr>
<th>Service Component</th>
<th>Functionality Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>HTML availability</td>
<td>Ability to access the HTML version of an article</td>
</tr>
<tr>
<td>PDF Download</td>
<td>Ability to download the PDF version of an article</td>
</tr>
</tbody>
</table>

4 Service components as outlined above will each be available for at least 99.00% of scheduled uptime.

5 Scheduled Maintenance time, for each service component, will be less than 20.8 hours over any consecutive 12 month period.

6 The Publisher reserves the right to restrict access to the Licensed Material and its networks in order to maintain the stability and security of both. Any restrictions under this Paragraph 6 shall be limited to an individual Authorised User or a restricted sub-set of Authorised Users for a maximum period of 4 hours. Upon being aware of any activity affecting the stability or security of the Licensed Material and its networks the Publisher shall inform the Institution of the restriction immediately.
LICENCE ANNEX 1 – OFFER

This Offer is identical to the offer included in Error! Reference source not found. of the ACM Digital Library Agreement between ACM and Jisc Collections dated 22nd January 2020.

The offer:

- All research articles and conference proceedings with a corresponding author from the participating institution are made OA upon publication, with the corresponding author being given the option of selecting a CC-BY license for article sharing and reuse.

- The participating institutions retain access to all subscription content in the ACM Digital Library (DL), including research articles and conference proceedings which are not OA, archived content, and non-peer-reviewed content.

- The participating institution is eligible for additional benefits, including:
  - Localized branding signifying OA support
  - Provision of institution-specific usage statistics
  - Access to an API and TDM access to the historical archive
  - Automatic deposit of articles and metadata publishing by affiliated authors to the campus repository and/or the repository required by a funding agency.
  - Discounts off other paid ACM products or services

Pricing

Pricing for ACM OPEN is based on yearly relevant article output, averaged over the previous three years.

Annual Pricing levels:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Average Article Output Range</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>75+</td>
<td>$30,000</td>
<td>$60,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>2</td>
<td>60 – 74</td>
<td>$30,000</td>
<td>$60,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>3</td>
<td>40 – 59</td>
<td>$30,000</td>
<td>$45,000</td>
<td>$60,000</td>
</tr>
<tr>
<td>4</td>
<td>30 – 39</td>
<td>$25,000</td>
<td>$35,000</td>
<td>$45,000</td>
</tr>
<tr>
<td>5</td>
<td>20 – 29</td>
<td>$15,000</td>
<td>$25,000</td>
<td>$35,000</td>
</tr>
<tr>
<td>6</td>
<td>16 – 19</td>
<td>$25,000</td>
<td>$25,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>7</td>
<td>12 – 15</td>
<td>$17,500</td>
<td>$17,500</td>
<td>$17,500</td>
</tr>
<tr>
<td>---</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>8</td>
<td>8 – 11</td>
<td>$12,500</td>
<td>$12,500</td>
<td>$12,500</td>
</tr>
<tr>
<td>9</td>
<td>4 – 7</td>
<td>$10,000</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>10</td>
<td>0 – 3</td>
<td>$8,000*</td>
<td>$8,000*</td>
<td>$8,000*</td>
</tr>
</tbody>
</table>

* Tier 10 pricing decreases as the portion of content published OA increases; see the Transition to OA section below.

**Pricing parameters**

- Institutions are expected to indicate a long-term commitment to this model by entering into multi-year agreements.
  - The minimum agreement term is three years; however, longer agreements are available (potentially with discounts)
  - An institution’s tier is set at the start of the multi-year agreement, and does not change throughout the term of the agreement.
  - Institutions that face a significant cost increase may negotiate a pricing ramp-up period over the course of the multi-year agreement (provided the agreement is a minimum of three years or longer).

- It is understood that tiers may need to evolve over time:
  - Prices may increase incrementally due to inflation; multi-year agreements would guarantee a fixed rate but once expired, may be subject to renewal increases.
  - Article Output Ranges may change over time to keep the tiers properly balanced.

- Institutions are free to choose to participate in the ACM OPEN model or continue with the traditional subscription (read only) model. Articles published by authors affiliated with institutions that choose the traditional subscription model will not be made OA, unless authors chose to pay APCs to unlock articles by ACM’s Hybrid Open Access option or another Open Access option is offered by ACM. These articles will only be made available to institutions with either a traditional subscription or a commitment to ACM OPEN.

**Transition to OA**

**Milestones**

The end goal of ACM OPEN 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 in the ACM Digital Library
as Open Access content increases. As this percentage reaches certain thresholds, pricing will be decreased for those institutions that publish very little or no peer-reviewed research articles but wish to continue having access to all the contents of the ACM Digital Library. For this group (which is categorized in the pricing chart above as Tier 10 institutions) pricing would gradually be reduced to a base level (~$2,500) that shall be fixed as the minimum annual licensing payment to be paid by institutions wishing to have access to all the contents of the DL, including the full-text archive and all non-peer reviewed research articles. The following details approximate pricing for the long tail Tier 10 institutions as certain OA thresholds are reached:

- 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:
  - All future peer-reviewed research content in the ACM Digital Library is made 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.
  - Corresponding authors from institutions that do not participate in ACM OPEN will be required to pay an APC to publish in the ACM Digital Library to make their article OA.

Please note that all these milestones represent percentages of ACM’s total global research output, thus they are fully dependent on the commitment across the global academic community to Open Access. As a result, this means that the model must be opt-in for all institutions and cannot be made mandatory until the 80% fully flipped milestone is reached (see above).
LICENCE ANNEX 2 – SUBSCRIPTION ORDER AND ACCEPTANCE FORM (EXAMPLE)

Jisc Collections journals order and licence acceptance

☐ I am authorised by my institution to make this order. By clicking on the 1 Confirm and Place Order button (on behalf of my Institution) acknowledge that I have read and understood the Licence(s) listed below and agree to be bound by the terms and conditions of such Licences. I agree that my Institution will pay the subscription fee(s) due from the invoice(s) generated from this order no later than thirty (30) days after being issued by Jisc Collections or the publisher of the resource.

☐ By clicking on the 1 Confirm and Place Order button (on behalf of my Institution) acknowledge that I have checked the Licensed Material in the Schedule of each Licence(s) listed below and agree that this is correct at the time of accepting the licence(s).

The following licence(s) is/are available for acceptance:

Journal Licence.doc

It should be NOTED that by clicking on the 1 Confirm and Place Order button, your Institution is legally bound to pay for each Licence listed above the full total relevant fee to their Institution (if and when demanded) from the start date until the expiry date of such Licences as set out in this Form.”

1 Confirm and Place Order