



Association for
Computing Machinery

Advancing Computing as a Science & Profession

Client #

Texas A&M Contract #C2023-10164

April 26, 2023

2023-2027 ACM Digital Library Tiered-Band 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

Texas A&M University (“Texas A&M”), on behalf of the institutions detailed in Schedule C of this Agreement, each a member of The Texas A&M University System (“A&M System”) and each an agency of the State of Texas, collectively “the Consortium” (each individually as the “University” and collectively as the “Universities”).

ACM and Consortium (or University) may be individually referred to as “Party” or collectively referred to as “Parties.”



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 (as defined below) by allowing them to publish accepted Eligible Articles (as defined below) in ACM's peer-reviewed scholarly publications on an open access basis with no fee charged to them while also offering them the option to retain copyright in their work.

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

This Agreement shall also provide Authorized Users (as defined below) 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 Term (as defined below) of this Agreement.

II. DEFINITIONS

1. **Authorized Users.** The following categories of users of the Licensed Materials are recognized as Authorized Users: persons affiliated with the University as students, faculty, registered users or employees, and persons physically present in the University's campus facilities.
2. **Affiliated Author(s).** Authors who correctly list themselves as affiliated with the University during the article submission process. Authors shall be deemed affiliated with the University if the email address they provide to ACM during the article submission process is part of the list of domain names provided by the University or shall be identified through other means as agreed between the University and ACM.
3. **Corresponding Author(s).** Authors who are either sole authors or co-authors of articles accepted by ACM for publication, who are designated by their co-authors to serve as the corresponding author for the accepted article. A corresponding author has the authority to represent their co-authors in all publication related matters with ACM and is responsible for the completion of the ACM rights assignment process.
4. **Affiliated Corresponding Authors.** Affiliated Authors who are Corresponding Authors.
5. **Eligible Articles.** Articles in the ACM Digital Library designated as research articles by ACM at time of publication, including articles commonly referred to as research articles, review articles and conference or proceedings papers, and any other article types in the Licensed Materials for which ACM would otherwise charge an Article Processing Charge ("APC") during the Term of this Agreement.
6. **Licensed Materials.** The complete contents of the ACM Digital Library (DL), including ACM's entire publication portfolio of journals, magazines, conference proceedings, newsletters, websites, and multimedia files, whose contents are listed at https://dl.acm.org/contents_dl.cfm, and the additional content made available to University 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 Eligible 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 Effective Date (as defined below) or accepted for publication prior to the expiration or termination date of this Agreement.
3. ACM shall provide all Affiliated Corresponding Authors with the option to select one of the two rights assignment options of their choice: the ACM License option where all individual co-authors of the published article retain the copyright to their article and provide ACM with an exclusive license to publish their article; or the ACM Permission Release option which provides ACM with a non-exclusive license to publish their article, and 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 University'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 Tiered Band Open Access (OA) Model Pilot on an annual basis, and to a collaborative process for analyzing the data. Specifically, ACM will provide the information below (Section 3, Article 6.i-ii and Section 3, Article 6a-h), including both annual and cumulative data, about the pilot years **2023 by April 1 of 2024; year 2024 by April 1 of 2025; year 2025 by April 1 of 2026; and year 2027 by April 1 of 2028:**
 - i. the number of Open Access Articles published by ACM where the Corresponding or non-Corresponding Author is affiliated with the University; and
 - ii. details of all the Open Access Articles in the material by the Affiliated Author such as title, author name and Digital Object Identifier including funder information.

By Consortium and by University:

- a) Adoption by Consortium: number of institutions that have signed on to the pilot, by tiered band.
- b) Progress towards reducing costs for Tier 10 Universities according to the schedule laid out by ACM (schedule B).
- c) Open licensing: what sort of author copyright licenses have been selected, in what number and proportion.
- d) Copyright retention: number of authors who have chosen to retain copyright and number who have chosen to grant copyright to ACM.
- e) Volume of OA: Proportion of OA articles overall and from Universities involved in the 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 University publishing volume: publishing output by University in pilot, including Affiliated Corresponding Authors as well as all Affiliated Authors.
- h) Other metrics as mutually identified and agreed upon between University and ACM.



At least once per year following the release of this data, pilot Universities 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 Tiered-Band 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 Tiered-Band 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 Tiered-Band Open Access Pilot model by Consortium, 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 Tiered-Band 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 Tiered-Band Open Access Model.
8. **Reversion to Subscription Agreement.** The University will have the option upon termination of the pilot to return to a subscription model at a cost that is equivalent to the University’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. A written subscription agreement must be executed by and between the authorized representatives of each Party should the Parties agree to a return to a subscription model for access to ACM services.

