



NIMBLE BOOKS LLC  
1521 Martha Avenue  
Ann Arbor, Michigan 48103-5333

## Nimble Books Standard Book Publishing Contract

AGREEMENT, entered into as of January 17, 2009 between

Nimble Books LLC (hereinafter referred to as the "Publisher"), located at 1521 Martha Avenue, Ann Arbor, Michigan, USA, 48103-5333 and

WHEREAS, the Author wish to create a book tentatively titled

WHEREAS, the Publisher is familiar with the work of the Author and wishes to publish a book by the Author; and WHEREAS, the parties wish to have said publication performed subject to the mutual obligations, covenants, and conditions herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties agree as follows:

**1. Grant of Rights.** The Author grant, convey, and transfer to the Publisher in the work referenced above exclusive rights as follows:

- (A) To publish, distribute, and sell the Work in the form of a book only
- (B) In all formats, specifically including hardcover, paperback, PDF, Amazon Upgrade, Google Book Search;
- (C) In all territories;
- (D) In all languages;
- (E) For a term of ninety-nine years, unless the Author exercise the right to terminate the agreement as described in the section titled "Author's Right of Termination."

These provisions shall not be construed to limit Author rights to distribute the work for free on their own website.

**2. Reservation of Rights.** All rights not specifically granted to the Publisher are reserved to the Author.

**3. Delivery of Manuscript.** On or before February 28, 2009, the Author shall deliver to the Publisher a complete manuscript which shall be reasonably satisfactory in form and content to the Publisher and in conformity with the outline or description attached hereto as an appendix and made part hereof.



The manuscript shall be in the following formats:

- Microsoft Word, RTF, or ASCII text.
- The images shall be provided separately in high-resolution digital format (minimum 72 dpi, 300 preferable)

If the Author fail to deliver the complete manuscript within 90 days after receiving notice from the Publisher of failure to deliver on time, the Publisher shall have the right to terminate this Agreement.

**4. Permissions.** The Author agree to obtain all permissions that are necessary for the use of materials copyrighted by others. The cost of providing these permissions shall be borne by the Author. Permissions shall be obtained in writing and copies shall be provided to the Publisher when the manuscript is delivered.

#### **5. Duty to Publish and Mode of Publication**

a) The Publisher shall publish the Work within twelve months of the delivery of the complete manuscript. Failure to so publish shall give the Author the right to terminate this Agreement ninety days after giving written notice to the Publisher of the failure to make timely publication. In the event of such termination, the Author shall have no obligation to return monies received.

b) The Publisher shall have exclusive Authority to determine the mode of publication, including price, terms of trade, cover art and interior design, marketing, and sales activities..

c) The Author shall pay no fees and shall have no responsibility for any of the costs of publication.

**6. Returns.** The publisher shall have the right to elect whether the title will be returnable. If the title is returnable, the cost of returns will be deducted from net publishers compensation as described above.

**7. Author Compensation.** The publisher shall pay the Author in total

- 30 percent of net publisher compensation of list price on the first 5000 copies sold;
- 35 percent of net publisher compensation on the next 5000 copies; and
- 40 percent of net publisher compensation all copies sold thereafter.

Net publisher compensation is defined as (list price \* wholesale discount) – printing cost. The Publisher shall provide the Author with each month's values for these parameters (see the section titled "Accountings").

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If the title is returnable, the author's compensation for returns shall be deducted from the total royalty due. If the author's compensation to be deducted for returns in a given reporting period is greater than the compensation owed for that period, the negative balance will carry forward to future reporting periods until the balance is eliminated.

**8. Subsidiary Rights.** The publisher shall have the right to sell rights to publish this work in foreign countries and other languages. The Author shall receive 50% of any such sales.

**9. Ancillary advertising revenues.** The Author shall receive 50% of any ancillary advertising revenues (e.g., those generated through Google Book Search).

**10. Advances.** The Publisher will pay no advance.

**11. Accountings.** Commencing as of the date of publication, the Publisher shall report to the Author, showing for that period and cumulatively to date the number of copies printed and bound, the number of copies sold and returned for each royalty rate, the compensation paid to and owed to the Author, and licensing income.

The Author may opt for monthly, quarterly, semi-annual, or yearly reports.

**12. Payments.** The Publisher shall pay the Author all monies due Author pursuant to Paragraph 7 within 90 days of the close of each accounting period.

In the unlikely event that Publisher's distributor, Lightning Source, Inc., is late with its payments, Publisher may delay payment until it receives payment from the distributor.

In the unlikely event that Publisher's distributor, Lightning Source, Inc., defaults on its payments, Publisher shall not be required to pay compensation on the payments that are defaulted.

The Author may opt for monthly, quarterly, semi-annual, or yearly payments.

The Author may opt for payment either by electronic transfer service (such as PayPal) or by check. In the event that the author chooses electronic transfer service, the publisher will not be responsible for incurring any service charges assigned to the author by the transfer service.

**13. Right of Inspection.** The Author shall, upon the giving of written notice, have the right to inspect the Publisher's books of account to verify the accountings. If errors in any such accounting are found to be to the Author's disadvantage and represent more than 10 percent of the payment to the Author pursuant to the said accounting, the cost of inspection shall be paid by the Publisher.

