

# THE EAGLE EYE CONTRACT AND LICENSE FOR USE OF CREATIVE WORK

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The Eagle Eye, a student publication of Marjory Stoneman Douglas High School, and \_\_\_\_\_, an individual seeking to contribute creative work product to the Publication; agree to the following license governing the Staff Member's contribution(s) to the Publication (the Work(s)).

1. License and Rights. The Staff Member grants all licenses necessary to the Publication for the purpose of the Publication's inclusion of the Works in its print and electronic media publishing efforts, including without limitation the right to reproduce, distribute, display, perform, and electronically transmit issues of the Publication as described herein.

2. Grant of Rights. By contributing the Works to the Publication, the Staff Member grants a nonexclusive license to the Publication to reproduce, display and distribute copies of the Works in the issue for which the Works were originally submitted, future or commemorative issues, the Publication's Web site or other physical or electronic media now known or later discovered.

3. Reserved Rights. Except as expressly granted by this document, the Staff Member retains all rights associated with ownership of the Works. Any individual Work contributed to the Publication by the Staff Member is not considered a work made for hire and is the sole property of the Staff Member. Any future use of the Works by the Publication (beyond normal subscription and reprint fees, if any) requires an additional license from the Staff Member.

4. Term. The Staff Member agrees that the license shall exist as long as the intellectual property is entitled to protection under the laws of the United States and cannot be revoked except with written consent from the Publication.

(A) Calculation of days. Unless otherwise specified, all time periods in this contract measured by days are calculated in business days starting with the day after the triggering event. "Business days" are all days excluding Saturdays, Sundays and federal holidays.

(B) Calculation of months. Unless otherwise specified, all time periods in this contract measured by months are calculated by the date of the first day after the triggering event in the period of months ahead, regardless of day of week or holiday; or, if that month has no such corresponding date, the first day of the month immediately following. For example, within the meaning of this contract, a three-month period starting January 1 would end April 1, and a three-month period starting January 31 would end May 1.

5. Territory and Media. The Publication shall have the right to reproduce, publish, and distribute the Works in any format now known or later discovered, including without limitation any physical, broadcast, electronic, and Internet-based medium, and any future uses directly controlled by the Publication; save that the Publication shall have the obligation to comply with the terms of this contract with respect to uses for compensation as described herein.

6. Compensation and Royalties. No compensation or royalties are required from the Publication for the use of the Works as described herein.

## 7. Termination.

(A) This agreement will not terminate due to a breach, regardless of whether or not it is a material breach, unless the breaching party is given an opportunity to cure (as described herein) and fails to do so, except in the following situations that give rise to immediate termination of the agreement:

i. The Staff Member is found to have acted knowingly to deceive the publication as to the authorship of her/his works, as determined by a good faith vote of the editorial board of the Publication; in which case, such deceptive work(s) are released from this contract and no future works are accepted, though non-infringing existing works remain under contract.

(B) In the event the Publication becomes a party to a merger or other corporate combination, the Staff Member has the right, but not the obligation, to cancel within thirty (30) business days of learning of the merger.

(C) The Termination, or expiration of the Term, of this agreement does not discharge all duties of either party. These duties include, but are not limited to, certain representations and warranties, the duty to account for financial licensing, and the license obligations for works licensed under the contract prior to termination.

## 8. Approvals.

(A) For-Profit Use Approval. Any future use of the Staff Member's works by Publication that would result in payment to the Publication (beyond normal subscription and reprint fees, if any) requires an additional license from the Staff Member.

(B) Non-Profit Use Approval. Any future use of the Staff Member's works by Publication that would not result in payment to the publication (beyond normal subscription and reprint fees, if any) does not require any additional license from the Staff Member and is covered by the terms of this agreement.

(C) Agents. Approvals are requested by the editor-in-chief of the publication or her/his designee, using the editorial mailing address provided upon request. Approvals are sent to the Staff Member's last known mailing address, physical and digital, which it is Staff Member's obligation to keep current.

(D) Withholding approval. In the event that any party withholds an approval, that party agrees to explain why approval was withheld. The Publication has the right to re-submit a substantially similar request for approval if it reasonably believes that either the substance of the request or circumstances surrounding the request have been changed.

(E) Prior Approvals. Once given, the granting party is bound to an approval and such approval cannot be revoked save for an additional contract executed by both parties.

(F) Communication. All requests for approval, approvals and/or denials must be in writing, accompanied by appropriate additional materials necessary for the approval process as established herein, and sent by hand delivery, facsimile, standard mail, private courier, established overnight delivery, or e-mail; save that e-mail must be accompanied by some physical method. A failure to respond to a request for approval within thirty (30) business days shall be deemed an approval, a condition that shall be specified in the

written request. A request and/or response is deemed given the day after it is sent. If, after diligent efforts to contact the author to obtain such permission, the author cannot be found, such additional permission may be presumed to be granted. Only an affirmative non-approval is considered a denial of approval.

#### 9. Representations and Warrantees.

(A) The Staff Member represents and warrants that: i. The Staff Member is either the full legal owner of the intellectual property it is submitting to the publication, or, to the extent s/he is not, s/he has obtained all necessary consents, licenses, and clearances as necessary to permit the Publication to publish said intellectual property, or, to the extent s/he has not, s/he has informed the publication as to the need to obtain such consents, licenses and clearances. ii. The Staff Member will make all best attempts to identify and avoid plagiarism, to the extent plagiarism is defined by the academic institution the Staff Member is attending, or if the Staff Member is not attending an institution, the institution the Publication primarily covers and draws staff from. iii. In the event the Staff Member sells her/his interest in the Works to a third party, that the Staff Member will notify the purchaser of the existence of this contract and the licenses granted hereunder and will transfer her/his obligations under this license to the new owner of the Works in any such transfer.

