

## CHORUS Affiliate Membership Agreement

This membership agreement, including Appendix A attached hereto, which is incorporated herein by reference (the "Agreement") sets forth the terms and conditions under which a qualified institution becomes an Affiliate Member of CHOR, Inc., ("CHOR"), a nonprofit corporation organized under the laws of Delaware, and doing business as CHORUS, subject to the approval of CHOR. Affiliate membership in CHOR is open to any entity that actively participates in scholarly communications other than publishing and other additional membership criteria as may be determined from time to time by the Board of Directors of CHOR (the "Board") and set forth on the membership pages of the <http://www.chorusaccess.org> or successor sites ("CHORUS Site"). The Agreement is by and between CHOR and the party below (the "Affiliate Member") and shall be deemed effective upon execution by the second party to sign (the "Effective Date").

Affiliate Member:

Membership Fee (based on Exhibit 1, Fee Table):

1. **Introduction.** Under the mark CHORUS, CHOR manages and maintains a service to increase public access to publications that report on funded research in the United States by featuring links to such publications and highlighting publisher practices and commitments to such public access (collectively, the "CHORUS Service"). The CHORUS Service initially will support the identification of publications reporting on research funded by US federal agencies and may expand to cover other funders in the future. The "CHORUS Service" refers to all of the foregoing, including associated software and know-how.
2. **Affiliate Membership.** By accepting all of the terms of this Agreement and paying the required fees as set forth by the Board and indicated on the CHORUS Site, a qualified organization becomes an Affiliate Member of CHOR entitled to all of the benefits and subject to all of the responsibilities and conditions of being an Affiliate Member of CHOR, as governed by this Agreement and the bylaws of CHOR as amended from time to time (the "Bylaws") which are set forth on the CHORUS Site. On-going membership is conditioned upon continued payment of annual fees. The CHOR certificate of incorporation and Bylaws and additional information about CHORUS membership and governance are available on the CHORUS Site.
3. **Affiliate Member Benefits.** Provided that the Affiliate Member is in full compliance with the terms of this Agreement, the Affiliate Member (i) may indicate publicly its status as an Affiliate Member and its participation in the CHORUS Service, including use of the CHORUS name and mark(s) as set forth in Section 7; and (ii) if desired, may participate in the governance of CHOR by having a representative of its organization be nominated to serve as a Director of CHOR, and by recommending one or more representatives to CHOR working committees through which policy recommendations are made. (The Board shall retain the authority to appoint and remove directors and committee members in accordance with the Bylaws).
4. **Affiliate Member Obligations.**
  - a) Affiliate Member must promptly pay all membership dues.
  - b) Affiliate Member must appoint a business, technical, billing and communications contact on

Appendix A, and keep such contact information up to date.

