

**ftribunal**

**ASSOCIATION FOR COMPUTING MACHINERY (ACM)**

---

**ACM DIGITAL LIBRARY LICENSE AGREEMENT**

---

## ACM DIGITAL LIBRARY LICENCE AGREEMENT

THIS AGREEMENT is made between:

**XXX**

*Represented by* **XXX**

Hereinafter referred to as the “**XXX**” or “Licensee”

Party of the first part,

And

**Association for Computing Machinery (ACM)**  
1601 Broadway, 10th Floor, New York, NY 10019 - USA

*Represented by*  
Mr Scott Delman, Director of Publications, ACM

Hereinafter referred to as “Licensor” or “ACM”

Party of the second part,

It is hereby agreed as follows:

### RECITALS

**This licence Agreement covers online access to the licensed material listed in schedule 2**

**Licensor offers electronic versions of copyrighted material over the internet. This material consists of ACM’s publications including ACM journals, conference proceeding, magazines, newsletters, and multimedia titles. The material is made available on the Digital Library**

**The purpose of this license is to enable access to the electronic versions of the material listed in schedule2 for the members of the national purchasing group listed in schedule 3.**

**WHEREAS** the ACM Digital Library is a complete collection of all of ACM's publications including ACM journals, conference proceeding, magazines, newsletters, and multimedia titles;

**AND WHEREAS** the ACM DL and all intellectual property rights therein are owned by or duly licensed to the Publisher;

**AND WHEREAS** this License is based on the PA/JISC and the NESLI model licence for journals;

**AND WHEREAS** the terms of this Licence and the offer for ACM Digital Library were negotiated and agreed under the ACM Digital Library agreement « **Abonnement à la Digital Library de l'éditeur ACM** » between TSP diffusion and the COUPERIN Consortium.

**AND WHEREAS** the parties are desirous to contract on the basis of the terms and conditions of this Licence.

**IT IS AGREED AS FOLLOWS.**

## **1. DEFINITIONS**

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

"Authorised Users"

means individuals who are authorised by the Licensee to access the Members' information services whether on-site or off-site via Secure Authentication and who are affiliated to the Member as a current student (including but not limited to undergraduates and postgraduates), member of staff (whether on a permanent or temporary basis including retired members of staff and any teacher who teaches Authorised Users) or contractor of the Member. Persons who are not a current student, member of staff or a contractor of the Member, but who are permitted to access the Member's information services from computer terminals within the physical premises of the Member ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Member. Walk-In Users may not be given means to access the Licensed Material when they are not within the physical premises of the Member Institution. For avoidance of doubt, Walk-In Users may not be given access to the Licensed Material by any wireless network provided by the Member Institution unless such network is a Secure Network.

"Commercial Use"	means use for the purpose of monetary reward (whether by or for the Licensee or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Work. For the avoidance of doubt, neither recovery of direct cost by the Licensee from Authorised Users, nor use by the Licensee or Authorised Users of the Licensed Work in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.
"Educational Purposes"	means for the purpose of education, teaching, distance learning, private study and/or research.
"Fee"	means the fee as set out in Schedule 1. The fee shall be in line with the offer negotiated and agreed under the ACM Digital Library Agreement between XXX and TSP diffusion as set out in Schedule 1.
"Intellectual Property Rights"	means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
"Licensed Material"	means the material listed in Schedule 2.
"Member"	Members of COUPERIN listed in schedule 3.
"Secure Authentication"	means access to the Licensed Material by Internet Protocol ("IP") ranges or by another means of authentication agreed between the Publisher and XXX from time to time.
"Secure Network"	means a network which is only accessible to Authorised Users by Secure Authentication.
"Subscription Period"	means the period nominally covered by the volumes and issues of the Licensed Material as identified in Schedule 1, regardless of the actual date of publication.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be

deemed to be an indication of the meaning of the clause to which they relate.

- 1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

## **2. LICENCE GRANT**

- 2.1 The Publisher hereby grants to the Licensee, subject to and in accordance with the terms of this Licence, a non-exclusive licence to access and use the Licensed Material and to allow Members and Authorised Users to access and use the Licensed Material via Secure Authentication for Educational Purposes.
- 2.2 In consideration for the Publisher's licensing of the Licensed Material pursuant to Clause 2.1, the Licensee undertakes to pay to the Publisher the Fee in accordance with the provisions of Schedule 1.