IV. READ AND PERPETUAL ACCESS TERMS

1. This Agreement grants the University and all Authorized Users online access to and use of the following Licensed Materials:
 - a. Online access to the complete contents of the ACM Digital Library (DL), including ACM’s entire publication portfolio of journals, magazines, conference proceedings, newsletters, websites, and multimedia files. Access to the ACM Books Collections (<https://dl.acm.org/acmbooks>) is not included in this Agreement but is available for purchase via separate agreement. An up-to-date list of the contents of the ACM Digital Library is posted at <https://dl.acm.org/about/content>.
 - b. Online access to all ACM Affiliated Publications, including approximately 70 journals, proceedings, and bulletins during the Term of this Agreement.
 - c. Online access to the ACM Guide to Computing Literature, ACM’s bibliographic database and abstracting & indexing service, which is integrated into the ACM Digital Library platform.
 - d. **Historical Archive.** ACM shall provide complimentary access to the complete archive of all ACM Publications dating back to each publication’s first issue or volume.
 - e. **Perpetual Access Rights.** The University shall have perpetual access rights to all content in the ACM Digital Library published during the Term of this Agreement as well as all ACM DL and other ACM content subscribed to by the University in previous Agreements (“Perpetual Access Content”).
2. **License.** ACM grants to the University and Authorized Users the non-exclusive right to search, browse, view, print, copy, and download the Licensed Materials for research, teaching, private study, and other non-commercial purposes. University may not, and may not permit Authorized Users to, redistribute or make available access to the Licensed Materials for any commercial purposes unless approved by ACM in writing. The Licensed Materials shall not be made available to anyone who is not an Authorized User except as provided for elsewhere in this Agreement.



3. **Access.** Global access will be provided to the University based on IP Verification, unless otherwise agreed between the Parties. The University will provide ACM with a complete list of current IP Addresses.
4. **Alterations.** The University may not, and may not permit any Authorized Users to, modify, adapt, transform, translate, or create any derivative work based on any of the materials in the Licensed Materials except as provided for in the licenses governing those materials. Any copyright notices, or other notices appearing in the Licensed Materials, may not be removed, obscured, or modified in any way. All rights, title, and interest in the contents of the Licensed Materials are the recognized property of the respective copyright holders and no ownership rights, title, or interest are transferred to the University as a part of this Agreement.
5. **Redistribution.** The University and Authorized Users may not republish individual articles contained within the Licensed Materials or post them on other servers, or redistribute them to lists, except in accordance with the license terms under which the articles are published. No wholesale duplication of all or substantial sections of the Licensed Materials is permitted under the terms of this Agreement, except to provide for the text and data mining access outlined in Section 4, Article 6. Furthermore, ACM reserves the right to suspend or terminate this Agreement in accordance with the Term and Termination clause below if systematic downloading of the Licensed Materials is discovered. Notwithstanding the foregoing, University is afforded text and data mining rights outlined in Section 4, Article 6.
6. **Computational Access.** Authorized Users may use the Licensed Materials to perform and engage in text and/or data mining activities (“TDM”) for academic research, scholarship, and other educational purposes and may utilize and share the results of text and/or data mining (“TDM Output”) with research collaborators, and in their scholarly work and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials. Authorized users may include TDM Output as part of original works of scholarship, e.g. articles that describe, analyze, and interpret research, presentations at academic conferences, and inclusion in an academic thesis.

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

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

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

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

7. **Scholarly Sharing.** Authorized Users may transmit to a third-party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use but in no case for re-sale. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User’s own scientific, scholarly and educational works. University and Authorized Users may use metadata and abstracts in lists of publications on faculty and institutional web pages.



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

All Affiliated Authors whose work ("Content") is accepted for publication within the Licensed Materials on an open access basis shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including 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), in non-commercial repositories and to comply with all grant or institutional requirements associated with the Content.

Affiliated Authors whose Content is accepted for publication within the Licensed Materials and whose articles have not been published on an open access basis shall retain the non-exclusive, irrevocable, royalty-free right to use their Content for scholarly and educational purposes, including 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), in non-commercial repositories and to comply with all grant or institutional requirements associated with the Content.

