**Video Game Publishing Agreement Guide**

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In collaboration with Aerial Knights, LLC, we present this video game publishing agreement “how-to” guide to help you elevate your game to the next level. As a video game attorney passionate about this industry, I am thrilled to share this resource and support your success!

Video game developers should confidently advocate for fair terms in their publishing agreements, seeking the assistance of an experienced attorney to ensure they receive the compensation and rights they deserve, rather than settling for less simply to secure a publisher’s backing. Before signing, developers and their counsel should thoroughly research publishers and reach out to former development partners to understand their working relationships and potential pitfalls. Given the current state of the industry, we created this template guide to provide valuable insights into these common agreements, offering general yet helpful information that developers need.

Please note that using this template, including the notes I have provided, is not a substitute for legal counsel during the negotiation or drafting of a publishing agreement. It is ***crucial*** to have an experienced and licensed attorney guide you through every step, as these agreements are not one-size-fits-all. Each game is unique, and the agreements involved are tailored to the specific game, developer, and publisher.

This template aims to provide a foundational understanding of publishing agreements and offer tips on how to navigate them. For personalized drafting and negotiation, you can connect with me and our firm, Holon Law, for a seamless and customized experience. Publishing agreements can be complex, and we are well-equipped to assist you in asserting your rights and the value of your studio.

The sample agreement below offers a basic overview of common terms and clauses found in publishing agreements. It is not intended to be used or relied upon as a complete publishing agreement, as no two agreements are identical. However, there are commonalities worth mentioning, which I will outline below.

***Disclaimer***

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**SAMPLE VIDEO GAME PUBLISHING AGREEMENT**

This PUBLISHING AGREEMENT is entered into this (Month Day, 20\_\_) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_ (name of publisher), a \_\_\_\_\_\_\_\_\_\_\_ (business address and business type (i.e. LLC, DBA, etc.)) ("Publisher"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of developer), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (business address and business type (i.e. LLC, DBA, etc.)) ("Developer").

IN CONSIDERATION of the promises, agreements, covenants, representations, and warranties herein contained, Developer agrees to create and develop \_\_\_\_\_\_\_\_\_\_\_\_\_\_(insert game name) (the “Game”) and Publisher agrees to publish the Game as follows:

**Note: We want to know who the parties are. Contracts require a “meeting of the minds” or stated plainly that everyone is on the same page. So, we need to know who agrees to enter into this agreement. This part goes first and at the top of the agreement.**

**The “IN CONSIDERATION” language shows that the contract contains the legal requirement of “consideration.” Simply put, consideration means that there is an exchange of value between the parties. That way, this sets the tone and ensures that one is not entering into a one-sided contract or a contract that does not contain any real value. This sentence sets the tone and introduces the next part of the agreement.**

**Note: The next part of the agreement is very important. It contains the definitions for the important terms the parties are agreeing to. Ideally, they should leave no room for confusion. As stated above, the definitions contained in this part of the agreement may vary as not every game or publishing/developer relationship will look the same. However, I will note some common definitions here. This section typically does not contain substantive provisions (meaning rights, duties, desires) but I have seen some agreements that lay out certain rights in definition sections. For the purposes of simplification, I will only provide definitions below.**

