

# **AUTHOR PUBLISHING AGREEMENT**

**THIS AGREEMENT** (hereinafter called the Agreement) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (hereinafter called the “Publisher”) and \_\_\_\_\_ (hereinafter called the “Author,” which term shall be deemed to include the Author's executor, devisees, heirs, and literary assigns).

**WHEREAS**, the Author desires the Publisher to publish the Author’s work titled \_\_\_\_\_, (hereinafter called the “Title”), and Publisher desires to publish the Title;

**NOW, THEREFORE** in consideration of the promises hereinafter set forth and for valuable consideration, receipt whereof is acknowledged, the parties agree as follows:

## **1. Grant of Publishing Rights**

- A. The Author hereby grants and assigns to The Publisher, its successors, representatives, and assigns, the sole and exclusive right to publish (i.e., print, publish, and sell) The Title in the English language in all forms during the full term of copyright and any renewals and extensions thereof, except as provided herein.
- B. The Publisher shall have the sole and exclusive right to publish or to license The Title for publication in the English language or in any other language in the United States and in any other foreign country, except as provided herein.
- C. The Author shall execute and deliver to The Publisher all documents which The Publisher reasonably deems necessary or appropriate to evidence or effectuate the rights granted in this Agreement.
- D. If, at any time during the effective term of this Agreement, a claim shall arise for infringement or unfair competition as to any of the rights which are the subject of this Agreement, the parties may proceed jointly or separately to prosecute an action based on such claims. If the parties proceed jointly, the expenses (including attorneys’ fees) and recovery, if any, shall be shared equally by the parties. If the parties do not proceed jointly, each party shall have the right to proceed separately, and if so, such party shall bear the costs of litigation and shall own and retain any and all recovery resulting from such litigation. If the party proceeding separately does not hold the record title of the copyright at issue, the other party hereby consents that the action be brought in their or its name. Notwithstanding the foregoing, The Publisher has no obligation to initiate litigation on such claims and shall not be liable for any failure to do so.
- E. Nothing contained in this Clause shall be construed as limiting, modifying or otherwise affecting any of the rights granted to The Publisher under this Agreement.

## **2. Copyright**

Copyright of The Title belongs to The Author and their heirs. The Publisher will register The Title’s copyright with the Library of Congress upon The Author’s request. This registration will be executed by The Publisher for an additional fee as is outlined in the Menu of Services.

## **3. Author's Warranties and Indemnity**

- A. The Author warrants to The Publisher and its licensees that they are the sole author and proprietor of The Title; that The Title has not heretofore been published in book form; that they are the owner of all the rights granted to The Publisher, and has full power to enter into this agreement, and that said rights are not subject to any proper agreement, lien, or other claim or rights which may

interfere with the rights herein granted; that The Title is original and not in the public domain; that it does not violate the right of privacy of any person; that it contains no libelous, obscene, or other unlawful matter; and that it does not infringe upon the copyright or violate any other right of any person or party. The Author agrees to hold The Publisher harmless against any damages, including attorney's fees, sustained in any suit involving The Publisher or its licensees by reason of a violation of any of these warranties.

- B. If any such suit is instituted, The Publisher shall promptly notify The Author and may withhold payments due to The Author under this Agreement, until such suit has been settled or withdrawn. If a final adverse judgment is rendered and is not discharged by The Author, The Publisher may apply the payments so withheld to the satisfaction of such judgment. The Author undertakes for themselves, their successors, and assigns, to execute at any time, on request of The Publisher, any document, or documents to confirm or continue any of the rights defined herein, and to take all proceedings necessary to enforce copyright in the United States and elsewhere.
- C. If The Author unreasonably disapproves of any out-of-court settlement recommended by The Publisher and the claim or suit proceeds to trial, The Author shall be liable for all The Publisher's fees, costs, damages, and expenses connected with such trial regardless of outcome. The Publisher shall have the right to reasonably extend the benefit of the indemnities to any person, firm, or corporation at any time, and The Author shall be liable thereon as if The Author's warranties were originally made to such person, firm, or corporation.
- D. The provisions of Section 3 shall survive the termination of this Agreement.