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

9. **Inter-Library Loans.** Facsimile images that are exact representations of the print pages or of printouts from the electronic database may be provided for interlibrary loan in accordance with Section 108 of the U.S. Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means and distributed in paper, fax, or digital form.
10. **Course Reserves.** Libraries may include copies of digital content from the Licensed Materials in local electronic course reserve systems limited to use of Authorized Users of current classes.
11. **No Diminution of Rights.** Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be interpreted to diminish the rights and privileges of the University or Authorized Users with respect to any of the Licensed Materials, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under 17 U.S.C. §107. Use of content within the Licensed Materials that is made available under a Creative Commons or other open license shall be governed by the provisions of that license.
12. **Post-Cancellation Perpetual Access.** Upon termination or expiration of this Agreement, and upon written request from the University, ACM will provide the University and its Authorized Users with access to the full text of the Perpetual Access Content as granted under Section 4(1)(e) either through the ACM Digital Library ("ACM DL") platform (<http://dl.acm.org>) or by engaging the services of third-party trusted archives (such as Portico) and/or participating in collaborative archiving endeavors to exercise its perpetual use rights. University requesting Post-Cancellation Access (PCA) services agrees to provide ACM with a complete list of current IP Addresses registered for its institution at the time subscription access is terminated and PCA services are activated, and may be changed or updated by the University from time to time. The full text of the electronic files may not be resold at any time; this remains in effect in perpetuity. Continuing post cancellation access is subject to the terms and conditions of use in this Agreement. ACM shall also provide to the University upon request, or the University may create, one (1) copy of the entire set of Perpetual Access Content to be maintained as an archival copy. The archival copy from ACM shall be provided without any Digital Rights Management (DRM) in a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only. In the event ACM discontinues or suspends selling or licensing the materials licensed under this Agreement, the University may use such archives of the Perpetual Access Content under the same terms as this Agreement. If the University has a backup copy of



the materials licensed under this Agreement the backup copy may be used as an archival copy.

13. **Quality of Service.** ACM shall use commercially reasonable efforts to ensure that the ACM's server or servers have sufficient capacity and rate of connectivity to provide the Universities and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the University'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 Universities, and (2) in ways and at times that minimize inconvenience to the Universities and its Authorized Users, regardless of when notice has been given.
14. **Accessibility Requirements.** ACM warrants that the materials licensed under this Agreement comply with governmental disabilities laws and regulations, and conform to the accessibility requirements of Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.0 at level AA. ACM agrees to promptly respond to and resolve any complaint regarding accessibility of materials licensed under this Agreement.

V. TERM AND TERMINATION

1. **Term.** The term of this Agreement shall be five (5) years, commencing on January 1, 2023 (the "Effective Date") and extending through **December 31, 2027** (the "Term").
2. **Early Termination for Financial Hardship.** If sufficient funds are not provided, allocated, or allotted in future budgets of the University for library acquisitions to permit University, in the exercise of its reasonable administrative discretion, to continue this Agreement, the University 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 University 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 or expiration 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. The University will not be entitled to any refund or prorated portion of the current year's fees unless the University terminates this Agreement for breach in accordance with Section V(4) below.
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 this Agreement without further notice. If this Agreement is terminated for breach, ACM may terminate access to the Licensed Materials subject to Section 4, Article 12. Authorized copies of the Licensed Materials made by Authorized Users may be retained for educational, research and scholarly purposes and used subject to the terms of this Agreement.

VI. FEES

1. The 2023-2027 Tiered-Band Open Access Pilot Agreement fee shall be **\$39,744 the first year (2023), \$54,744 the second year (2024), \$59,744 the third year (2025), \$64,744 the fourth year (2026) and**



\$69,744 the fifth year (2027). These fees are ACMs publicly accessible Tiered-Band Open Access Pilot Agreement Publish + Read Licensing Tier-based Fee structure, as stated on Schedule A below. Payment will be delivered by the University within net 30 days of receipt of a properly prepared and submitted invoice. University shall not receive more than one invoice in a calendar month.

