



WALKER AND COMPANY

Walker Publishing Company, Inc.

AGREEMENT made this 14th day of January, 1974, by and between Walker Publishing Company, Inc., a New York State corporation located at 720 Fifth Avenue, New York, New York 10019 (hereinafter referred to as "the Publisher") and  
Andre Norton 2588 Lake Howell Lane  
Maitland, Florida 32751

(hereinafter referred to as "the Author")

WHEREAS the parties are desirous respectively of publishing and having published a certain work provisionally entitled

THE DAY OF THE NESS

illustrated and co-authored by Michael Gilbert  
(hereinafter referred to as "the Work")

NOW, THEREFORE, in consideration of the promises hereinafter set forth, the parties mutually agree as follows:

*Rights granted  
to Publisher*

1. (a) The Author hereby grants and assigns to the Publisher and its licensees, during the term of copyright including renewals and extensions thereof:

(i) the right to publish and sell the Work in book form in all languages.

(ii) the following subsidiary publication rights: publication or sale by book clubs; condensation or abridgements; publication in magazines (whether before or after book publication and whether in one or more installments); publication of the complete Work or selections therefrom in anthologies, compilations and digests; quotation in other works; picturized book versions; microprint and microfilm versions; Braille versions; and reproduction or utilization in any form by any mechanical, electronic or other means, now known or hereafter invented, including reproduction or utilization in an information storage and retrieval system.

(iii) the following performance rights: motion picture, television, radio, dramatic and non-dramatic stage and recording;

(b) Such grant shall be exclusive throughout the world.

(c) This grant of rights shall include all rights not specifically reserved by the Author, whether now in existence or hereafter coming into existence.

*Publication  
of Work*

2. The Publisher agrees to publish the Work at its own expense in such style as it may deem advisable not later than 18 months after the delivery of the manuscript as provided for in Clause 9.

*Warranty  
of Author*

3. The Author warrants that he is the sole author of the Work, that he is the sole owner of all the rights granted herein and has full power to enter into this agreement; that the Work is original and is not in the public domain; that it does not violate the right of privacy of any person; that it is not libelous or obscene; that it does not infringe upon the statutory or common-law copyright of anyone; and that any recipe, formula or instruction contained in the Work is not injurious to the user.

In the event of any claim, action or proceeding based upon an alleged violation of any of the foregoing warranties, (a) the Publisher shall have the right, at the expense of the Author, to defend the same through counsel of its own choosing, and (b) the Author shall hold harmless the Publisher and any seller

of the Work against any damages finally sustained in any such action or proceeding or by way of settlement, provided, however, that no settlement shall be effected without the prior written consent of the Author.

If any such claim, action or proceeding is instituted, the Publisher shall promptly notify the Author and may withhold payments due him under this or any other agreement between the Author and the Publisher.

These warranties and indemnities shall survive the termination of this agreement.

*Copyright*

4. The Author hereby authorizes the Publisher to take all steps necessary and appropriate to procure in the name of the Author (or the Publisher) a copyright to the said Work in the United States of America and in such other countries as may be covered by this agreement. In the event that the copyright is in the name of the Author, then upon the expiration of the first term thereof the Author agrees to take such steps as may be necessary to procure a renewal of the said copyright and to assign to the Publisher the sole and exclusive right to publish the Work as herein provided during the full term of said copyright renewal, on the same terms and conditions as for the original copyright term. The Publisher agrees to imprint an appropriate copyright notice on each copy of the Work for the protection of the said copyright. The Author gives the Publisher the authority to take necessary action in the name of the Author to protect against copyright infringement or to recover damages therefrom.

If the Author retains the right to periodical or foreign publication before publication by the Publisher, he shall notify the Publisher promptly of any arrangement for such publication or postponement thereof; and in the event of

(a) Periodical publication, if the copyright shall be in the name of any person other than the Author, he shall promptly deliver to the Publisher a legally recordable assignment of such copyright or a quitclaim from the publisher to the rights granted herein.

(b) Publication outside the United States, he shall furnish to the Publisher promptly after such publication three copies of the published work and the date of publication, and he shall notify the foreign publisher of this agreement.

*Other Versions*

5. So long as this Agreement shall be in force and effect, the Author will not, without the written consent of the Publisher, write, print or publish, or permit or cause to be written or published in book or pamphlet form any revised, corrected, enlarged or abridged version of the said Work within the territory herein granted.