## **3. PERMITTED USES**

- 3.1 Licensee may:
  - 3.1.1 make such local temporary copies of the Licensed Material as are necessary to ensure efficient use of the Licensed Material by Members and Authorised Users, provided that such use is subject to all the terms and conditions of this Licence;
  - 3.1.2 provide Authorised Users with integrated access and an integrated article author, article title and keyword index to the Licensed Material and all other similar material licensed from other publishers;
  - 3.1.3 allow Authorised Users to:
    - 3.1.3.1 access the Licensed Material by Secure Authentication in order to search, browse, view and download the contents in the Digital Library (DL). All downloading and printing by Authorized Users will be for scientific research and scholarly purposes only, unless otherwise expressly stated by ACM in writing. Authorized Users may include items from the DL in documents intended for use in connection with classroom instruction. Authorization will be by IP address ranges. ACM will use its best efforts to promote remote access by Authorized Users of Licensee via proxy servers or any other identification system. The term "IP address ranges" also covers access by proxy. Faculty members are allowed to reuse all ACM copyrighted material in the DL for classroom or educational use;
    - 3.1.3.2 electronically save parts of the Licensed Material;

- 3.1.3.3 print out single copies of parts of the Licensed Material;
- 3.1.3.4 incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
- 3.1.3.5 incorporate parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations (“the Academic Works”), including reproductions of the Academic Works for personal use and library deposit. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;
- 3.1.3.6 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a single paper copy of an electronic original of an individual document;
- 3.1.3.7 provide single printed or electronic copies of single articles at the request of individual Authorised Users;
- 3.1.3.8 display, download and print parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material, or for training Authorised Users;
- 3.1.3.9 publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity;
- 3.1.3.10 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Material in accordance with this Agreement; and
- 3.1.3.11 save and/or deposit in perpetuity parts of the Licensed Material in electronic repositories operated by the Licensee and/or by an Authorised User on a Secure Network. Access to and use of such

repositories shall be limited to Authorised Users and the funding bodies; and

- 3.1.3.12 save and/or deposit in perpetuity parts of the Licensed Material of which they are the authors, in accordance with ACM policy regarding the posting of ACM published articles in institutional repositories, which means On Author's own Home Page and On Author's Institutional Repository and In any repository legally mandated by the agency funding the research on which the work is based.

#### **4. RESTRICTIONS**

4.1 Save as provided herein, the Licensee, its Members and Authorised Users may not:

- 4.1.1 sell or resell the Licensed Material unless the Licensee, a Member or an Authorised User has been granted prior written consent by the Publisher to do so;
- 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
- 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
- 4.1.4 display or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network; or
- 4.1.5 use all or any part of the Licensed Material for any Commercial Use or for any purpose other than Educational Purposes.

4.2 This Clause shall survive termination of this Agreement for any reason.

#### **5. RESPONSIBILITIES OF THE PUBLISHER**

5.1 The Publisher agrees:

- 5.1.1 to make the Licensed Material available to the Licensee, its Members and Authorised Users from the commencement of the Subscription Period;
- 5.1.2 to use all reasonable endeavours to make the electronic copy of each journal covered by this Agreement available, not later than the start of business hours on the day of publication of the printed version. In the event that for technical reasons this is not possible for any particular journal, as a matter of course, such journal shall be identified at the time of licensing, together with the reasons therefore;

- 5.1.3 to use all reasonable endeavours to make the Licensed Material available to the Licensee and Authorised Users at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service;
- 5.1.4 to provide for customer support services to Authorised Users via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Licensed Material within 24 hrs of request;
- 5.1.5 to use all reasonable endeavours to ensure that the relevant server or servers have adequate capacity and bandwidth to support the usage of the Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this Agreement;
- 5.1.6 to provide electronic product documentation to the Licensee free of charge. The Publisher will allow copies of all documentation to be made and distributed by the Licensee to Authorised Users and publishers' representatives visiting for on-site training, provided it is either duplicated in full, or a proper ownership acknowledgement is included;
- 5.1.7 to provide at least initial on-site training to users free of charge
- 5.1.8 to use all best efforts to comply with the Open URL Standard ([http://www.niso.org/committees/committee\\_ax.html](http://www.niso.org/committees/committee_ax.html) and [http://www.jisc-collections.ac.uk/about\\_collections/publisher\\_information/coll\\_jiscfactfile/coll\\_fact\\_cards\\_provlinks.aspx/](http://www.jisc-collections.ac.uk/about_collections/publisher_information/coll_jiscfactfile/coll_fact_cards_provlinks.aspx/))
- 5.1.9 to use all best efforts to comply with the W3C standards (<http://www.w3.org/WAI/Resources/#in> and [http://www.jisc-collections.ac.uk/about\\_collections/publisher\\_information/coll\\_jiscfactfile/coll\\_fact\\_cards\\_ws.aspx/](http://www.jisc-collections.ac.uk/about_collections/publisher_information/coll_jiscfactfile/coll_fact_cards_ws.aspx/))
- 5.1.10 to provide the Licensee with COUNTER-compliant usage statistics, on at least a monthly basis (<http://www.projectcounter.org> ); these statistics will be made available at the Licensee and institutional levels. Usage statistics will be either emailed to site administrator or accessible via a logon administration interface hosted by Publisher. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws and as may be agreed between the parties from time to time, and the anonymity of individual users and the confidentiality of their searches shall be fully protected
- 5.1.11 to permit the Licensee to make cancellations and substitutions of the Licensed Material per annum [only applicable for multi-years agreements].
- 5.1.12 in the event of termination of this Agreement, the Publisher will provide the Authorised Institutions and their Authorised Users with access to the full text of the