#### **4. Delivery of New Title Manuscript and Payments**

*NOTE: The Publisher will require a 50% deposit of the chosen Menu of Services to proceed with editing, illustrations, and design. The remaining balance due based on The Author's selections from The Publisher's Menu of Services shall be paid by The Author after the book is available for printing and/or purchase.*

- A. The Author agrees to deliver to The Publisher one (1) copy of the final manuscript of the Title, in content and form satisfactory to The Publisher (electronic Word Document or PDF) so that The Publisher may proceed with the design.
- B. The Author shall deliver to The Publisher, no later than the Initial Delivery Date unless otherwise designated by The Publisher, each of the following materials:
- C. The Author shall deliver to The Publisher, at The Author's sole expense, written authorizations and permissions for the use of any copyrighted or other proprietary materials (including but not limited to art and illustrations) owned by any third party which appear in The Title, and written release(s) or consent(s) by any persons or entities described, quoted or depicted in The Title (hereinafter collectively called the "Permissions"). If The Author does not deliver the Permissions, The Publisher shall have the right, but not the obligation, to obtain such Permissions on its own initiative, and The Author shall reimburse The Publisher for all expenses incurred by The Publisher in obtaining such Permissions.
- D. If The Publisher, in its sole discretion, reasonably deems the Manuscript, and/or any other materials delivered by The Author to be unacceptable in form and substance, then The Publisher shall promptly advise The Author by written notice, and The Author shall cure any defects and generally revise and correct the Manuscript and/or other materials to the reasonable satisfaction of The Publisher, and deliver a fully revised and corrected Manuscript and/or other materials promptly after receipt of The Publisher's notice.
- E. If The Author fails to deliver the Manuscript or other materials required under this Agreement, and/or any revisions and corrections thereof as requested by The Publisher, on the dates reasonably designated by The Publisher, or if The Author fails to do so in a form and substance reasonably

satisfactory to The Publisher, then The Publisher shall have the right to terminate this Agreement by so informing The Author by letter sent certified mail, return receipt requested, to the address of The Author set forth herein. Upon termination by The Publisher, The Author shall, without prejudice to any other right or remedy of The Publisher, immediately repay The Publisher any sums previously paid to The Author, and upon such repayment, all rights granted to The Publisher under this Agreement shall revert to The Author.

- F. If The Author provides artwork and/or images for the Title's design, there may be additional charges for scanning, editing, revising, photo shopping, or altering any of the supporting documents submitted. The Author is responsible for securing the licenses and permissions for the use of images or material protected by copyright that are provided to The Publisher to be included in the final, print-ready Title files. The Publisher shall make every effort to take care of any images, photographs, or artwork submitted by The Author and return them in the state given, but The Publisher shall not be responsible for revisions or adaptations of the original images deemed necessary during the design and publication process.
- G. If The Author chooses to use their own editor, illustrator, or any other third party contractor to aid in the design of The Title, The Author will be responsible for any and all contractual dealings and agreements with these parties including payments, copyright issues, royalties or any other compensation as it relates to The Title's publication.

## 5. Author Revisions Pre-Publication

The Publisher agrees to allow The Author to make changes to The Title, up to and including the final proof stage. The Publisher will allow The Author three (3) change requests to the cover layout and three (3) change requests to the interior layout free of charge during the design phase. Additional change requests made by The Author will incur a fee of **\$20 per request. Change requests made AFTER a layout (interior and/or cover) has been approved, but prior to The Title being submitted to the print distributor, will incur an additional \$100 fee per request.** Change request fees will be waived if The Publisher determines that the request is necessary in order to correct a file error or omission made by the book designer. Change requests shall be submitted in the format specified in The Author's Checklist document. If The Author makes changes after final proof approval and submission of The Title to The Publisher's print distributor, there will be additional charges for the revision and re-uploading of files (interior and/or cover) as outlined in the Menu of Services.

## 6. Style, Price, and Publication

- A. After consultation with The Author, The Publisher shall have the right, but not the obligation, to publish and re-publish The Title at its own expense in such format, style, manner, and at such price, as The Publisher deems suitable except that the initial publication of The Title shall include the title, content, design, formatting, and pricing agreed to by both parties in writing.
- B. If The Publisher wishes to make editorial changes or deletions in The Title's manuscript, The Publisher shall consult with The Author prior to publication about these changes.
- C. The Publisher agrees to publish The Title within three (3) months of the date of this Agreement if The Author has complied with the above sections. The Author's compliance in following the publication timeline provided by The Publisher shall be dependent upon The Author's delivery of The Title's manuscript and any supporting files, providing revisions within a timeframe that is reasonable, and providing feedback on The Title's progress throughout the design and iteration phase. In the case of delays that result from circumstances beyond the control of The Publisher, or in the instance that The Author fails to return corrections within two (2) business days following the delivery of any documents, drafts, or proofs, the publication timeline shall be extended to account for such delays. Should The Publisher fail to publish The Title before the expiration of said

period, except as provided herein, The Publisher's failure to do so shall be deemed cause for The Author, if they so desire, to terminate this Agreement.

