

## **Booksmith Account Creation Agreement**

This document constitutes an agreement between the Client, identified at the end of this document, and Booksmith.

By entering into this agreement, the Client requests Booksmith to create and maintain a User Account, as defined in this document. The Client agrees wholly and without reservation to be bound by the terms of the User Account as set forth in this document, and as amended in writing and provided in notification to the Client by Booksmith.

In this agreement:

- “The Client” shall refer to the person or entity so identified at the conclusion of this document.
- “Booksmith” shall refer to 506268 Ontario Limited, a corporation located at 261 Alice Street, Kincardine ON N2Z 2P9, Canada.
- “Intellectual Property” shall refer to the electronic books, manuscripts, textbooks, pamphlets or other documents managed by Booksmith on behalf of The Client.
- “Electronic Book Distributors” shall refer to the third-party businesses identified in Attachment B of this agreement.
- “User Account” shall refer to an account maintained by Booksmith on behalf of The Client for the sole and express purposes of providing services to the Client by Booksmith and of conveying the proceeds of the sale of the Client’s Intellectual Property from Electronic Book Distributors to the Client.
- “Billing Cycle” shall refer to a one month period commencing upon the date when this agreement is accepted and executed by Booksmith.

The section headings in these Terms and Conditions are for convenience only and have no legal or contractual effect.

Terms and Conditions of this agreement:

### **1. Fees Charged by Booksmith to The Client**

If the Client creates a Novelist Account: The Client shall pay to Booksmith the amount of \$99.99 (US) in payment for the formatting, graphic management, uploading and royalty management of the Intellectual Property associated with the account, the Intellectual Property to consist of a single title, payment to be made at the commencement of the account billing cycle. The term of the account shall

be one calendar year, at the conclusion of which the Client may renew the royalty management portion of the account for a further calendar at the then-current renewal price.

If the Client creates an Author Account: The Client shall pay to Booksmith the amount of \$49.99 (US) for each calendar year or portion thereof during which the User Account is active, payment to be made at the commencement of the account billing cycle. The billing cycle for an Author Account shall be one calendar year.

If the Client creates a Publisher Account: The Client shall pay to Booksmith the amount of \$19.99 (US) for each calendar month or portion thereof during which the User Account is active. Fees for the account shall be payable in full at the commencement of each Billing Cycle. The billing cycle for a Publisher Account shall be one calendar month.

Terms common to all accounts: The Client shall provide Booksmith with a valid major credit card acceptable to Booksmith and written authorization to charge the card for monthly fees and any other costs, charges or fees agreed to by the Client, the credit card and associated information to be detailed in Attachment A of this document, or the Client shall make payment through the Client's designated PayPal account.

In the event that the Client should change or update the credit card provided to Booksmith for payment, or change or update the payment details of the Client's PayPal account, the Client undertakes to notify Booksmith in a timely manner of the Client's updated payment information to permit Booksmith to successfully charge the Client's credit card or PayPal account as specified.

The Client undertakes that he or she is at least 18 years old, and that he or she has the authority to authorize charges to the payment device provided to Booksmith. The Client further undertakes that he or she is the person or entity identified as the Client entering into this agreement.

The Client agrees that under no circumstances will payment for any costs, charges or fees agreed to in this or dependant documents be withheld or disputed for any reason.

The Client agrees that in the event Booksmith does not receive complete payment for any costs, charges or fees agreed to by the Client, due to a dispute, insufficient funds or any other cause, Booksmith shall have recourse to seek payment in any manner it sees fit, subject to the laws of the jurisdiction where the Client resides. In such instance, Booksmith may employ a third-party collection agency to collect money owed to it, and shall be free to disclose any information it sees fit to a collection agency to facilitate the collection of said debt. Further, in this eventuality, the Client agrees to pay, in addition to the total value of the costs, charges or fees owed to Booksmith, any reasonable cost of collection required to

obtain payment for or by Booksmith or its agents or representatives, and to compensate Booksmith for any bank charges, processing fees and other costs incurred.