(B) The Publication represents and warrants that: iv. All publications of submissions by the Staff Member will include credit to the Staff Member, except as separately agreed and executed in writing.

10. Indemnifications. The Staff Member agrees to indemnify, defend, and hold the Publication harmless from any and against all losses, costs, and liability incurred due to a third party's claim, lawsuit, cause of action or arbitration (including, without limitation, reasonable attorneys' fees and expenses; settlements; judgments; and arbitration awards) arising from or related to a breach by the Staff Member of the representations and warrantees set out in this agreement. The Publication agrees to indemnify, defend, and hold the Staff Member harmless from any and against all losses, costs, and liability incurred due to a third party's claim, lawsuit, cause of action or arbitration (including, without limitation, reasonable attorneys' fees and expenses; settlements; judgments; and arbitration awards) arising from or related to a breach by the Publication of the representations and warrantees set out in this agreement.

(A) Alienation of ownership. In the event that the Staff Member sells her/his ownership of the copyright in the Work(s) to a third party and fails to inform the third party of this contract and that the transfer of the Work(s) will not terminate this license, the Staff Member agrees to indemnify, defend, and hold the Publication harmless from any and all losses, costs, and liability due to a claim, lawsuit, cause of action or arbitration by the purchasing party or its licensees (including, without limitation, reasonable attorneys' fees and expenses; settlements; judgments; and arbitration awards) arising from or related to a breach by the Staff Member of the representations and warrantees set out in this agreement.

11. Exclusivity. The Staff Member shall not, for three (3) months following the initial submission of the work to the Publication, permit the story, or any shorter or longer version of the story, to be published in a competing publication without obtaining prior written consent from The Publication.

(A) Definition of Competitive. As used under this paragraph, a “Competitive” publication is a print, broadcast, or Internet publication that reaches a substantial portion of the circulation reached by the Publication.

(B) Counting Days. For purposes of counting time under this section, the first day is the day after the work was submitted to an editor of the publication for inclusion in the Publication’s media offering(s). Pre-publication consultation with editors will not start the period.

12. Notice. Unless otherwise specified, all notices given hereunder shall be in writing and shall be sent by hand-delivery, facsimile or overnight delivery by one of the established overnight delivery services. If sent by hand-delivery or overnight delivery, a signature must be obtained from the individual in charge of obtaining mail at the recipient’s location. Notice will be deemed given the day after it is sent to the correct address or phone number.

13. Opportunity to Cure. For any breach or material breach that does not expressly give rise to immediate termination as described herein, the breaching party shall have a reasonable opportunity to cure the breach with no effect on this contract or its terms. Upon being notified of the breach, the breaching party and non-breaching party will attempt to agree on an appropriate cure period; if the parties are unable to reach an agreement, the breaching party will have ten (10) business days to cure any breach.

14. Choice of Law. This agreement shall be governed and construed in accordance with the internal laws of the state in which the Publication has its primary office, without regard to its conflicts of laws principles; and the intellectual property laws of the United States of America. The parties hereby agree that United States intellectual property laws will exclusively govern any intellectual property subject to this contract and no other intellectual property conventions or rights will have any effect in the application, enforcement, performance or adjudication of this contract, including but not limited to moral rights as defined by the EU; the limitation of dilution protection in the U.K.; WIPO and the definition of famous marks under the Paris Convention; the Berne Convention; or any other external treaties or laws not executed internally by the U.S. Congress.

15. Choice of Forum. Any legal actions relating to this contract shall be maintained in a state court or a federal district court located in the state in which the Publication has its primary office, and both the Publication and the Staff Member irrevocably consent to jurisdiction and venue in that state. In the event that any legal action or any other proceeding is commenced to enforce any provision of this contract or as a result of a breach, default or misrepresentation in connection with any provision of this contract, the successful or prevailing party shall be entitled, in addition to any other relief to which said party may be entitled, to recover reasonable attorneys’ fees and costs of litigation incurred in such action or proceeding.

16. Arbitration. At the Publication’s sole and exclusive discretion, a legal dispute raised by either party can be sent to binding arbitration, in which the substantive and procedural laws dictated by this document will continue to apply. The Publication has up to six (6) months from the date served with a complaint to force arbitration and will the fee required by the administrator of arbitration. The parties may mutually agree on an arbitrator, but if mutual agreement is impossible, the parties agree to permit the National Arbitration Forum to select a neutral arbitrator in the Publication’s geographic area. In no event with the Publication be bound to an arbitration that would require more than one hundred and twenty (120) miles of travel.

17. Severability. If any provision or any portion of any provision(s) of this contract is illegal, invalid, or unenforceable for any reason, including (without limitation) any restrictive covenants and/or any law(s) of this or any other jurisdiction where this contract is enforced or construed, the offensive provision(s) or portion(s) thereof are considered void and eliminated from the contract as if never incorporated herein, unless striking the illegal, invalid or unenforceable part of the contract frustrates the purpose of the contract.

18. Waiver. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future or of any subsequent breach thereof.

19. Merger. This agreement constitutes the complete, final and entire understanding between the parties and supersedes all prior representations, negotiations, promises, understandings or agreements, whether oral or written, between the parties with respect to the subject matter. No amendment of this agreement will have legal force unless in writing and executed by the authorized officers of the respective parties.

20. Headings. The headings used in this Agreement are intended for reference only and shall not be deemed part of this Agreement.

**The Eagle Eye**

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

Printed name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**Accepted and agreed to:**

The staff member signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Email address where you can be reached in the future: \_\_\_\_\_

**Parent or guardian signature if staff member is a minor:**

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

Printed name: \_\_\_\_\_

Date: \_\_\_\_\_