2. In addition to reporting requirements 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 National Information Standards Organization's Consensus Principles on Users' Digital Privacy in Library, Publisher, and Software-Provider Systems (NISO Privacy Principles) available at <https://groups.niso.org/higherlogic/ws/public/download/16064/NISO%20Privacy%20Principles.pdf>. As a minimum, ACM shall not provide University's personally identifiable information in any form to any third party without the University's 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 University or its Authorized Users without the University'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 of patterns of use, ACM shall provide the University with adequate prior written notice as soon as is practicable, so that University or Authorized Users may seek protective orders or other remedies. ACM will notify University and Authorized Users as soon as is practicable if ACM's systems are breached and the confidentiality of personally identifiable information is compromised.
2. **Warranties.** ACM warrants that it has copyright ownership and/or permission to use all of the materials in the Licensed Materials and to extend the licenses provided herein. ACM further warrants that use of the Licensed Materials will not infringe the intellectual property rights of any third party. ACM shall indemnify and hold harmless Consortium from and against any third-party claims, damages, liabilities, expense or loss asserted against Consortium arising out of (i) an allegation that the Licensed Materials infringe upon or violate any copyright, patent, trademark, or other proprietary or intellectual property rights of any third party ("**Infringement Claim**"), or (ii) ACM's breach of any representation or warranty contained herein. If the Licensed Materials become or are likely to become the subject of an Infringement Claim, then ACM may, at its expense and option, either: (a) replace or modify the Licensed Materials to make them non-infringing, while maintaining equivalent functionality; (b) procure for Consortium the right to continue using the Licensed Materials pursuant to this Agreement; or (c) terminate this Agreement and provide a refund to Consortium for any pre-paid fees.
3. **Assignment.** This Agreement may not be assigned by either Party to any other person or organization, nor may either Party sub-contract any of its obligations, without the prior written consent of the other Party, for which consent shall not be unreasonably withheld.

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

[SIGNATURES FOLLOW ON NEXT PAGE]



**Association for
Computing Machinery**

Advancing Computing as a Science & Profession

The Parties hereby agree to the above terms,

Signatures

On behalf of

Texas A&M University

DocuSigned by:
Dean K. Endler
6BED0370913B466...

Signature

Dean K. Endler

Name

University Contracts Officer

Title

4/26/2023 | 3:48:20 CDT

Date

Association for Computing Machinery

DocuSigned by:
Scott Delman
A022041F77DB47C...

Signature

Scott Delman

Name

Director of Publications

Title

4/26/2023 | 2:18:46 PDT

Date



Schedule A

The following tier-based pricing schedule shall remain in effect through **December 31, 2027**. Tiering is based on the average article output for each University from the three most recent complete calendar years (**2019-2021**) prior to the execution of this Agreement.

For the purposes of this Agreement, each University shall have individually assigned tiers, which are based on the average articles published annually from **2019-2021**. The tier level and annual pricing for each University shall be frozen as outlined below for the five-year Term of this Agreement, subject to annual reductions outlined in Schedule B. Six months prior to the completion of the five-year Term, ACM shall provide the University with the new tier-based pricing schedule along with detailed article output data and an updated three-year article output average from which pricing will be determined for a new Agreement (if any).

Tier Pricing in Effect until December 31, 2027

<u>Tier Level</u>	<u>Institution</u>	<u>Institution Tier by Article Output</u>	<u>Tier Pricing</u>	<u>5-Year Ramp-Up Pricing</u>
1		75+		
2		60-74		
3	Texas A&M University (College Station)	40-59	See 5-Year Ramp Up Pricing	Year 1 (2023): \$20,000 / Year 2 (2024): \$35,000 / Year 3 (2025): \$40,000 / Year 4 (2026): \$45,000 / Year 5 (2027): \$50,000
4		30-39		
5		20-29		
6		16-19		
7		12-15		
8		8-11		
9		4-7		
10	Texas A&M University-San Antonio	0-3	\$7,000/Year	Fixed for the agreement duration
10	Texas A&M University-Commerce	0-3	\$6,372/Year	Fixed for the agreement duration
10	Texas A&M University-Corpus Christi	0-3	\$6,372/Year	Fixed for the agreement duration



Schedule B

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

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



Association for
Computing Machinery

Advancing Computing as a Science & Profession

Schedule C

Texas A&M University (located in College Station, Galveston, and Qatar)
Texas A&M University-Commerce
Texas A&M University-Corpus Christi
Texas A&M University-San Antonio

ADDENDUM

This Addendum amends and supplements the 2023-2027 ACM Digital Library Tiered-Band Open Access Model Pilot Agreement Terms and Conditions (“Agreement”) between Texas A&M University (“Texas A&M”) on behalf of the institutions detailed in Schedule C of the Agreement, each a member of The Texas A&M University System (“A&M System”) and each an agency of the State of Texas (“Consortium”) (each individually as “University” and collectively as “Universities”), and Association for Computing Machinery, a New York Corporation, with offices at 1601 Broadway, 10th Floor, New York, NY 10019, (“ACM”). All terms used herein and not otherwise defined shall have the same meaning as in the Agreement. This Addendum is incorporated into the Agreement and in the event of any conflict in the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control. Consortium and ACM may be individually referred to as “Party” or collectively referred to as “Parties.” All Parties agree that the Agreement is hereby amended and supplemented to add the following language to the Agreement:

Compliance with Laws. Each Party hereto shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.