- c) Affiliate Member must in good faith promote the use of the CHORUS Service to its customers.
  - d) To the extent that its service(s) are covered by the CHORUS Service, Affiliate Member must use reasonable commercial efforts to modify its service(s) to enable CHORUS functionality and otherwise reasonably assist customers that are participating in the CHORUS Service in doing so. The business and technical terms of such modification and assistance shall be at Affiliate Member's sole discretion.<sup>1</sup>
5. **On-boarding and Compliance.** Upon the Effective Date and payment of membership fees, Affiliate Member shall be entitled to use the CHORUS trademark(s) and logo to indicate that it is an affiliate member of CHOR and participates in the CHORUS Service consistent with Section 7. Affiliate Member shall have 180-days from the Effective Date to become fully compliant with the requirements set forth in Section 4.
6. **CHOR's Intellectual Property.** Affiliate Member acknowledges that, as between itself and CHOR, CHOR has all right, title and interest in and to the CHORUS Service, including all related copyrights, database compilation rights, trademarks, trade names, and other intellectual property rights, currently in existence or later developed.
7. **Promotion.** CHOR and Affiliate Member may each use the other's logos(s) and mark(s) to identify the status of Affiliate Member as a member of CHOR and participating in the CHORUS Service, including for example, featuring the CHOR/CHORUS logo(s) and mark(s) on Affiliate Member's website, and featuring Affiliate Member's logo(s) and mark(s) on the CHORUS website home page, on the CHORUS dashboard, in the CHORUS search engine, and for general purposes of marketing the CHORUS Service by indicating the identity of its members. Each party shall adhere to such guidelines as may be provided by the other party from time to time regarding the use of logos(s) and mark(s). Any other use (beyond identification of participation and membership) of the logo(s) and mark(s) of the other party may only be made with the prior written consent of such party.
8. **Term; Termination.**
- a) This Agreement shall commence upon the Effective Date and shall continue through December 31 of the current year, and thereafter shall be renewed<sup>2</sup> according to the terms of the most recent version of this Agreement for consecutive twelve (12) month periods upon invoicing and payment of a renewal fee. A renewal shall not require signature of the Parties, and shall be deemed to have occurred if Affiliate Member pays its renewal fee in a timely manner (as specified in a renewal invoice from CHOR, which shall provide for at least net 30 days payment), or if CHOR elects, in its sole discretion, to accept a late payment. Failure to make timely payment in absence of a waiver from CHOR shall result in automatic termination, effective as of the end of the then-current term.
  - b) The Affiliate Member may terminate this Agreement upon 90 days prior written notice, but shall not be entitled to a refund of any fees that have been paid or waiver of any fees that have accrued.
  - c) CHOR has the right, but not the obligation, to enforce the terms of this Agreement against any of its members, including Affiliate Member. CHOR may terminate this Agreement and

Affiliate Member's status as a member of CHOR and participation in the CHORUS Service, (i) upon written notice for failure to pay any fees 90 days after such fees are due; (ii) upon written notice for failure to cure a material breach of this agreement within 10 business days of notice of such breach, including as set forth in Section 5. Except in the case of termination for failure to timely pay fees, CHOR's Board shall review and approve any decision to terminate Affiliate Member's membership in CHOR and participation in the CHORUS Service. As part of such review, Affiliate Member shall have an opportunity to be heard under such reasonable procedures as the Board may determine in its good faith. The decision to so terminate, however, shall rest solely with CHOR.

- d) Notwithstanding the foregoing, CHOR reserves the right to temporarily suspend any part of the CHORUS Service or to temporarily or permanently remove links to any article upon determination in CHOR's sole discretion that the continuation of such aspect of the CHORUS Service (generally or with respect to a specific member) or linking to any such article could result in legal risk to CHOR, without following the procedures outlined in Section 8(c).

#### **9. Actions Following Termination.**

Upon termination or expiration of this Agreement, each party shall immediately cease using the other party's logo(s) and mark(s) to indicate that Affiliate Member is a member of CHOR or participates in the CHORUS Service, and neither party shall have any further obligations to the other party, other than the payment of any fees due hereunder.

#### **10. Disputes.** The Affiliate Member agrees to abide by the terms and conditions of the following dispute resolution procedures.

- a) **Choice of Law, Jurisdiction.** This Agreement shall be interpreted, governed and enforced under the laws of New York, without regard to its conflict of law rules. All claims, disputes and actions of any kind arising out of or relating to the Agreement shall be settled exclusively in New York, New York.
- b) **Alternative Dispute Resolution.** If any claim, dispute or action, arising out of or relating to this Agreement cannot be resolved amicably by the parties, then it shall be resolved by a single arbitrator mutually agreed upon by the parties and reasonably familiar with the publishing industry. The decision of the arbitrator shall be final and binding on the parties, and may be enforced in any court of competent jurisdiction.
- c) **Injunctive Relief.** Notwithstanding the foregoing subsection 10(b) (Alternative Dispute Resolution), no party shall be prevented from seeking injunctive or preliminary relief in anticipation, but not in any way in limitation, of arbitration, before any court located in New York, NY.
- d) **Limitations.** Affiliate Member may not seek to compel CHOR to act against any other member of CHOR or any funding agency.