The Client agrees that in the event Booksmith attempts to charge the Client's credit card for any costs, charges or fees agreed to by the Client and the charge is declined, the Client shall pay to Booksmith a processing fee not to exceed \$10.00 (US) for each dishonored transaction.

The Client agrees that Booksmith shall not be required to complete or provide documentation pertaining to the costs, charges or fees agreed to in this and dependant documents exclusive of a transaction receipt, for any reason. This includes, but is not exclusive to, government taxation or transaction documents.

The Client agrees that if the Client requests a refund for any costs, charges or fees due to an error of the part of the Client, and if Booksmith agrees to provide the Client with said refund, Booksmith may at its discretion deduct a processing fee not to exceed \$10.00 (US) from the refund to offset costs and labor associated with the processing of the refund. The refund shall consist of the refunded amount minus the processing fee. This condition does not constitute an undertaking by Booksmith to refund all or part of any costs, charges or fees. Refunds will be provided at the sole discretion of Booksmith.

The Client agrees that in the event of non-payment of any costs, charges or fees agreed by the Client to be paid to Booksmith, Booksmith shall have full and exclusive recourse to any revenues generated by the Client's Intellectual Property as managed by Booksmith, until such time as all debts to Booksmith have been paid in full.

The Client agrees that Booksmith may adjust its account fees at any time, by providing the Client with written notification by conventional mail, e-mail or FAX thirty (30) calendar days prior to the adjustment. In the event that the Client retains the User Account created by this agreement for thirty (30) calendar days after receiving notification of an adjustment to the monthly User Account fee, the Client will be deemed to have accepted and agreed to said adjustment as if it had been included in the original text of this agreement.

The Client agrees that in addition to the fees for the Client's account, other costs, charges or fees may be payable to Booksmith for specific services not covered by the User Account fee. All such costs, charges or fees will be agreed to in writing by dependant agreements.

The Client agrees that the Client shall not be entitled to a refund of all or part of any costs, charges or fees charged to the Client by Booksmith for any reason, including but not exclusive to the refusal of Booksmith to accept specific Intellectual Property, the refusal of one or more Electronic Book Distributors to

accept specific Intellectual Property or the refusal of one of more Electronic Book Distributors to sell specific Intellectual Property at a price requested by the Client.

## **2. Term and Termination**

This agreement shall be in force until it is terminated in writing by either party.

The Client may terminate this agreement at any time, for any reason, by providing Booksmith with notification by conventional mail, e-mail or FAX of the Client's wish to terminate the agreement.

Booksmith may terminate this agreement at any time, for any reason, by providing the Client with notification by conventional mail, e-mail or FAX of Booksmith's wish to terminate the agreement.

At such time as this agreement is terminated by either party, the User Account created in accordance with this agreement will be terminated and closed at the conclusion of the current billing cycle. After the User Account is terminated and closed, no further payments, as specified in section 1 of this agreement, will be applied to the Client's credit card by Booksmith.

Booksmith agrees that no account "set up" fee or account termination fee will be charged to the Client.

Notwithstanding the termination of this agreement by either party, the conditions set forth and agreed to in sections 4 through 11 of this agreement will remain in force in perpetuity.

In the event of a User Account being terminated before the end of its billing cycle, no portion of fees charged for the current billing cycle will be refundable.

## **3. Services Provided to the Client by Booksmith**

Booksmith undertakes by this agreement to provide the following services to The Client in accordance with this agreement, in consideration of the monthly User Account fee. No other services will be provided by Booksmith to the Client, except as detailed in dependant agreements or attachments to this agreement, or as agreed to by the Client.

- If the Client creates a Novelist Account: Booksmith will collect all monies provided by the Electronic Book Distributors listed in Attachment B of this agreement in compensation for the sale of Intellectual Property by the Client, and Booksmith will forward all monies thus collected to the Client by the method detailed in Attachment C of this agreement not more frequently than once every six calendar months if the Client requests payment by bank draft, or not more frequently than once every Calendar month if the Client requests payment by

PayPal. Booksmith will undertake to the best of its abilities to transfer all monies so collected to the Client within thirty (30) calendar days of the monies being paid to the accounts of Booksmith and the foregoing conditions being met.