Licensed Material which was published and paid for during the term of this Agreement, either through Portico, or by supplying the electronic files in a medium and format mutually agreed between the parties to the Authorised Institutions without charge. The full text of the electronic files may not be resold at any time; this remains in effect in perpetuity. Continuing archival access is subject to the terms and conditions of the use of this Agreement; and

- 5.1.13 use all best efforts to comply with the Code of Practice of Project Transfer relating to the transfer of titles between publishers <http://www.projecttransfer.org>
- 5.1.14 to provide up-to-date title lists, including accurate date ranges;
- 5.2 If the publisher wishes to vary the content during the life of the contract, at least six months notice should be given to the Licensee of any such variation. The Licensee may accept this variation at its discretion, but significant variation, which could mean a withdrawal of access of a very small number of significant titles from a bundle of titles, may render the contract void;
- 5.3 The Publisher reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish and for which the Publisher has been unable to secure the provisions as set out in Clauses 8.7 and 8.8, or any item or part of an item for which the Publisher has reasonable grounds to believe it infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Publisher shall give written notice to the Licensee of such withdrawal. If the withdrawn material represents more than ten per cent (10%) of the Licensed Material the Publisher shall make a pro rata refund of part of the Fee to the Licensee, taking into account the amount of material withdrawn and the remaining unexpired portion of the Subscription Period.

## **6. RESPONSIBILITIES OF THE LICENSEE**

- 6.1 The Licensee and each Member agree to:
  - 6.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
  - 6.1.2 provide lists of valid IP addresses to the Publisher and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time;
  - 6.1.3 use all reasonable efforts, including without limitation by use of Secure Authentication, to ensure that only Authorised Users are permitted access to the Licensed Material;
  - 6.1.4 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Agreement; and

- 6.1.5 use all reasonable efforts to monitor compliance with the terms of this Agreement and notify the Publisher immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised access to or use of the Licensed Material or unauthorised use of any of the Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement, the Licensee's Members further agree promptly to fully investigate and initiate disciplinary procedures in accordance with the Licensee's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence.
- 6.2 The Licensee and Members undertake to the Publisher that the computer system through which the Licensed Material will be used is configured, and procedures are in place, to prohibit access to the Licensed Material by any person other than an Authorised User, that it shall inform the Authorised Users about the conditions of use of the Licensed Material, and that during the term of this Agreement, the Licensee and Members will make best efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

## **7. FEE**

- 7.1 The Publisher will invoice TSP-Diffusion, ACM's exclusive agent in France, for the Fee payable at the address set out below:

**TSP-Diffusion  
34 Boulevard Gambetta  
78300 POISSY  
FRANCE**

- 7.2 The terms of payments to the Publisher are set out in Schedule 1 hereto.

## **8. TERM AND TERMINATION**

- 8.1 This Agreement shall commence at the beginning of Subscription Period and, unless terminated earlier as provided for in this Clause 8, will remain in full force and effect until the end of the Subscription Period.
- 8.2 Any party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.
- 8.3 Upon termination of this Agreement by the Publisher due to a material breach or repeated other breaches by the Licensee or Member, the Publisher shall cease to authorise on-line access to the Licensed Material by the Licensee and Authorised Users.