*Royalties and  
Other Payments*

6. The Publisher agrees to pay the Author, or his duly authorized representative, royalties as follows:

(a) An advance of \$250.00 against the Author's royalties and other earnings under this agreement, payable:

on signing of the contract

(b) A royalty on the regular hardcover edition sold in the United States on the retail price of all net copies sold (except as hereinafter set forth):

2.5%

(c) On all sales in the United States of the Work in the regular trade edition sold to jobbers or to wholesale or retail distributors or booksellers, at discounts of forty-eight percent (48%) or more of the catalog price, a royalty which shall be equal to the royalty specified in (b) above, less an amount equal to one-half the difference between a discount of forty-four percent (44%) and the discount granted. The rate of royalty specified in this paragraph shall also apply to any sales, regardless of

two and one-half percent (2-1/2%)

two and one-half percent (2-1/2%)  
one and one-quarter percent (1-1/4%)

one and one-quarter percent (1-1/4%)  
one and three-quarter percent (1-3/4%)  
twelve and one-half percent (12-1/2%)

12% to Andre Norton  
37 1/2% to Michael Gilbert  
and 50% to the Publisher

Accounts and Payments

Overstock

Editorial Responsibilities

quantity, made on a returnable basis at a discount of fifty percent (50%) or more to news-dealers, reading circles or wholesale distributors. In no case shall the royalty paid pursuant to the provisions of this paragraph be less than ten percent (10%) of the net proceeds of the sale received by the Publisher.

(d) On copies either bound or in sheets sold for export or to State Reading Circles or for school adoption, or at a special discount over fifty percent (50%) of the retail price, or for the use of plates by any governmental agency for its own special edition, ~~ten percent (10%)~~ of the amount received on the original trade edition and ~~five percent (5%)~~ of the amount received on any cheaper edition or on copies sold at a special discount of sixty percent (60%) or more of the retail price.

(e) On all mail order sales direct to the consumer the royalty shall be one-half of the prevailing rate as applied to the offering price to the consumer.

(f) When sales of the Work are made at or below the Publisher's cost, or when copies are furnished gratis to the Author, or for review, advertising, sample or like purposes, no royalty shall be paid.

(g) On copies sold in any six month royalty period following that of publication in which the regular sales do not exceed 500 copies, provided that such sales are from a reprinting of 2,500 copies or less, royalties shall be equal to one-half of the royalties enumerated in paragraphs (b), (c), (d) and (e) above, this reduction in royalty being made by reason of the high cost of manufacture of such small reprintings, and a concession by the Author for the purpose of keeping the Work in print.

(h) On all copies of the Work in a cheap edition, sold by the Publisher at one-half or less of the original catalog price, a royalty of ~~five percent (5%)~~ of the cheap edition catalog price, and on all copies of such cheap edition sold at above one-half of the original catalog price, a royalty of ~~seven percent (7%)~~ of the cheap edition catalog price; if, however, the rights are leased to a reprint publisher, ~~five percent (5%)~~ of the amount of royalty received by the Publisher.

(i) The revenue, less agents' commissions, from the sale to third parties of all subsidiary and additional rights to the Work shall be shared ~~equally between the Author and the Publisher~~, save as otherwise stipulated in this agreement. The Publisher shall have the exclusive right to license such rights.

(j) The Publisher agrees to and does grant to the Author the right upon his/her written request to examine or cause to be examined through certified public accountants the books of account of the Publisher insofar as the same relate to the said Work; such examination shall be at the cost of the Author unless errors of accounting (arising otherwise than from an interpretation of this contract) amounting to 5% or more of the total sums paid to the Author shall be found to his disadvantage, in which case the cost shall be paid by the Publisher.

7. The Publisher agrees to render semi-annual statements in duplicate on July 31 and January 31 in each year following the publication hereof, showing an account of sales and all other payments due hereunder to May 31 and November 30 preceding said respective accounting dates. Payments then due shall accompany such statements.

After two years from the date of first publication the Publisher reserves the right to render no statement for the six month period ending May 31 if the amount of royalties earned is less than \$25.00.

8. The Publisher shall notify the Author of its intention to dispose of overstock and will offer the author the opportunity to buy such overstock at 25% of the catalog price of the Work.

9. The following defines the responsibilities of the Author and the Publisher in respect to the preparation of the Work for publication:

(a) The Author ~~shall deliver~~ <sup>has delivered</sup> to the publisher ~~not later than~~ two neatly typed double-spaced copies (one top copy and one carbon) of the finished Work satisfactory in form and content to the Publisher and ready for the printer. Should the Author fail to deliver the completed script to the Publisher within 30 days



of this date, the Publisher may terminate this agreement and recover all monies advanced to the Author on the Work, if need be, by attaching monies owing to the Author on the sale of previous works by the Author issued by the Publisher, without prejudice to any other legal or equitable remedies.