- If the Client creates an Author Account: Booksmith will collect all monies provided by the Electronic Book Distributors listed in Attachment B of this agreement in compensation for the sale of Intellectual Property by the Client, and Booksmith will forward all monies thus collected to the Client by the method detailed in Attachment C of this agreement not more frequently than once every six calendar months if the Client requests payment by bank draft, or not more frequently than once every Calendar month if the Client requests payment by PayPal. Booksmith will undertake to the best of its abilities to transfer all monies so collected to the Client within thirty (30) calendar days of the monies being paid to the accounts of Booksmith and the foregoing conditions being met.

- If the Client creates a Publisher Account: Booksmith will collect all monies provided by the Electronic Book Distributors listed in Attachment B of this agreement in compensation for the sale of Intellectual Property by the Client, and Booksmith will forward all monies thus collected to the Client by the method detailed in Attachment C of this agreement. Booksmith will undertake to the best of its abilities to transfer all monies so collected by to the Client within thirty (30) calendar days of the monies being paid to the accounts of Booksmith.

- Booksmith will provide the Client with a detailed statement of account listing the payments made to Booksmith as a result of the sales of the Client's Intellectual Property as managed by Booksmith.

The Client agrees that Booksmith shall not be required to forward any money to the Client until such time as said money is paid to the account of Booksmith by the Electronic Book Distributors with whom the Client's intellectual property has been placed by Booksmith. The Client further agrees that Booksmith shall have no responsibility to ensure that payment is made by said Electronic Book Distributors, or undertake legal action or other processes to facilitate the collection of monies owed to the Client should payment not be received from one or more Electronic Book Distributors.

The Client agrees that Booksmith shall not be liable for any costs, loss, damage, expense or the payment of interest or penalties in the event that monies owed to the Client are not paid in a timely manner.

Except as noted elsewhere in this agreement for the express purpose of settling debts owed to Booksmith by the Client, Booksmith agrees not to withhold any portion of the monies paid to it by the Electronic Book Distributors in settlement of royalties due the Client for the sale of the Client's Intellectual Property.

#### **4. Warrantee by The Client**

The Client hereby warrants that all Intellectual Property submitted to Booksmith by the Client or representatives of the Client are wholly and entirely the property of the Client, or that the Client has written title and permission to utilize, convey and distribute the Intellectual Property.

The Client hereby warrants that the Intellectual Property does not include any content which would constitute copyright infringement; plagiarism; theft of ideas; unauthorized or unreasonable quotation or citation; or any other content which could be construed as the violation of copyright of any third party.

The Client hereby warrants that the Intellectual Property does not include any content which would be deemed to be unlawful within any jurisdiction in which the Electronic Book Distributors chosen by the Client to sell the Intellectual Property do business.

The Client hereby warrants that the Intellectual Property does not include any content which might be reasonably construed to constitute instructions for the construction, obtaining or implementation of explosives, weapons, biological agents or other devices or substances which might be used or construed to be implements of terrorism.

The Client hereby warrants that the Intellectual Property does not include any content which might be reasonably construed to be intentionally racist, denigrating or derogatory of a specific racial or ethnic group or intended to promulgate hate or discrimination toward a specific racial or ethnic group.

The Client hereby warrants that the Intellectual Property does not include any content which might be reasonably construed to be instructional or adjunctive in the commission of any unlawful action.

The Client hereby warrants that the Intellectual Property does not include any content which might be reasonably construed to be criminally obscene within any jurisdiction in which the Electronic Book Distributors chosen by the Client to sell the Intellectual Property do business.

The Client hereby undertakes to defend and hold harmless Booksmith, its principals, its employees, its stockholders and its suppliers from any and all costs resulting from legal action arising out of Booksmith's relationship with the Client, however it occurs, including but not exclusive to liability or expense arising from all claims, losses, damages, suits, judgments, litigation costs and attorneys' fees, of every kind and nature, court costs and settlements.