## **7. Advertising, Promotion, and Marketing**

- A. The Publisher has the right, but not the obligation, to promote The Title on the BDI Publishers website and/or social media accounts. The Publisher can provide The Author with advertising strategies, promotional recommendations, and assistance with marketing efforts, but it is the sole responsibility of The Author to promote and advertise The Title.
- B. The Publisher shall have the right to use, and to license other parties or entities to use, The Author's name, image, likeness and biographical material for advertising, promotion, and other exploitation of The Title and the other rights granted under this Agreement provided The Publisher has obtained The Author's approval which shall not be unreasonably withheld to said use and exploitation.

## **8. Title Revision After Initial Publication**

If at any time while this Agreement continues in force The Author wishes to alter the book, price, cover, interior, or create a second edition, additional costs for said work shall be in accordance with The Publisher's Menu of Services.

## **9. Title Transfers and Terminations**

- A. The Author, if they so choose, may transfer, or terminate the publication of The Title at any time, with or without cause. The Publisher will provide a copy of its Title Termination/Transition Agreement, which both parties shall be required to sign before any transfer or termination of The Title shall be executed.
- B. The Author must provide The Publisher with a minimum of thirty (30) days notice of intent to transfer or terminate The Title's publication and The Author shall be required to include a date of intended termination and/or transfer. The Publisher will act in good faith to remove The Title from circulation, within a timeframe that is reasonable, but The Publisher shall not be responsible for delays in processing such requests. Termination delays may include, but are not limited to, extended termination claim processing by The Publisher's distributor(s), or title listing(s) that remain in circulation after the termination has been executed by The Publisher and its affiliated distributor(s).
- C. Once the termination has been executed by The Publisher and The Title is no longer in circulation, The Author is at liberty to re-enable publication/distribution of The Title with another publisher or distributor. It is the responsibility of The Author to determine the eligibility of The Title for future publication and distribution, including whether The Title is eligible for immediate release upon successful termination by The Publisher.
- D. The Publisher shall be held harmless of any contractual agreements entered by The Author and any other party or entity for the future sale, distribution, or promotion of The Title. The Author is responsible for reviewing the terms of any contracts or agreements initiated by or with another party or entity that intends to provide services that will enact, maintain, or promote the future publication of The Title. The Publisher shall not be liable for maintaining or upholding the terms and conditions of any future agreements entered by The Author on The Title or The Author's behalf.

- E. The Publisher is not responsible for title transfers that result in a suspension or the delay of the future publication and distribution of The Title. The Publisher shall not be liable for any loss of revenue or damages that result from the delay, suspension, or termination of The Title, regardless of circumstance.
- F. The Author may not use or distribute any files (cover or interior) that contain The Publisher's name, image, likeness, contact information, or associated ISBN(s) unless The Publisher gives The Author prior consent. Any print or electronic files being provided by The Author to a third party shall not include any files in The Author's possession that contain identifiers specific to The Publisher. The Publisher does not authorize The Author, or any other party or entity intending to sell, distribute, or promote The Title, to do so by using files that include identification of The Publisher of any kind.
- G. Upon completion of The Title's transfer or termination, The Publisher will continue to send payment disbursements as is customary according to The Publisher's disbursement schedule until all royalties earned by The Title have been paid to The Author. If The Author has any outstanding balances that remain unpaid after The Title has been terminated, The Publisher may withhold all royalties and apply title earnings against the balance owed until the amount owed by The Author has been collected.

## **10. Force Majeure**

The failure of The Publisher to publish or republish any of The Title shall not be deemed to be a violation of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of government agencies, labor disputes, or inability to obtain the materials necessary for its manufacture, or occurs for any other reason beyond The Publisher's control; and in the event of delay from any such cause, the publication date or reissue may be postponed accordingly.

## **11. Statements and Payments**

- A. The Publisher shall pay The Author twice each year according to the sales and royalty totals provided by its print and e-book distributors. The Publisher will follow a bi-annual sales reporting and payment schedule when calculating title/author compensation. The Author will receive a detailed sales report and payment disbursement in October for Quarters One and Two (January – June), and in April of the subsequent year for Quarters Three and Four (July – December). The Publisher will send a statement showing The Title's total sales for the specified period, minus any fees (Annual Catalog fee, Publisher fee of 15%, etc.). If The Title's sales for the period do not cover the administrative cost to process payment, The Publisher has the right to defer payment until there are enough sales to warrant a payment that would cover the associated expense. If The Author requires payment outside of The Publisher's predetermined payment schedule (April and October), The Publisher will charge an administrative fee of \$40 (\$20 to run the sales reports and \$20 to process and mail a check) or apply the \$40 against the total to be paid. The Author may request a sales report at any time for a fee of \$20.
- B. The Author may choose to be paid via check or electronic payment for disbursements. There will be an additional fee of 4% charged by The Publisher for the processing of electronic payments. The Publisher will also charge up to 4% for all payments made by The Author to cover any processing fees (credit cards, PayPal, etc.).
- C. If The Author orders books directly from The Publisher, The Publisher will fill the order and charge The Author for printing, shipping & handling, tax (if applicable), PLUS a BDI Publishers fee of 15% of the list price per the number of units ordered. The BDI Publishers fee shall be no less than \$25, regardless of quantity. Orders fulfilled direct from The Publisher are not charged the 30% wholesale fee that is withheld by online retailers (i.e., Amazon, Barnes & Noble, etc.). For vanity