#### **11. Warranty.** Each party represents and warrants that it has the full power and complete authority to enter into this Agreement, that the person signing is authorized to do so, that it has conducted a review of the rights granted herein according to documented internal policies and procedures, and that the granting of such rights will not infringe the rights of any third party.

#### **12. Disclaimer.** CHOR SHALL TAKE COMMERCIALY REASONABLE STEPS IN OPERATING THE CHORUS SERVICE. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE CHORUS SERVICE IS OFFERED "AS IS" WITHOUT ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND WHATSOEVER,

**INCLUDING REPRESENTATIONS AND WARRANTIES RELATED TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE ACCURACY OF ANY INFORMATION FEATURED IN THE CHORUS SERVICE OR CONTAINED ON THE CHORUS SITE GENERALLY.**

- 13. Limitations of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF IT HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR (I) ANY LOSS, CORRUPTION OR DELAY OF DATA, (II) ANY LOSS, CORRUPTION OR DELAY OF COMMUNICATIONS WITH OR CONNECTION TO RELATED PRODUCTS OR CONTENT, OR (III) ANY VIRUS, BUG OR OTHER HARM THAT IS INTRODUCED THROUGH THE USE OR PROVISION OF THE CHORUS SERVICE. AFFILIATE MEMBER ACKNOWLEDGES AND AGREES THAT THE CHOR PARTIES SHALL NOT BE LIABLE FOR (I) ANY ACTIONS TAKEN BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY GOVERNMENT AGENCY OR ANY ARCHIVE WITH RESPECT TO THE CHORUS SERVICE AND (II) ANY INACCURATE OR INCOMPLETE INFORMATION FEATURED IN THE CHORUS SERVICE OR CONTAINED ON THE CHORUS SITE GENERALLY.
- 14. Taxes.** Affiliate Member is responsible for all sales and use taxes imposed, if any, with respect to the services rendered or products provided to the Affiliate Member hereunder, other than taxes based upon or credited against CHOR's income.
- 15. No Waiver.** No delay or omission by either party to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant contained herein.
- 16. No Partnership.** Neither party is or shall become as a result of this Agreement, an agent, representative, or partner of the other party.
- 17. No Third-Party Beneficiaries.** Except as expressly set forth herein, neither party intends that this Agreement shall benefit, or create any right or cause of action in or on behalf of, any person or entity other than CHOR or Affiliate Member.
- 18. No Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed, conditioned or denied. Any transfer to the contrary shall be null and void. Notwithstanding the foregoing, CHOR may subcontract or sublicense its rights and obligations hereunder to third parties to assist it in operating the CHORUS Service.
- 19. Notices.** Written notice under this Agreement shall be effective if sent to the party's address as follows: (i) by personal service on the same day, (ii) by internationally recognized courier (e.g., FedEx, UPS) on the next business day following the scheduled delivery date; or (iii) by email, with a confirmation receipt, on the next business day following the date sent.

If to CHOR:                      Howard Ratner  
                                            Executive Director  
                                            CHOR, Inc.

72 Dreyer Avenue  
Staten Island, NY 10314

Email: [hratner@chorusaccess.org](mailto:hratner@chorusaccess.org)

If to Affiliate Member, to the name and address listed as the Business Contact on Appendix A.