#### **5. Warrantee by Booksmith**

The Client agrees that all services provided by Booksmith are without warrantee of any kind, expressed or implied. In the event that services provided to the Client by Booksmith are found to be other than as specified or promised in writing by Booksmith, Booksmith will undertake to the best of its abilities to remedy the defect.

The Client agrees that the Client is not entitled to any compensation, monetary or otherwise, in the event of the services provided to the Client by Booksmith being other than as specified or promised.

## **6. Grant of rights and ownership of intellectual property**

All rights to the Intellectual Property managed by Booksmith on behalf of the Client shall remain the property of the Client, or representatives of the Client, or other copyright holders as identified by the Client. No rights to the Intellectual Property shall be conveyed to Booksmith through this agreement.

The Client agrees that unless otherwise agreed in writing, Booksmith shall not be required to provide to the Client the formatted text of the Intellectual Property until the Intellectual Property has been submitted to one or more Electronic Book Distributors by Booksmith and the Client's account with Booksmith has managed the Intellectual Property for a contiguous period of time of not less than 365 calendar days.

## **7. Privacy and Security**

Booksmith undertakes to take all reasonable precautions to ensure the privacy of information provided to it by the Client for the purpose of servicing the Client's account.

Booksmith agrees that the Client's name, address, telephone number, credit card information and e-mail address will not be disclosed to third parties without the Client's express permission or proper legal due process, except as is required to facilitate the servicing of the Client's account and subsequent related communications.

Booksmith agrees that it will not contact the Client for any reason by any medium except in conjunction with the servicing of the Client's account and related matters, nor will it contract with third parties to do so.

The Client agrees that information provided to it by Booksmith, including but not exclusive to passwords, account information and financial information will be treated by the Client as secret and confidential, and will be protected with no less security than the Client's most secure information, and will not be disclosed to third parties, subject only to disclosure as a result of legal due process.

The Client agrees that Booksmith shall not be liable for any loss, damage or expense arising from the unwarranted or accidental disclosure or distribution of the Intellectual Property, even if said disclosure or distribution is found to be the result of a breach of security resulting in actions by Booksmith. The Client further agrees to defend and hold harmless Booksmith, its principals, its employees, its stockholders and its suppliers from any and all costs resulting from legal action arising out of the unwarranted or accidental disclosure or distribution of the Intellectual Property, however it occurs, including but not exclusive to attorney's fees, court costs, settlements and damages.

The Client agrees that in the event of the Client owing a debt to Booksmith, and said debt not being settled in full by the Client within ten (10) calendar days of receipt in writing by the Client of the existence of the debt, Booksmith shall be empowered to disclose any private information related to the Client to any third parties it sees fit in the furtherance of the collection of said debt.

## **8. Revisions and Modifications to this Agreement**

Booksmith may at its discretion revise and update the terms and conditions of this agreement, dependant agreements or attachments thereto by notifying the Client in writing thirty (30) calendar days prior to the effective date of the revisions or updates. In the event that the Client retains the Account created by this agreement for thirty (30) calendar days after receiving notification of revisions or updates to this agreement, the Client will be deemed to have accepted and agreed to said revisions or updates as if they had been included in the original text of this agreement.

## **9. Addendums to this Agreement**

The Client agrees to be bound by all the terms and conditions set forth in the distribution agreements of the Electronic Book Distributors to which the Client has instructed Booksmith to submit the Client's Intellectual Property, as referenced in Attachment B of this agreement. Said distribution agreements are included in this agreement by reference.

## **10. Jurisdiction**

This Agreement is governed by the laws of the province of Ontario, Canada. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario and further agrees to commence any litigation which may arise hereunder in the courts located in the Judicial District of York, Province of Ontario.

## **11. Entire Agreement**

If any part of this Agreement is determined to be invalid or unenforceable, then

the invalid or unenforceable provision will be deemed superceded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of the Agreement shall continue in effect. This Agreement together with any attachments and dependant agreements referencing this one, constitutes the entire agreement between you and Booksmith, and supercedes all other (prior or contemporaneous) communications and proposals, whether electronic, oral or written, between you and Booksmith.

