

*After careful review of the Agreement and acceptance of its terms and conditions, please execute two (2) copies and return the document to CHORUS at the address in Section 16.*

## **Institution Dashboard Service Agreement**

This service agreement (“Agreement”) is by and between CHOR, Inc., a nonprofit corporation organized under the laws of Delaware, and doing business as CHORUS (“CHORUS”) and [Institution] (“Institution”) and shall be deemed effective as of [DATE] (the "Effective Date"). Each of CHORUS and Institution are referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS CHORUS supports funders, publishers, authors and institutions to deliver public access to articles reporting on funded research, with the aim to create a future where the output flowing from funded research is easily and permanently discoverable, accessible and verifiable by anyone in the world (collectively with related metadata, know-how and software, the “CHORUS Service”);

WHEREAS the CHORUS Institution Dashboard Service offered as part of the CHORUS Service covers the identification of articles that report on certain research funded by government agencies and other funding bodies (“Articles”) published by its publisher members (“Publisher Members”) and authored by staff, faculty and students (“Persons”) affiliated with a specific institution;

WHEREAS through the collection of information about the identity, public accessibility, availability of re-use licenses, and preservation of such Articles and presentation in an institution-specific dashboard (“Institution Dashboard”), the CHORUS Institution Dashboard Service assists institutions in tracking research output and monitoring adherence to public access requirements and commitments;

WHEREAS Institution is an educational and research institution where Persons author Articles;

WHEREAS Institution is interested in tracking Articles and other research output of Institution’s Persons and monitoring adherence to public access requirements and commitments;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Fees.** Institution agrees to pay the required fees as set by CHORUS and indicated on the attached Exhibit 1 for the CHORUS Institution Dashboard Service.
2. **Institution Benefits.** Institution shall be entitled to the following benefits and privileges in connection with the CHORUS Institution Dashboard Service:
  - a) Institution may nominate a representative to a CHORUS Advisory Group, which provides recommendations to CHORUS’ Executive Director and Board of Directors on the structure and implementation of the CHORUS Service.
  - b) Institution shall have access to an Institution Dashboard and reports in the CHORUS system which provide information about the identity, public accessibility, availability of re-use licenses, and preservation of Articles tagged as authored by Institution

Persons and published by Publisher Members.

- c) Institution may ingest metadata from the CHORUS Service and the CHORUS Institution Dashboard Service related to Articles by Institution Persons and links to full text on Publisher Member websites using the CHORUS Application Interface (API) and downloadable reports.

For the avoidance of doubt, nothing herein is intended to limit any other contractual rights Institution may have under direct agreements with Publisher Members.

**3. Institution Obligations.** Institution agrees to:

- a) Allow CHORUS to communicate Institution's status as a CHORUS Institution Dashboard Service recipient as set forth in Section 7.
- b) In addition, Institution is encouraged to (i) utilize and provide to CHORUS ORCID (Open Researcher and Contributor Identifier) persistent identifiers and associated metadata for standardizing the identity of Institution Persons and their associated research (Additional information about ORCID identifiers is available at [www.orcid.org](http://www.orcid.org)); (ii) provide CHORUS with any additional Article-level metadata, including Article-identifiers for relevant Articles authored by Institution Persons.

**4. CHORUS Obligations.** CHORUS shall undertake the following with respect to the CHORUS Institution Dashboard Service:

- a) Monitor Articles authored by Institution Persons for public accessibility on Publisher Member websites.
- b) Monitor Articles authored by Institution Persons for posting on a growing list of funder portals (e.g., US DOE PAGES, NSF PAR, and USGS Publications Warehouse and NIH PubMed Central).
- c) Monitor Articles authored by Institution Persons for associated ORCID researcher records.
- d) Confirm that Articles authored by Institution Persons have been deposited by Publisher Members and ingested in a dark archive with which CHORUS has a relationship (currently, CLOCKSS and Portico) prior to the an embargo period selected by Publisher Members to ensure long-term preservation and accessibility of such Articles.
- e) Create and maintain an Institution Dashboard in the CHORUS system which provides information about the identity, public accessibility, availability of re-use licenses, and preservation of Articles tagged as authored by Institution Persons and published by Publisher Members, with links back to the Publisher Member websites via a DOI provided by the Publisher Member.
- f) Provide customer support during business hours (9AM – 5PM Eastern, Monday through Friday)