Prompt Pay. Each University’s payment shall be made in accordance with Chapter 2251, *Texas Government Code* (“the Texas Prompt Payment Act”), which shall govern remittance of payment and remedies for late payment and non-payment.

State Auditor’s Office. ACM understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. ACM agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. ACM will include this provision in all contracts with permitted subcontractors.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, ACM agrees that any payments owing to ACM under this Agreement may be applied directly toward certain debts or delinquencies that ACM owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Loss of Funding. Performance by each University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Consortium will issue written notice to ACM and Consortium or University may terminate its participation in this Agreement without further duty or obligation hereunder. ACM acknowledges that appropriation of funds is beyond the control of University. In the event of a termination or cancellation under this Section, Consortium will not be liable to ACM for any damages that are caused or associated with such termination or cancellation.

Public Information. ACM acknowledges that Consortium is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Consortium’s written request, ACM will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of Consortium in a non-proprietary format acceptable to Consortium that is accessible by the public. ACM acknowledges that Consortium may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Agreement and ACM agrees that this Agreement can be terminated if ACM knowingly or intentionally fails to comply with a requirement of that subchapter.

Dispute Resolution. To the extent that Chapter 2260, *Texas Government Code* is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Consortium and ACM to attempt to resolve any claim for breach of contract made by ACM that cannot be resolved in the ordinary course of

business. ACM shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Consortium, who shall examine ACM's claim and any counterclaim and negotiate with ACM in an effort to resolve the claim. This provision and nothing in this Agreement waives Consortium's sovereign immunity to suit or liability, and Consortium has not waived its right to seek redress in the courts.

Access by Individuals with Disabilities. ACM represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Consortium under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*) (the "EIR Accessibility Warranty"). ACM shall provide Consortium with a Voluntary Product Accessibility Template ("VPAT") or similarly-formatted document attesting to the accessible features and capabilities of the EIRs. Consortium may test the EIR to ensure the accuracy of the VPAT response regarding conformance with the EIR Accessibility Warranty. If ACM becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, ACM shall, at no cost to Consortium, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that ACM fails or is unable to do so, Consortium may immediately terminate this Agreement, and ACM will refund to Consortium all amounts paid by Consortium under this Agreement within thirty (30) days following the effective date of termination.

Confidential Information.

- A. "Confidential Information" shall mean any information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, should be reasonably understood to be confidential. Confidential Information shall include all specifications, formulas, prototypes, computer programs, and any records, data, ideas, methods, techniques, processes and projections, improvements, patents and know-how related thereto, relating to the Disclosing Party.
- B. Exclusions. Confidential Information shall not include information which (i) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party, (ii) was already in the possession of the Receiving Party or any of its Representatives (as defined below) as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential, (iii) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions, or (iv) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Recipient.
- C. The Receiving Party shall (i) use the Disclosing Party's Confidential Information solely for the purposes of performing its obligations under this Agreement, (ii) not disclose any such Confidential Information to a third party without the Disclosing Party's prior written consent, and (iii) handle Confidential Information with the same care that the Receiving Party uses to protect its own information of comparable sensitivity, but not less than reasonable care. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, contractors, agents, and other representatives ("Representatives") with a need to know who are subject to confidentiality obligations not less restrictive than those set forth herein, and the Receiving Party agrees that it shall be responsible for its Representatives' compliance with such obligations. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized disclosure, misappropriation, or misuse of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse.
- D. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure by the Receiving Party of that portion of the Confidential Information which the Receiving Party is legally required to disclose will not constitute a breach of this Agreement. For

the avoidance of doubt, the Receiving Party is not required to pursue any claim, defense, cause of action, or legal process or proceeding on the Disclosing Party's behalf.

- E. Confidential Information remains the property of the Disclosing Party and no rights or licenses are granted to the Receiving Party except the limited right to use the Confidential Information as provided for herein.
- F. Upon the written request of the Disclosing Party, and in any event no later than thirty (30) days after the expiration or termination of this Agreement, the Receiving Party shall (i) return, destroy or erase all materials embodying Disclosing Party's Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, and (ii) provide written confirmation to this effect. The Receiving Party may also securely retain one copy of materials embodying Confidential Information in its files solely for record purposes.