**14. Copyright and Authorship Credit.** The Publisher shall, as an express condition of receiving the grant of rights specified in Paragraph 1, place copyright notice in the

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Author's name on all copies of the Work. The Author shall receive Authorship credit as follows:

© 2009 Frank Andruss, Sr.

**15. Warranty and Indemnity.** The Author warrants and represents that he or she is the sole creator of the Work and owns all rights granted under this Agreement, that the Work is an original creation and has not previously been published (except for those materials for which permissions have been obtained pursuant to Paragraph 5), that the Work does not infringe any other person's copyrights or rights of literary property, nor, to his or her knowledge, does it violate the rights of privacy of, or libel, other persons. The Author agrees to indemnify the Publisher against any final judgment for damages (after all appeals have been exhausted) in any lawsuit based on an actual breach of the foregoing warranties. In addition, the Author shall pay the Publisher's reasonable costs and attorney's fees incurred in defending such a lawsuit, unless the Author choose to retain his or her own attorney to defend such lawsuit. The Author makes no warranties and shall have no obligation to indemnify the Publisher with respect to materials inserted in the Work at the Publisher's request. In the event a lawsuit is brought which may result in the Author having breached his or her warranties under this Paragraph, the Publisher shall have the right to withhold and place in an escrow account any sums payable to the Author pursuant to Paragraph 12, but in no event may said withholding exceed the damages alleged in the complaint.

**16. Copy Editing.** Publisher shall provide the Author with proofs which the Author shall review and return to the Publisher within thirty (30) days of receipt.

Author shall not be responsible for any typography costs.

**17. Original Materials.** The Publisher shall not be obliged to return original manuscripts or electronic files to the Author.

**18. Free Copies, Review Copies, and Author Copies**

- The Author shall each receive 5 free copies of the Work as published, after which the Author shall each have the right to purchase additional copies at a 35 percent discount from the list price.
- At the Author request, the publisher will send review copies to qualified reviewers, up to a maximum of 15 copies total. A "qualified" reviewer is one who has expressed interest in reviewing this specific book for a publication with a readership in excess of 1,000 per month.
- The Author shall be entitled to purchase an unlimited quantity of author copies from the publisher for 65% of list price, i.e. 0.65 \* list price. All purchases must be prepaid and must include shipping and handling.

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**19. Successors and Assigns.** This Agreement shall be binding on the parties and their respective heirs, administrators, successors, and assigns.

**20. Infringement.** In the event of an infringement of the rights granted under this Agreement to the Publisher, the Publisher and the Author shall have the right to sue jointly for the infringement and, after deducting the expenses of bringing suit, to share equally in any recovery. If either party chooses not to join in the suit, the other party may proceed and, after deducting all the expenses of bringing the suit, any recovery shall be shared equally between the parties.

**21. Author's right of termination.** The Author shall have the right to terminate this Agreement by written notice if:

(A) the Work goes out-of-print and the Publisher, within ninety days of receiving notice from the Author that the Work is out-of-print, does not place the Work in print again. A work shall be deemed out-of-print if the work is not available for sale in reasonable quantities in normal trade channels;

(B) if the Publisher fails to provide statements of account;

(C) if the Publisher fails to make timely payments pursuant to the section on "Payments";

(D) if the Publisher fails to publish in a timely manner pursuant to the section "Duty to Publish."

The Author must both state their desire to exercise the right of termination.

**22. Publisher's rights of termination.** The Publisher shall have the right to terminate this Agreement if the Author fails to provide a reasonably satisfactory manuscript as provided in the section "Delivery of Manuscript."

The Publisher shall also have the right to terminate this Agreement in the event that it becomes illegal under the laws of the United States or Michigan for the Publisher to fulfill its obligations under this Agreement.

This Agreement shall automatically terminate in the event of the Publisher's insolvency, bankruptcy, or assignment of assets for the benefit of creditors. In the event of termination of the Agreement, the Publisher shall grant, convey, and transfer all rights in the Work back to the Author.

**23. Production Materials and Unbound Copies.** Upon any termination, the Author may, within sixty days of notification of such termination, request PDF copy of the final typeset book.

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**24. Promotion.** The Author consents to the use of his or her name, portrait, or picture for promotion and advertising of the Work, provided such use is dignified and consistent with the Author's reputation.

**25. Arbitration.** All disputes arising under this Agreement shall be submitted to binding arbitration before the arbitration service provided by the Publishers' Market Association and shall be settled in accordance with the rules of the American Arbitration Association. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof.

**26. Notice.** Where written notice is required hereunder, it may be given by use of first class mail addressed to the Author or Publisher at the addresses given at the beginning of this Agreement and shall be deemed received five days after mailing. Said addresses for notice may be changed by giving written notice of any new address to the other party.

**27. Entire Agreement and Modifications.** This Agreement represents the entire Agreement between the parties. All modifications of this Agreement must be in writing and signed by both parties.

**28. Waivers and Defaults.** Any waiver of a breach or default hereunder shall not be deemed a waiver of a subsequent breach or default of either the same provision or any other provision of this Agreement.

**29. Governing Law.** This Agreement shall be governed by the laws of Michigan, U.S.A.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

**Author:**

**W. Frederick Zimmerman, Publisher**