(b) The manuscript will be approximately 20,000 words in length. Should the manuscript, in the opinion of the Publisher, require retyping or correction as proper preparation for the press, the Publisher shall so notify the Author. Such retyping or correction shall be made by the Author or at his expense and must be completed within thirty (30) days of notification from the Publisher.

(c) The Author shall assume responsibility to provide the Publisher with the following necessary adjuncts to the finished manuscript: introduction, preface, foreword, index, finished art work, captions, legends, bibliography, appendices and permissions for all material quoted or reproduced from another source. If the Author fails to do so within such time as not to delay publication of the Work, the Publisher shall supply the same and shall charge the cost thereof against any sums accruing to the Author under this agreement.

(d) The Author agrees to read, revise, correct and return promptly all proof sheets of the work and to pay in cash or, at the option of the Publisher, to have charged against him, the cost of alterations, in type or in plates, required by the Author, other than those due to printer's errors, in excess of seventy-five dollars (\$75.00) provided a statement of these charges is sent to the Author within thirty (30) days of the receipt of the printer's bills and the corrected proofs are presented on request for his inspection.

**five (5)**

10. The Publisher agrees to furnish, without charge, ~~ten (10)~~ five (5) copies of the printed Work to the Author. The Author may purchase additional copies of the Work from the Publisher at a discount of forty percent (40%) provided these copies are intended for personal use and not for resale.

11. The Author agrees to submit to the Publisher his next book-length work before submitting the same to any other publisher. For a period of 60 days after the submission of the completed manuscript, which period shall not commence prior to one month after the publication of the work covered by this agreement, the Publisher shall be entitled to acquire the same exclusive rights contained herein on terms:

12. If the Publisher fails to keep the work in print and the Author makes written demand to reprint it, the Publisher shall, within sixty (60) days after the receipt of such demand, notify the Author in writing as to whether it intends to comply. If the Publisher notifies the Author that it intends to comply, it shall reprint the work within six (6) months from the date of receipt of the Author's demand unless prevented from doing so by circumstances beyond its control. If the Publisher fails to notify the Author within said sixty (60) days that it intends to comply, or within six months after receipt of such demand from the Author, declines or neglects to reprint the work, then this agreement shall terminate and all rights granted hereunder shall revert to the Author, subject to licenses theretofore granted provided the Author is not indebted to the Publisher for any sum owing to it under this agreement. After such reversion, the Publisher shall continue to participate to the extent set forth in this agreement in monies received from any license previously granted by it. Upon termination, the Author shall have the right for thirty (30) days thereafter to purchase the plates, if any, at one-fourth of the manufacturing cost (including composition) and any remaining copies or sheets at one-half of the manufacturing cost, exclusive of overhead, in default of which the Publisher may dispose of the same as it sees fit, subject to the royalty provisions of Clause 6. If the work is under contract for publication or on sale in a reprint edition, it shall be considered to be in print. Notwithstanding anything to the contrary herein contained, if the Publisher shall determine that there is not sufficient sale for the work to enable it to continue its publication and sale profitably, the Publisher may dispose of the copies remaining on hand as it deems best, subject to the royalty provisions of Clause 6.

*Author's  
Copies*

*Option*

*Reversion of  
Rights*

*Author's  
Property*

*Author's  
Agent*

13. Except for loss or damage due to its own gross negligence, the Publisher shall not be liable for loss of or damage to any property of the Author placed by him in the possession of the Publisher.

~~14. The Author hereby authorizes his agent~~

~~to collect and receive all sums of money payable to him under the terms of this agreement and the receipt of such agent shall be a good and valid discharge in respect thereof. The said agent is hereby fully authorized and empowered to act on behalf of the Author in all matters in any way arising out of this agreement.~~

*Force Majeure*

15. Neither party shall be liable to the other for any delay in performance or failure to perform hereunder due to any cause beyond the control of such party or to any cause usually described as "force majeure," such as strikes or other labor troubles, fire, war, etc.

*Law  
Applicable*

16. Regardless of the place of its physical execution, this contract shall be interpreted under the laws of the State of New York and of the United States of America.

*Arbitration*

17. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration, in accordance with the Rules, then obtaining, of the American Arbitration Association in the City of New York, and judgment upon the award rendered may be entered in any Court having jurisdiction thereof.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement the day and year first above written.

WALKER PUBLISHING COMPANY, INC.

*Publisher*

In the Presence of:

Margery S. Cuyler By Samuel Walker  
*President*

In the Presence of:

Andee Norton  
*Author*