Data Privacy and Security.

- A. Each University shall retain all right, title, and interest in and to all information, data or other content that the University or its Authorized Users provide to ACM under the Agreement, including without limitation, education records (as defined below) (collectively, "University Data").
- B. ACM shall hold University Data, including without limitation, any information contained in the University Data that alone or in conjunction with other information identifies an individual, in confidence. ACM shall only use or disclose University Data for the purpose of fulfilling ACM's obligations under the Agreement, as required by law, or as otherwise authorized in writing by the University. ACM shall restrict disclosure of University Data solely to those employees, subcontractors or agents of ACM that have a need to access University Data in order for ACM to perform its obligations under the Agreement. ACM shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on ACM in the Agreement.
- C. For purposes of the Family Educational Rights and Privacy Act ("FERPA"), University hereby designates ACM as a school official with a legitimate educational interest in any education records (as defined in FERPA) that ACM is required to create, access, receive, or maintain in order to fulfill its obligations under the Agreement. ACM shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in the Agreement or otherwise authorized by FERPA or University in writing.
- D. Pursuant to Section 2054.138, *Texas Government Code*, ACM shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at <https://cyber-standards.tamus.edu/>, as may be amended from time to time (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of University Data. ACM shall periodically provide University with evidence of its compliance with the Security Controls within thirty (30) days of University's request.
- E. ACM must promptly notify University of any legal request for University Data from a third party and take (and assist University in taking) appropriate steps not to disclose such University Data.
- F. ACM shall, within two (2) business days of discovery, report to University any use or disclosure of University Data not authorized by the Agreement or in writing by University. ACM's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the University Data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure (if known), (d) what ACM has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action ACM has taken or will take to prevent future similar unauthorized use or disclosure. ACM shall provide such other information, including a written report, as reasonably requested by University.
- G. Within thirty (30) days of the expiration or termination of the Agreement, ACM, as directed by University, shall return all University Data to University in its possession (or in the possession of any of its subcontractors or agents) or delete all such University Data if return is not feasible. ACM shall provide University with at least ten (10) days' written notice of ACM's intent to delete such University Data, and shall confirm such deletion in writing.

Buy Texas. ACM agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, ACM will purchase products and materials

produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

HUB Subcontracting Plan. It is the policy of the state of Texas and Consortium to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in Consortium contracting and purchasing. ACM has indicated it will not subcontract any of its duties or obligations under this Agreement. If ACM will subcontract any of its duties and obligations under this Agreement, ACM will be required to provide prior written notice to Consortium and make a good faith effort to submit a HUB subcontracting plan as required under Section 20.285 of the Texas Administrative Code.

Insurance. ACM shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth on Appendix A hereof.

Prohibited Agreements. ACM recognizes that as a state agency, Consortium may not award contracts as outlined below.

- 1) **Compensation for Preparing Bids.** Consortium cannot award a contract if such contract includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Under Section 2155.004, *Texas Government Code*, ACM certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2) **Disaster Related Contracts.** Consortium cannot award a contract if such contract involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina or any other disaster occurring after September 24, 2005. Under Section 2155.006, *Texas Government Code*, ACM certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 3) **Involvement in Human Trafficking.** Consortium cannot award a contract if such contract includes financial participation by a person, who, during the five-year period preceding the date of the contract, has been convicted of any offense related to the direct support or promotion of human trafficking. Under Section 2155.0061, *Texas Government Code*, ACM certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, ACM certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Certification Regarding Boycotting Israel. To the extent that Chapter 2271, *Texas Government Code*, is applicable to this Agreement, ACM certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. ACM acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Certification Regarding Business with Certain Countries and Organizations. To the extent that Subchapter F, Chapter 2252, *Texas Government Code*, is applicable to this Agreement, ACM certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. ACM acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Certification as to Discrimination Against Firearm Entities. To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, ACM verifies that (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (b) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. ACM acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

Certification as to Boycotting Energy Companies. To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, ACM verifies that (a) it does not boycott energy companies, and (b) it will not boycott energy companies during the term of this Agreement. ACM acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

Franchise Tax Certification. If ACM is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then ACM certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that ACM is exempt from the payment of franchise (margin) taxes.

