

## **Model Publication Agreement Amendment**

An amendment such as the one that follows, when attached by an author to a publication agreement or contract, is a mechanism through which crucial copyright rights can be retained by the author.

This model was adapted from existing amendments – also known as addenda – that are in use or proposed for use by MIT (see <http://libraries.mit.edu/about/scholarly/copyright-form.html>), the Scholarly Publishing and Academic Resources Coalition (SPARC; see <http://www.arl.org/sparc/author/index.html>) and the Science Commons and Creative Commons Scholar’s Copyright Project (see <http://www.sciencecommons.org/projects/publishing/>).

Following this model publication amendment is an explanation of its terms in non-legal language.

**Note:** The model amendment and explanation are not intended as substitutes for legal advice. The University of California Office of Scholarly Communication (OSC) is not part of the Office of the General Counsel and is not legal counsel to the University or to any members of the University community. A goal of the OSC is to provide information to help members of the community better address their scholarly communication needs. The information provided here is intended only for purposes of reference and possible guidance, not as a substitute for legal counsel. Please consult an attorney if you have questions regarding a specific copyright transfer agreement or publishing contract.

**AMENDMENT TO PUBLICATION AGREEMENT**

1. This Amendment hereby modifies the attached Publication Agreement concerning the following Article:

\_\_\_\_\_ (manuscript title) \_\_\_\_\_ (journal name)

2. The parties to the Publication Agreement and to this Amendment are:

\_\_\_\_\_, and \_\_\_\_\_.  
(corresponding author) (the Publisher)

- 3. The parties agree that in the event of a conflict between this Amendment and the Publication Agreement, the provisions of this Amendment shall prevail and the Publication Agreement shall be construed accordingly.
- 4. Notwithstanding any terms in the Publication Agreement to the contrary and in addition to the rights retained by Author and/or licensed by Publisher to Author in the Publication Agreement and any fair use rights of Author, Author and Publisher agree that the Author has the following rights:
  - a. The Author, without limitation, has the non-exclusive right to use, reproduce, distribute, perform, *and* display publicly the Article and create derivative works, including, but not limited to, updates, of the Article in electronic, digital or print form in connection with the Author’s teaching, conference presentations, lectures, other scholarly works, and for all of Author’s academic and professional activities, provided the journal in which the Article has been published is cited as the source of first publication of the Article.
  - b. The Author has all the non-exclusive rights necessary to make, or to authorize others to make, the Article available in online digital form, including but not limited to, a non-commercial website under the control of the Author or the Author’s employer or through any non-commercial digital repository, such as the University of California’s eScholarship Repository or the National Library of Medicine’s PubMed Central database, provided, however, that such rights shall not be exercised before publication of the Article. If Publisher delays publication of the Article unduly, Author has the option of terminating this Agreement.
  - c. The Author further retains all non-exclusive rights necessary to grant to the Author’s employing institution the non-exclusive right to use, reproduce, distribute, display, publicly perform, and make copies of the Article in electronic, digital or in print form in connection with teaching, digital repositories, conference presentations, lectures, other scholarly works, and all academic and professional activities conducted at or by the Author’s employing institution at the time of publication of the Article.
- 5. Acknowledgment of Prior License Grants. Publisher acknowledges that Author’s assignment of copyright or Author’s grant of exclusive rights to Publisher in the Publication Agreement is subject to Author’s prior grant of a non-exclusive copyright license to Author’s employing institution and/or to a funding entity that financially supported the research reflected in the Article as part of an agreement between Author or Author’s employing institution and such funding entity, such as an agency of the United States government. Publisher acknowledges that it has determined prior to execution of this Agreement whether any such grant exists.
- 6. Entire Agreement. This Amendment and the Publication Agreement, taken together, constitute the final agreement between the Author and the Publisher with respect to the publication of the Article and allocation of copyright rights in the Article. Any modification of or additions to the terms of this Amendment or to the Publication Agreement must be in writing and executed by both Publisher and Author in order to be effective.

AUTHOR  
(corresponding author on behalf of all authors)

PUBLISHER

DATE

DATE

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## **Annotated Explanation of Model Publication Agreement Addendum**

Following is an annotated explanation of paragraphs 3 through 6 of the model Amendment to Publication Agreement:

1. Paragraph 3—if there is a difference in the terms of the main publication agreement and this amendment *and* the difference is great enough that the terms are considered contradictory, the terms of the amendment will be given legal effect and the contradicting terms of the main agreement will not be given legal effect (i.e. the amendment “trumps” the Publisher’s agreement).
2. Paragraph 4—this paragraph specifies what copyright rights the author retains in his or her work, and contemplates the author’s present or future (near or distant) exercise of that right. Each subparagraph addresses a different right:

subparagraph (a)—this means the author has the right to use his or her work fully for the purpose of teaching, conference presentations, and other scholarly/professional activity, and to update or use the work as a basis for a new work (in other words, a “derivative” work). It is a “non-exclusive” right, and the publisher may allow others to use the author’s work in these ways as well. If the author assigned all copyright and copyright rights to the publisher and did not retain these rights, the author would be in the same position as a complete stranger with respect to his or her use of the work. The author would have to rely solely on the fair use provisions of the federal Copyright Act and the “face-to-face” teaching exception in that Act (which allows the copying and other use of an entire work without permission of the copyright owner provided it is used in face-to-face teaching). The retained rights give the author greater rights than those available under fair use or the face-to-face teaching exception.

subparagraph (b)—this means the author has the right to make the work available in digital form, including in a non-commercial online digital repository, to others. An author would not have this right if it was not retained. It is “non-exclusive” and allows the publisher to also place the work in its own or another’s repository. It preempts a potential publisher’s objection to the provision by specifying that the right may not be exercised before publication of the work. The last sentence is intended as an escape hatch if the publisher delays in publication: the author may terminate and make other arrangements.

subparagraph (c)—this means the author has the right to give the author’s employing institution the right to fully use the work and place it in an online repository in connection with academic and professional activities conducted by the employing institution. It is “non-exclusive” in order to allow the publisher the right to do these things as well.

Paragraph 5—this puts the publisher on notice that the author may have already granted copyright rights to another before signing this agreement, such as to a federal agency in compliance with regulations of the agency that helped fund the underlying research. This precludes a publisher from later asserting that it was not aware that the author had given such rights, and that the author’s granting of such rights must be rescinded or that the author owes compensation (“damages”) to the publisher.

Paragraph 6—this means that the publisher cannot claim that it and the author had an enforceable agreement on a term that is not included in writing in either this amendment or in the main agreement. In other words, the written terms of this amendment and the main agreement are the only legally enforceable terms; thus, even if the author agrees orally to something proposed by the publisher, or vice versa, it is not legally effective unless it is in writing and signed by both the author and the publisher.