- 8.4 After termination of this Agreement (save for a material breach by the Licensee or Member of its obligations under this Agreement) the Publisher will provide (at the option of the Licensee) the Licensee and its Authorised and Walk-in Users with access to and use of the full text of the Licensed Material which was published and paid for within the Subscription Period, without charge, or at a fair access fee, either i) by supplying archival copies of the same Licensed Material in an electronic medium mutually agreed between the parties which will be delivered to the Licensee; or ii) supplying archival copies via ftp protocol of the same Licensed Material; or iii) through participation in an electronic archiving service such as Portico.  
For the avoidance of doubt access and use of archival copies shall be subject to the terms and conditions as set out in Clauses 3, 4 and 5.1.12 of this Agreement.
- 8.5 The Licensee and its Members are permitted to mount the archival copies of the Licensed Material supplied by the Publisher in accordance with Clauses 8.4 (i) and 8.4 (ii), communicate, make available and provide access to such Licensed Material via a Secure Network to Authorised Users in accordance with the terms of this Agreement. The Licensee and Members are further permitted to make such copies or re-format the Licensed Material contained in the archival copies supplied by the Publisher in any way to ensure their future preservation and accessibility in accordance with this Licence;
- 8.6 In the event that ownership of a part or parts of the Licensed Material is sold by the Publisher or otherwise transferred to another publisher, the Publisher will use all reasonable efforts to retain a non-exclusive copy of the volumes published and make them available free of charge through the Publisher's server or by supplying such material free of charge to the Licensee in accordance with the procedure described in Clause 8.4;
- 8.7 In the event that the Publishers ceases to publish a part or parts of the Licensed Material, a digital archive will be maintained of such Licensed Material and be made available free of charge through the Publisher's server or by supplying such material free of charge to the Licensee in accordance with the procedure described in Clause 8.4;
- 8.8 The archival copies supplied in accordance with Clause 8.4 (i) and (ii) will contain all textual content of the Licensed Material but may not contain all links and other features and functionality associated with the online version available via the Publisher's server. Access and use of such copies will not attract a fee charged by the Publisher.
- 8.9 On termination of this Agreement by the Licensee due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Licensee a pro rata proportion of the then remaining Fee for the unexpired part of the Subscription Period. The Publisher shall not be obligated to return any portion of the Fee for termination by the Publisher due to the Licensee's breach pursuant to Clause 8.2.

## **9. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Material are the property of the Publisher or duly licensed to the Publisher and that this Agreement does not assign or transfer to the Licensee any right, title or interest therein except for the right to access and use the Licensed Material in accordance with the terms and conditions of this Agreement.
- 9.2 For the avoidance of doubt, the Publisher hereby acknowledges that any database rights created by the Licensee as a result of local mounting of the Licensed Material as referred to in Clause 8.6 shall be the property of the Licensee.

## **10. REPRESENTATION, WARRANTIES AND INDEMNIFICATION**

- 10.1 The Publisher warrants to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Publisher and that the Licensed Material used as contemplated in this Agreement does not infringe any Intellectual Property Rights of any natural or legal person. The Publisher agrees that the Licensee shall have no liability and the Publisher will indemnify, defend and hold the Licensee harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee in defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of the Licensee's or Authorised Users use of the Licensed Material, provided that: (1) the use of the Licensed Material has been in full compliance with the terms and conditions of this Agreement; (2) the Licensee provides the Publisher with prompt notice of any such claim or threat of claim; (3) the Licensee co-operates fully with the Publisher in the defence or settlement of such claim; and (4) the Publisher has sole and complete control over the defence or settlement of such claim.
- 10.2 The Publisher reserves the right to change the content (including removal of an entire journal on ceasing to have the right to publish), presentation, user facilities or availability of parts of the Licensed Material and to make changes in any software used to make the Licensed Material available at their sole discretion. The Publisher will give six months' notice to the Licensee of any substantial change to the Licensed Material.
- 10.3 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 any part of the Licensed Material including (without limitation) the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Licensee or Authorised Users as a result of their reliance on the Licensed Material.
- 10.4 In no circumstances will the Publisher be liable to the Licensee for any loss resulting from a cause over which the Publisher does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.

- 10.5 The Licensee agrees to notify the Publisher immediately, provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Material. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.
- 10.6 Nothing in this Agreement shall make the Licensee liable for breach of the terms of this Agreement by any Authorised User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 10.7 Save as provided for in Clause 10.1, neither the Licensee nor the Publisher will be liable to the other in contract or negligence or otherwise for (i) any special, indirect, incidental, punitive or consequential damages (ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings or for any increased costs or expenses.
- 10.8 No party limits its liability for (i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and (ii) its own fraud or that of its employees or agents in the course of their engagement.