Prior Employment. ACM acknowledges that Section 2252.901, *Texas Government Code*, prohibits Consortium from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by Consortium during the twelve (12) month period immediately prior to the effective date of the Agreement. If ACM is an individual, by signing this Agreement, ACM represents and warrants that it is not a former or retired employee of Consortium that was employed by Consortium during the twelve (12) month period immediately prior to the effective date of the Agreement.

Conflict of Interest. ACM certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, or any officer of Consortium or the A&M System, has a direct or indirect financial interest in ACM or in the transaction that is the subject of this Agreement.

Not Eligible for Rehire. ACM is responsible for ensuring that its employees involved in any work being performed for Consortium under this Agreement have not been designated as "Not Eligible for Rehire" as defined in A&M System policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event Consortium becomes aware that ACM has a NEFR Employee involved in any work being performed under this Agreement, Consortium will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by Consortium.

Use of Name. Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading.

Independent Contractor. Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by ACM's service to University. As an independent contractor, ACM is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. Except as specifically required under the terms of this Agreement, ACM (and its representatives, agents, employees, and subcontractors) will not represent themselves to be an agent or representative of Consortium or the A&M System.

Non-Assignment. ACM shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of Consortium.

Representations & Warranties. If ACM is a business entity, ACM warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of ACM has been duly authorized to act for and bind ACM.

Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. Consortium and ACM can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

Consortium:

Texas A&M University
TAMU Libraries
5000 TAMU
College Station, TX 77843
Attention: Eric Hartnett
Telephone: 979-845-0797
Email: ehartnett@library.tamu.edu

With a copy to:

Texas A&M University
Department of Contract Administration
1182 TAMU
College Station, TX 77843-1182
Attention: Director
Telephone: 979-845-0099
Email: contracts@tamu.edu

ACM:

Association for Computing Machinery
1601 Broadway, 10th Floor
New York, NY 10019
Attention: Dimitris Anagnostopoulos
Telephone: +30 693-708-0177
Email: dimitris.anagnostopoulos@staff.acm.org

Governing Law. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

Venue. Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against Consortium or University is to be in the county in which the principal office of Consortium's or University's governing officer is located.

Limitations. As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of Texas A&M to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on Texas A&M's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Terms and conditions related to the Limitations will not be binding on Texas A&M except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by Texas A&M nor any other conduct, action, or inaction of any representative of Texas A&M relating to this Agreement constitutes or is intended to constitute a waiver of Texas A&M's or the state's sovereign immunity.

Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.

Survival. Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

Entire Agreement. This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of all Parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

ACCEPTED & AGREED:

TEXAS A&M UNIVERSITY

DocuSigned by:
Dean K. Endler

6BED0370913B466...

Signature
Dean K. Endler

Name
University Contracts Officer

Title
4/26/2023 | 3:48:20 CDT

Date

ASSOCIATION FOR COMPUTING MACHINERY

DocuSigned by:
Scott Delman

A022041E77DB47C...

Signature
Scott Delman

Name
Director of Publications

Title
4/26/2023 | 2:18:46 PDT

Date

APPENDIX A**Insurance Requirements**

ACM Insurance. ACM shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. All coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Consortium. By requiring such minimum insurance, Consortium shall not be deemed or construed to have assessed the risk that may be applicable to ACM under this Agreement. ACM shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. ACM is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Consortium at least ten days before the effective date of the cancellation.

1. Worker's Compensation

Worker's compensation insurance with the following minimum limits of coverage:

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Consortium. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

2. Commercial General Liability

Commercial general liability insurance with the following minimum limits of coverage:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy must be issued on a form that insures ACM's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

3. Cyber Liability

ACM shall procure and maintain, for the duration of this Agreement and for such length of time as is necessary to cover any and all claims, cyber liability insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. The cyber liability policy shall be sufficiently broad to cover ACM's duties and obligations under this Agreement and include coverage for claims involving: invasion of privacy; loss, damage, theft, alteration or other misuse of data; unauthorized exposure or breach of data; privacy event expenses such as mandatory/voluntary notification costs, credit monitoring, call center services, forensic costs, and any other fees, costs, or expenses necessary to comply with any applicable breach notification laws; privacy regulatory proceedings (including fines and penalties); cyber extortion payments; and network security.

