

Author/Journal Agreement
Duke Law Journal

The following is an agreement between the **AUTHOR**, hereinafter referred to as “**the Author**,” and ***Duke Law Journal***, hereinafter referred to as “**the Journal**,” and governs “**TITLE**” hereinafter referred to as “**the Work**.”

1. Author’s Grant of Rights

- a. Except as provided in Paragraphs 1 (c) and 2 (b), the Author grants to the *Journal* the rights to reproduce and distribute the Work in the *Journal*, in facsimile reprints or microforms, as a contribution to a collection published by the *Journal*, and by means of an Internet or Intranet site over which the *Journal* exercises effective control, and also by means of a third-party online legal information provider, such as, but not limited to, LEXIS-NEXIS and Westlaw.
- b. The *Journal*’s rights provided in Paragraph 1 (a) shall be exclusive for a period beginning when this Agreement is executed and ending one (1) year after publication of the Work in the *Journal* or two (2) years after execution of this Agreement, whichever is shorter, and shall be nonexclusive thereafter.
- c. The *Journal*’s right to reproduce the Work includes the right to prepare a translation in any language or to authorize the preparation of such a translation, but such right is subject to the Author’s approval of the translator, which is not to be unreasonably withheld.
- d. After the Work has been published in the *Journal*, the *Journal* shall have the right, after notification of the Author, to authorize another party to reproduce and distribute the Work in the forms specified in Paragraph 1 (a).
- e. The Author grants the above rights without claim of royalties or other compensation.

2. Author’s Ownership of Copyright and Reservation of Rights

- a. The copyright in the Work shall remain with the Author.
- b. The Author retains the rights:
 - (i) To reproduce and distribute the Work, and to authorize others to reproduce and distribute the Work, in any format, to students for classroom use, at or below cost;
 - (ii) To include the Work, in whole or part, in another work of which the Author is the sole or joint author or editor, provided that in either circumstance the Author may not submit a work for publication that is substantially the same as the Work to another periodical

without the permission of the *Journal* sooner than one (1) year after publication of the Work or two (2) years after execution of this Agreement, whichever is sooner, and provided further that such Work identifies the Author, the *Journal*, the volume, the number of the first page, and the year of the Work's publication in the *Journal*.

- (iii) To post the Work, in whole or part, on an Internet or Intranet site over which the Author has effective control or which is maintained by a third-party online legal information provider, provided that such Work identifies the Author, the *Journal*, the volume, the number of the first page (once known) and the year of the Work's publication in the *Journal*.

3. Publication by Others

- a. Unless the Author notifies the *Journal* in writing otherwise, the issue of the *Journal* in which the Work appears shall include a notice stating that the Work may be reproduced and distributed, in whole or in part, by non-profit institutions for educational purposes including distribution to students, provided that the copies are distributed at or below cost and identify the Author, the *Journal*, the volume, the number of the first page, and the year of the Work's publication.
- b. The *Journal* shall have the right to authorize another party to reproduce and distribute the Work in a form other than those specified in Paragraph 1 (a), provided that such reproduction identifies the Author, the *Journal*, the volume, the number of the first page, and the year of the Work's publication in the *Journal*, and provided further that the Author has been notified by the *Journal* of its intent to authorize such reproduction and distribution not less than thirty (30) days prior to the grant of such authorization and the Author has not within thirty (30) days after being notified given the *Journal* written notice of the Author's objection to such reproduction and distribution.

4. Author's Warranties and Undertakings

- a. The author warrants that to the best of the Author's knowledge:
 - (i) The Author is the sole (joint) author of the work and has the power to convey the rights granted in this Agreement;
 - (ii) The Work has not previously been published, in whole or in part, except as follows:

 - (iii) The Work does not infringe the copyright or property right of another; and

- (iv) The Work does not contain matter that is defamatory, violates another's civil right, right of privacy, right of publicity, or other legal right, or is otherwise unlawful
- b. If the Work reproduces any textual or graphic material that is the property of another for which permission is required, the Author shall, if requested by the *Journal*, obtain written consent to such reproduction.

5. Litigation

- a. If a claim is asserted against the *Journal* as a result of the Author's alleged breach of this Agreement or the warranties herein, the Author shall be promptly notified. The author shall have the right to participate in the *Journal's* response to and defenses against such claim, and the *Journal* shall not settle such claim without the Author's approval. If a settlement requires the *Journal* to make a money payment, or a money judgement is rendered against the *Journal*, the author shall reimburse the *Journal* for the amount of such payment or judgement, and shall pay the cost and expenses reasonably incurred by the *Journal* in defending against the claim.
- b. The *Journal* shall have the power, after giving notice to the Author, to initiate legal proceedings against persons or entities believed to be infringing the rights granted by the Author to the *Journal*. The Author agrees to cooperate reasonably in the institution and maintenance of such proceedings. Damages recovered in such proceedings shall be applied first toward the *Journal's* reasonable costs and expenses incurred in the proceedings, and the balance shall be divided equally between the Author and the *Journal*.

6. Editing and Printing

- a. The Author authorizes the *Journal* to edit and revise the Work prior to publication in the *Journal*, but the Work shall not be published by the *Journal* unless it is acceptable in its final form to both the Author and the *Journal*.
- b. Promptly after publication, the *Journal* shall give the Author, without charge 25 offprint copies of the Work and, if requested by the Author, additional copies at a cost to be determined.

7. Final Agreement

This Agreement constitutes the sole agreement between the Author and the *Journal* with respect to the publication and copyright of the Work. Any modifications of or additions to the terms of this agreement shall be in writing.

Author: _____ Date: _____

Journal: _____ Date: _____