- 20. Survival.** Sections (and the corresponding subsections, if any) 6 and 8 through 25 and any rights to payment shall survive the expiration or termination of this Agreement for any reason.
- 21. Headings.** The headings of the sections and subsections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.
- 22. Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will be reformed to be enforceable to the maximum extent permitted under applicable law, and whether or not it may be so reformed, it will not affect any other provision of this Agreement, unless the unenforceability of the applicable provision would materially impair either party's ability to obtain substantial performance of the other party.
- 23. Entire Agreement.** The terms and conditions of this Agreement and any exhibits supersede all prior oral and written agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire agreement between the parties with respect to the matters contained herein.
- 24. Agreement Modifications.** In order to account for the evolution of CHORUS, CHOR reserves the right to modify this Agreement, provided that (i) any material modification (as determined by CHORUS) shall be approved in advance by the Board; (ii) no such modification shall be retroactive; and (iii) CHOR will provide Affiliate Member with 30 days' advance written notice of any such modifications. Continued acceptance of all terms and conditions of the Agreement as amended is a condition of continued membership in CHOR and participation in the CHORUS Service. If Affiliate Member objects to any such modification, Affiliate Member may terminate this Agreement (effective as of effective date of the modification) by providing written notice to CHOR prior to the effective date, and CHOR shall provide Affiliate Member a pro-rata refund. This Agreement also may be modified by mutual written consent of the parties.
- 25. Counterparts; Electronic Signature.** This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement. **EACH PARTY MAY USE A HARD COPY (INK AND PAPER) OR ELECTRONIC/FACSIMILE SIGNATURE, EACH OF WHICH SHALL BE DEEMED TO BE AUTHENTIC AND EQUALLY ENFORCEABLE.**

AGREED TO AND ACCEPTED BY:

CHOR, INC.

AFFILIATE MEMBER

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Name:

Name:

Title:

Title:

Date:

Date:

## **Exhibit 1: 2027 Fee Table (\$US)**

### **Affiliate Membership Fees**

| <b>Gross Revenue*</b> | <b>Annual Affiliate Membership fee</b> |
|-----------------------|----------------------------------------|
| <\$2.5m               | \$682                                  |
| ≤\$5m                 | \$1,352                                |
| ≤\$10m                | \$2,624                                |
| ≤\$20m                | \$6,148                                |
| ≤\$50m                | \$12,285                               |
| ≤\$100m               | \$24,576                               |
| ≤\$200m               | \$43,060                               |
| ≤\$500m               | \$61,493                               |
| >\$500m               | \$92,267                               |

#### **\*Notes on definition of "Gross Revenue"**

- Gross Revenue includes all revenue from all the divisions of an organization for all types of activities.
- The Affiliate Member is considered to be the largest legal entity rather than a division. Membership fee billing will be done on a calendar year basis.
- Affiliate Members will self-categorize.

## Appendix A: Affiliate Member Designation of Representatives (Required)

Affiliate Member must provide the following information to CHOR and promptly notify CHOR if there are any changes. Affiliate Member may update this information from time to time upon written notice to CHOR, including by email.

It is preferable to list two separate individuals as contacts below.

**Business Contact.** The following individual will be the main representative of Affiliate Member for purposes of this Agreement, providing guidance and direction in operational, membership and governance matters, including voting:

|                 |          |
|-----------------|----------|
| Name:           | Company: |
| Street Address: |          |
| City:           | State:   |
| Post Code:      | Country: |
| Phone:          | Fax:     |
| Email:          |          |

**Technical Contact.** The following individual will be the representative of the Affiliate Member for general technical matters and information.

|                 |          |
|-----------------|----------|
| Name:           | Company: |
| Street Address: |          |
| City:           | State:   |
| Post Code:      | Country: |
| Phone:          | Fax:     |
| Email:          |          |

**Billing Contact.** The following individual will be the representative of Affiliate Member for purposes of billing and payment matters:

|                 |          |
|-----------------|----------|
| Name:           | Company: |
| Street Address: |          |
| City:           | State:   |
| Post Code:      | Country: |
| Phone:          | Fax:     |
| Email:          |          |

**Communications Contact.** The following individual will be the main representative of Affiliate Member for ongoing marketing and communications purposes, providing information, guidance, and collaboration on promotional matters of mutual benefit.

|                 |          |
|-----------------|----------|
| Name:           | Company: |
| Street Address: |          |
| City:           | State:   |
| Post Code:      | Country: |
| Phone:          | Fax:     |
| Email:          |          |