4. ACM shall deliver to Consortium evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance prior to the execution and delivery of this Agreement and prior to the performance of any services by ACM under this Agreement. ACM shall provide additional evidence of insurance on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
5. Commercial General Liability and Auto Liability policies must be endorsed to name The Texas A&M University System Board of Regents ("Board of Regents"), The Texas A&M University System ("A&M System") and Texas A&M University as additional insureds up to the actual liability limits of the policies maintained by ACM. The commercial general liability additional insured endorsements must include on-going and completed operations afforded by CG 20 10 (10 01 Edition or equivalent) and CG 20 37 (10 01 Edition or equivalent). Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance. The Umbrella policy, at minimum, must follow form.
6. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents, A&M System and Consortium.
7. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to Consortium ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy.
8. Any deductible or self-insured retention must be declared to and approved by Consortium prior to the performance of any services by ACM under this Agreement. ACM shall pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the certificates of insurance.
9. Certificates of insurance and additional insured endorsements as required by this Agreement must be mailed, faxed, or emailed to the following Consortium contact:

Department of Contract Administration
Texas A&M University
1182 TAMU
College Station, Texas 77843
Email: contracts@tamu.edu

The insurance coverage required by this Agreement must be kept in force until all services have been fully performed and accepted by Consortium in writing.

Certificate Of Completion

Envelope Id: C4240745726B4B79B3D9EEB7110BF7B4	Status: Completed
Subject: Signature request on C2023-10164 E-Resource Contract - Association for Computing Machinery	
Source Envelope:	
Document Pages: 22	Signatures: 4
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Contract Administration
Time Zone: (UTC-06:00) Central Time (US & Canada)	P.O. Box 1675
	Galveston, TX 77553
	contractadmin@tamu.edu
	IP Address: 199.188.157.82

Record Tracking

Status: Original 4/26/2023 03:08 PM	Holder: Contract Administration contractadmin@tamu.edu	Location: DocuSign
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Signer Events

Dean K. Endler
d-endler@tamu.edu
University Contracts Officer
The Texas A&M University System
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Dean K. Endler
6BED0370913B466...

Signature Adoption: Pre-selected Style
Using IP Address: 128.194.2.231

Timestamp

Sent: 4/26/2023 | 03:12 PM
Viewed: 4/26/2023 | 03:47 PM
Signed: 4/26/2023 | 03:48 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Scott Delman
Scott.Delman@hq.acm.org
Director of Publications
Security Level: Email, Account Authentication (None)

DocuSigned by:
Scott Delman
A022041F77DB47C...

Signature Adoption: Pre-selected Style
Using IP Address: 104.28.76.236
Signed using mobile

Sent: 4/26/2023 | 04:05 PM
Viewed: 4/26/2023 | 04:15 PM
Signed: 4/26/2023 | 04:18 PM

Electronic Record and Signature Disclosure:
Accepted: 4/26/2023 | 04:15 PM
ID: b2985b94-d2b7-4311-8d25-e886b98c8c8c

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Dimitris Anagnostopoulos
dimitris.anagnostopoulos@staff.acm.org
Security Level: Email, Account Authentication (None)

COPIED

Sent: 4/26/2023 | 04:06 PM

Electronic Record and Signature Disclosure:
Accepted: 4/26/2023 | 04:04 PM
ID: e5d11184-dced-49f8-8e44-ec54cd190ed2

Carbon Copy Events	Status	Timestamp
<p>Orie Varner ovarner@tamu.edu The Texas A&M University System Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 3/7/2018 04:05 PM ID: 72008922-13ac-41a7-abb5-ea809f9e8e55</p>	COPIED	<p>Sent: 4/26/2023 03:48 PM Viewed: 4/26/2023 04:20 PM</p>
<p>Eric Hartnett ehartnett@library.tamu.edu Director of Electronic Resources Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 8/5/2022 01:37 PM ID: a3fd63d6-b21e-4444-9201-734edc77d496</p>	COPIED	<p>Sent: 4/26/2023 04:18 PM</p>
<p>Krystle Murillo kmurillo@tamu.edu The Texas A&M University System Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 4/26/2023 04:18 PM</p>
<p>Orie Varner ovarner@tamu.edu The Texas A&M University System Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 3/7/2018 04:05 PM ID: 72008922-13ac-41a7-abb5-ea809f9e8e55</p>	COPIED	<p>Sent: 4/26/2023 04:18 PM</p>

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	4/26/2023 03:12 PM
Certified Delivered	Security Checked	4/26/2023 04:15 PM
Signing Complete	Security Checked	4/26/2023 04:18 PM
Completed	Security Checked	4/26/2023 04:18 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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