The failure of Booksmith to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision.

By completing and signing this agreement, the Client accepts and agrees without reservation or condition to all the terms and conditions herein.

This agreement shall not be deemed to be in force until the agreement and all attachments thereto have been completed by the Client, the entire completed and unmodified agreement and all attachments thereto have been FAXed to Booksmith at **1-519-396-4738** or sent by conventional mail to **booksmith.ca, 261 Alice Street, Kincardine, ON N2Z 2P9, Canada** and the agreement has been reviewed and accepted by Booksmith.

Identification of the Client:

Client's full name: \_\_\_\_\_

Client's business (optional): \_\_\_\_\_

Client's mailing address: \_\_\_\_\_  
\_\_\_\_\_

Client's city and state or province: \_\_\_\_\_

Client's country: \_\_\_\_\_

Client's daytime telephone: \_\_\_\_\_

Client's FAX (optional): \_\_\_\_\_

Client's e-mail address: \_\_\_\_\_

Date of client's acceptance of this agreement: \_\_\_\_\_

Client's signature: \_\_\_\_\_

Account type to be created:  Novelist Account  
 Author Account  
 Publisher Account

The text of this agreement is copyright © 2009 - 2010 booksmith.ca, and may not be reproduced in any form except for the express purpose of completing and executing a client agreement with booksmith.ca.

**Attachment A – Credit Card Information**

Booksmith can only accept payment by Visa, MasterCard and American Express credit cards at this time. Debit cards are acceptable – in the event that payment is made by debit card, it is the Client’s responsibility to ensure that sufficient funds are available in the Client’s debit card account to complete payment.

Payment will be charged in an amount of Canadian dollars equivalent to the US dollar total of the costs, charges or fees owed by the Client.

Client’s name as it appears on the card: \_\_\_\_\_

Client’s credit card number: \_\_\_\_\_

Client’s credit card expiry date: \_\_\_\_\_

Client’s signature: \_\_\_\_\_

**Attachment B – Electronic Book Distributors**

The Client hereby authorizes Booksmith to submit its Intellectual Property to the following Electronic Book Distributors.

The Client shall have the option of choosing the specific Electronic Book Distributors to which each of its Intellectual Properties shall be submitted.

The Client agrees that Booksmith shall not be responsible for any costs, charges or fees, or to refund and costs, charges or fees in the event that one or more of the Electronic Book Distributors to which the Client’s Intellectual Property is submitted refuses to accept said submission, requires alternation or editing of said submission or refuses to sell the Client’s Intellectual Property at the price suggested by the Client.

Select one or more of the following (you agree to the publisher agreements referenced below in so doing):

Amazon Kindle:

<http://forums.digitaltextplatform.com/dtpforums/entry.jspa?externalID=2&categoryID=12>

Date of client’s acceptance of this attachment: \_\_\_\_\_

Client’s signature: \_\_\_\_\_

**Attachment C – Client Payment Instructions**

Booksmith undertakes to transfer monies owed to the Client as per the terms of the Booksmith Account Creation agreement, using the Client’s selection of one of the following transfer methods.

Select one of the following:

Send a bank draft or other negotiable payment instrument payable to the Client to the following address:

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Transfer the monies owed to the Client to following PayPal account:

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The Client agrees that all monies transferred by Booksmith to the Client will be in United States dollars.

Booksmith agrees to pay at its expense the cost of sending monies owed to the Client through one of the above methods.

The Client agrees to pay any costs of receiving monies owed to it by Booksmith, including but not exclusive to bank service charges, currency conversion charges, processing fees and withholdings.

The Client agrees to notify Booksmith in a timely manner of changes to the Client’s payment information, and to hold Booksmith harmless for any loss or expense arising from lost or delayed payments resulting in changes to the Client’s payment information, or by any failure of the Client’s payment recipient to correctly and accurately receive and processes payments sent to the Client by Booksmith.

Date of client’s acceptance of this attachment: \_\_\_\_\_

Client’s signature: \_\_\_\_\_