press, called short runs (no presence on any retail sites), The Publisher will fill orders for printing cost, plus shipping & handling, tax (if applicable), and 15% of the retail price or 50% of printing costs, whichever is greater.

- D. If there are multiple authors or contributors, The Publisher will pay ONLY The Author who has initiated and agreed to the terms of this Agreement. The Publisher is not contractually bound or obligated to disburse any royalties or payments to any party or entity other than the undersigned. It is the sole responsibility of The Author to disburse payments to any other contributing party. The Publisher shall be held harmless if The Author fails to compensate any additional authors or contributors for their portion of the royalties earned.
- E. If The Author chooses to forgo any portion of their bi-annual payment disbursement (either a percentage or the total in full) to have The Publisher contribute to a non-profit organization, The Author must provide a written request indicating the donation amount and/or percentage, the name of the organization, and the duration for such payments (if the contribution shall be recurring). If The Author wishes to suspend payments made to non-profit organizations by The Publisher on its behalf, it is The Author's responsibility to provide written notice in advance of any forthcoming payment disbursement. Notification by The Author of any changes to be made to their payment disbursement less than 30 days prior to the disbursement being processed may not be implemented by The Publisher until the following Quarter. The Publisher has the right to suspend any subsequent agreement made between The Author and Publisher relating to non-profit donations made by The Publisher on The Author's behalf. In these instances, The Publisher shall remit any future payment disbursements directly to The Author based on the bi-annual payment schedule.

## **12. Online Presence and Social Networks**

- A. The Author may request that The Publisher set up an online website or social network (Facebook and/or Twitter) for The Title, as outlined in the Menu of Services. In doing so, The Author agrees to submit all necessary payment and contact information needed to set up The Title on any of the platforms agreed to. The Publisher is only responsible for creating the website and/or social media accounts for The Title. Once these pages and platforms have been established, it is the responsibility of The Author to maintain these accounts. The Publisher will provide basic content pertaining to The Title (book title, description, cover image(s), author biography, etc.) when establishing webpages and social media accounts. The Author understands and agrees that it is not the responsibility of The Publisher to promote, advertise, or maintain any of the virtual content that is created for The Title, either before and/or after these pages and accounts have been established. Any expense that is the direct or indirect result of these social networks and/or website(s) is the sole financial responsibility of The Author. Any fees or expenses that The Publisher incurs during the setup of The Title's website(s) or social media accounts will be invoiced directly to The Author upon completion.
- B. The Publisher will have ninety (90) days from the publication date of The Title to establish any social media accounts or websites requested and purchased by The Author. Any change requests made by The Author while the website and/or social media accounts are being set up by The Publisher will extend the completion deadline by an additional ninety (90) days. Upon completion, The Publisher is released of all liability relating to the content and maintenance of these pages and platforms.

## **13. Copyright Infringement and Third-Party Sellers**

It is The Author's responsibility to address any third-party seller issues, free downloads, or other copyright infringements and The Author shall hold The Publisher harmless should any of these instances arise over the course of this Agreement. The Publisher shall help The Author to resolve these

issues, but The Publisher shall not be held responsible for any loss of revenue or other damages, foreseeable or unforeseeable.

**14. Termination & Reversion of Rights**

If either party is not satisfied with the arrangement at any time, they may terminate the Agreement with thirty (30) days written notice. Once the Agreement is terminated, The Publisher will forward all files associated with The Title to The Author. The Publisher will also remove the book from its distributor(s) catalogues and discontinue sales on all websites. The Author/Publisher agree to pay the other party any outstanding balances at the time this Agreement is terminated.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written, and the Agreement shall be interpreted under the laws of the United States of America and International Laws concerning publishing and copyright.

**Publisher**

By: Brent Darnell

Name: Brent Darnell

Title: Owner

**Author**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_