## **11. FORCE MAJEURE**

- 11.1 Either party's failure to perform any term or condition of this Agreement as result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities ["Force Majeure"]) shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 11.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

## **12. ASSIGNMENT**

- 12.1 Save as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be assigned by either party without obtaining the prior written consent of the other party, such consent shall not unreasonably be withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall

assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

### **13. GOVERNING LAW AND DISPUTE RESOLUTION**

- 13.1 This Agreement shall be governed by and French law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the Tribunal Administratif of the licensee main site.
- 13.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the current Chairman of the Licensee. Where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 13.3 Any person to whom a reference is made under Clause 13.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 13.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 13.5 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.

### **14. NOTICES**

- 14.1 All notices required to be given under this Agreement shall be given in writing in English or French and sent by courier, or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received three (3) days after the date of posting in the case of special delivery or despatch in the case of courier :

if to the Licensee:

**XXX**

if to the Publisher :  
Mr Scott Delman, Director of Publications, ACM  
Association of Computing Machinery (ACM)  
1601 Broadway, 10th Floor, New York, NY 10019, USA

## **15. GENERAL**

- 15.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 15.2 The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.
- 15.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 15.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement 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 Agreement 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.

## SCHEDULE 1 : FEES

ACM DL licensing fees are based on the Publisher's Academic Pricing and include access to:

- 56 peer reviewed scholarly journals
- 2 fully Open Access peer reviewed scholarly journals
- 7 technical magazines
- ACM's complete collection of conference proceedings containing over 2,500 volumes of scholarly materials
- 37 technical newsletters sponsored by ACM's technical Special Interest Groups (SIGs)
- An up-to-date list of the contents of the ACM Digital Library is posted at <https://dl.acm.org/about/content>
- Access to Historical Archive. The Licensor shall provide complimentary access to the complete archive of all ACM Publications dating back to each publication's first issue or volume. This complimentary access does not include archival rights, which can be arranged with the Licensor by separate Agreement.
- ACM Guide to Computing Literature. The Licensor shall provide complimentary access to ACM's bibliographic database and abstracting & indexing service.

The Subscriber shall be given web-based access to the ACM Digital Library during the **term beginning January 1<sup>st</sup>, 2022 and concluding December 31<sup>st</sup>, 2022**

The Licensee shall cause the Publisher to be paid the **total fee of US Dollars XXX or XXX€** (exclusive of VAT) as payment for the rights granted in this Agreement.

All fees shall fall due and payable by the Licensee within 30 days on receipt by the Licensee of the Publisher's invoice. All Fees shown are exclusive of VAT, which will be payable in addition by the Licensee where applicable.



## SCHEDULE 2 : LICENSED MATERIAL

The Licensed Material consists of the following:

- 56 peer reviewed scholarly journals
- 2 fully Open Access peer reviewed scholarly journals
- 7 technical magazines
- ACM's complete collection of conference proceedings containing over 2,500 volumes of scholarly materials
- 37 technical newsletters sponsored by ACM's technical Special Interest Groups (SIGs)
- An up-to-date list of the contents of the ACM Digital Library is posted at <https://dl.acm.org/about/content>
- Access to Historical Archive. The Licensor shall provide complimentary access to the complete archive of all ACM Publications dating back to each publication's first issue or volume. This complimentary access does not include archival rights, which can be arranged with the Licensor by separate Agreement.
- ACM Guide to Computing Literature. The Licensor shall provide complimentary access to ACM's bibliographic database and abstracting & indexing service.

Post-Cancellation Perpetual Access. In the event of termination or expiration, the Publisher will provide the Authorised Institutions and their Authorised Users with access to the full text of the Licensed Material which was subscribed to by each Authorised Institution participating in this Agreement, either through CLOCKSS, Portico, or by supplying the electronic files in a medium and format mutually agreed between the parties to the Authorised Institutions without charge.

For clarification purposes, any institution which cancels during the term of this Agreement shall only be entitled to the Licensed Materials published in the years the Authorised Institution was an active subscriber to the Licensed Materials during the term of this Agreement. Any institution for which there is a lapse in subscription access shall not be entitled to post-cancellation access during the years subscription access was not renewed or active. Authorised Institutions shall only be entitled to post-cancellation access to the Licensed Material published during the years in which they participated in the consortium license and had an active subscription.

The full text of the electronic files may not be resold at any time; this remains in effect in perpetuity. Continuing archival access is subject to the terms and conditions of use of this Agreement. The Subscriber is not entitled to any refund or prorated portion of the Subscription Fees due to cancellation.

IN WITNESS the hands of the above parties on the date first above written:

SIGNED by: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Mr Scott Delman (Signature)

Position: Director of Publications

*for and on behalf of*

The Association of Computing Machinery (ACM)  
1601 Broadway, 10th Floor, New York, NY 10019, USA

SIGNED by: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature

Position:

*for and on behalf of*

XXX