5. **Enforcement.** The optimal functioning of the CHORUS Service and the CHORUS Institution Dashboard Service relies in part on compliance of Publisher Members with the terms and conditions of their respective agreements with CHORUS. Should Institution discover any problems with compliance, Institution may bring such issues to CHORUS's attention, in which case Institution and CHORUS shall work in good faith to resolve such issues. Notwithstanding the foregoing, Institution acknowledges that CHORUS does not control Publisher Members and further that Institution may not seek to compel CHORUS to act against any Publisher Member.
6. **Intellectual Property.** Institution acknowledges that, as between itself and CHORUS, CHORUS has all right, title and interest in and to the CHORUS Service and the CHORUS Institution Dashboard Service, including all related copyrights, database compilation rights, trademarks, trade names, and other intellectual property rights, currently in existence or later developed. The Parties acknowledge that copyright and other intellectual property rights in Articles may be owned in whole or in part by Publisher Members, Institution Persons, or third parties, including, without limitation, contributors, editors, illustrators, and societies. Nothing in this Agreement will be construed to supersede, abrogate, amend, or otherwise modify any rights of any rightsholder.
7. **Promotion.** CHORUS and Institution may each use the other's name(s) and mark(s) to identify the status of Institution as a CHORUS Institution Dashboard Service recipient, including featuring Institution's name and mark(s) on the CHORUS website and on the CHORUS Institution Dashboard. Each Party shall adhere to such guidelines as may be provided by the other Party from time to time regarding the use of name(s) and mark(s). Any other use of the name(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 for twelve (12) months, and thereafter shall automatically be renewed according to the terms of the then-most recent version of this Agreement for consecutive twelve (12) month periods unless terminated in accordance with the terms of this Agreement.
  - b) Either Party may terminate this Agreement upon ninety (90) days prior written notice.
  - c) A non-breaching Party may terminate this Agreement upon written notice for failure by the breaching Party to cure a material breach of this Agreement within thirty (30) days of written notice from the non-breaching Party to the Breaching Party of such breach.
  - d) Notwithstanding the foregoing, CHORUS reserves the right to temporarily suspend any part of the CHORUS Service or the CHORUS Institution Dashboard Service or to temporarily or permanently remove links to any Article upon determination in CHORUS's sole discretion that the continuation of such aspect of the CHORUS Service or the CHORUS Institution Dashboard Service (generally or with respect to a specific Publisher Member) or linking to any such Article could result in legal risk to CHORUS or upon request of a Publisher Member that such linking or Article may infringe the rights of a third party or otherwise present a legal risk to the Publisher Member.

9. **Actions Following Termination.** Upon termination or expiration of this Agreement, each Party shall immediately cease using the other Party's name(s) and mark(s) to indicate that Institution is a CHORUS Institution Dashboard Service recipient.

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

- (i) **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.
- (ii) **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 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.

11. **Warranty.** Each Party represents and warrants that it has the full power and complete authority to enter into this Agreement and that the person signing is authorized to do so.

12. **Disclaimer.** CHORUS SHALL TAKE COMMERCIALY REASONABLE STEPS IN OPERATING THE CHORUS SERVICE AND THE CHORUS INSTITUTION DASHBOARD SERVICE. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE CHORUS SERVICE AND THE CHORUS INSTITUTION DASHBOARD SERVICE ARE 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 AND THE CHORUS INSTITUTION DASHBOARD 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 OR THE CHORUS INSTITUTION DASHBOARD SERVICE. INSTITUTION ACKNOWLEDGES AND AGREES THAT CHORUS SHALL NOT BE LIABLE FOR (I) ANY ACTIONS TAKEN BY ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY PUBLISHER MEMBER OR ANY ARCHIVE WITH RESPECT TO THE CHORUS SERVICE OR THE CHORUS INSTITUTIONAL DASHBOARD SERVICE OR ANY OTHER CHORUS

**SERVICES, AND (II) ANY INACCURATE OR INCOMPLETE INFORMATION FEATURED IN THE CHORUS SERVICE OR THE CHORUS INSTITUTION DASHBOARD SERVICE OR ANY OTHER CHORUS SERVICES, OR CONTAINED ON THE CHORUS SITE GENERALLY. IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY HEREUNDER BE GREATER THAN THE ANNUAL FEES PAID (OR DUE) FOR THE THEN-CURRENT TERM.**

14. **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.
15. **No Partnership.** Neither Party is or shall become as a result of this Agreement, an agent, representative, or partner of the other Party.
16. **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 CHORUS or Institution.
17. **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.
18. **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 CHORUS:                      Howard Ratner  
   Executive Director  
   CHOR, Inc.  
   72 Dreyer Avenue  
   Staten Island, NY 10314  
   Email: hratner@chorusaccess.org

If to Institution, to the name and address listed as the Main Contact on Appendix A.

19. **Survival.** Sections (and the corresponding subsections, if any) of 6 and 8 through 24 shall survive the expiration or termination of this Agreement for any reason.
20. **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.
21. **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.
22. **Entire Agreement.** The terms and conditions of this Agreement and any appendices

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.

**23. Agreement Modifications.** In order to account for the evolution of CHORUS, CHORUS reserves the right to modify this Agreement in connection with each renewal term, provided that (i) no such modification shall be retroactive; and (ii) CHORUS will provide Institution with at least sixty (60) days’ written notice prior to the end of the then-current term of such modifications. If Institution objects to any such modification which is material, Institution may terminate this Agreement at the end of the then-current term by providing written notice to CHORUS within 30 days of receipt of such notice. If Institution does not object to such modification within such 30-day period, this Agreement shall be so modified. This Agreement also may be modified by mutual written consent of the Parties.

**24. 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 SIGNATURE, EACH OF WHICH SHALL BE DEEMED TO BE AUTHENTIC AND EQUALLY ENFORCEABLE.**

In witness whereof, a duly authorized representative of each of the Parties has signed below as of the Effective Date.

CHOR, INC.

**INSTITUTION**

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date:

## Exhibit 1: 2020 / 2021 Fee Table

### Annual Institution Dashboard Fee Table

5,000+ articles	\$5,150
1,000-4,999 articles	\$2,550
<1,000 articles	\$1,030

### Setup Fee

CHORUS is proposing that Institution pay a setup fee of **\$1,000**. This one-time fee will provide standard implementation services, including basic project management and customer service.

## Appendix A: Institution Designation of Representatives (Required)

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

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

**Main Contact.** The following individual will be the main representative of Institution for purposes of this Agreement, providing guidance and direction in operational and service matters:

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

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

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