1. DEFINITIONS. For purposes of this Agreement, the following terms will have the meanings set forth:
   1. Term: This Agreement shall be become effective from the Effective Date shall continue \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
      1. **Note: I included a blank as this part can vary. Common terms are “in perpetuity” or an actual number of years subject to a revisit (i.e. for one year and then the parties will renew the agreement for another year or more- this is typically seen as more ideal). There are many variations for what can be included here so it is important to have an attorney walk you through options specific to you. Ex: there are agreements that make the term conditioned on royalties paid or units sold.** 
         1. **In perpetuity: Means forever. This is typically a phrase seen as a “red flag” by most developers as it can make them feel too constrained in a relationship and feel “no way out.” One way to have the above sentence with “in perpetuity” without it seeming predatory is language like:** *“until such time that it is terminated by one or both Parties in accordance with articles of this agreement.”* **Meaning that there is a way to terminate the agreement and still give the publisher the security they seek.**
   2. Intellectual Property: “Intellectual Property” means any patents, trademarks, trade dress, copyrights, or any other intellectual property right under the law.
      1. **Note: intellectual property rights are essential to publishing agreements, so this should be included in every publishing agreement in some way. We will discuss more about the importance of IP rights in the clause for it below.**
   3. Derivative Works: means any localized version of the Game, Sequels (as defined below), movies, music, books, comics and other derivative works deriving from or based on the Game.
      1. **Note: This is the right that the Developer has as the copyright owner of the game/its contents. Therefore, the Developer would have to license or otherwise share these rights with the Publisher for them to have it. Again, not recommended that one gives a percentage of their IP rights – but this will also depend on the entirety of the agreement. That’s why it is imperative that one negotiates these deals with an experienced attorney.**
   4. Platform: Developer shall create, develop, and deliver the game for \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (insert PC, console, mobile, etc.). Publisher shall have rights for \_\_\_\_\_\_\_\_\_\_\_.
      1. **Note: This is another term that will vary. Some Publishers want language giving rights across platforms, or even platforms that may not exist just yet. It’s also common to see language for “ports” and for those to be considered “games” for the purposes of the agreement.**
   5. Gross Revenue: Total amount received by Publisher from sales, licensing, distribution, and [other revenue generated from exploitation of the game].
      1. **Note: I know you are wondering what that brackets are for. Essentially, publishers may want to agree to creating Commercialized or Ancillary products regarding the game. Commercialized/Ancillary products are designed to support and promote the game (clothing, toys, posters, or other merch). “Derivative Works” such as sequels to the game, movies, music, books, comics and other works deriving from the Game would also be included, if applicable. That would be included here with the gross revenue section.**
   6. Gold Master: “Gold Master” means the final version of a game that is ready for release and meets the Publisher and Platform’s requirements.
      1. **Note: This is another term that may be defined or further specified. Essentially, what are the publisher’s requirements? What are the platform’s requirements? Bugs are unavoidable but which would be considered unacceptable? These are things that an attorney would walk through with you as the agreement negotiations occur.**
   7. Initial Advance: Publisher agrees to pay Developer an initial advance of \_\_\_\_\_\_\_\_\_\_\_\_ (may contain recoup provisions specific to the parties).
      1. **Note: I included the recoup parenthetical as most Publishers now will not give an advance unless there is language allowing recoupment of same. They are taking a risk by investing in this game, so they want to try to mitigate that risk as much as possible. Not ideal to a lot of Developers or their attorneys but depending on how it is drafted it may not be a huge cause for concern. This is why it is important to discuss this with an attorney. There are some publishing agreements that have language stating that the developer will not receive revenue or a revenue share until the advance is fully recouped. Most advances are well over 6-figures, so this may result in developers not seeing payment for a while. Thus, it is imperative that you have an attorney review the language of the agreement and negotiate/draft language that ensures a revenue share and recoup clause that is reasonable.**
      2. **Bonus note: Not all publishing agreements will offer an initial advance. That may be a red flag and definitely something to consider. If the publisher is expressing interest, then that means your game is valuable. Therefore, they should be willing to express that value by giving an initial advance.**
   8. Marketing Budget: For the purposes of this agreement, “Marketing Budget" will mean the minimum amount of money the Publisher must spend towards marketing the game not to exceed a maximum amount as agreed to by the parties and reflected in this agreement.
   9. Net Revenue: The “Net Revenue” is the result of the gross revenue minus deductions. Deductions may include any recoupment discussed by the parties, platform fees, cost of goods, damaged goods, promotional and advertising expenses, refunds, credits, returns, price protection, localization, currency exchange fees, taxes, expenses incurred due to lack of performance.
2. GRANT OF RIGHTS.

**Note: As the name implies, this section is for granting rights to the Publisher by the Developer. The Developer has the rights to the Game already – or at least warrants that they do. So, this section is mainly about what the Publisher will receive and their duties. Please note that this is general and explanatory in nature. Some agreements may have time limits on certain rights granted to the publisher. For example, I have seen an agreement that gave the publisher a certain percentage of IP rights for a specified time period in exchange for developer getting more rights and funding.**

* 1. Grant to Publisher: Developer hereby grants to Publisher the exclusive right during the term of this Agreement to prepare, manufacture, market, and distribute throughout the world, in all languages, copies of the Game in object code form only.
     1. **Note: This sample language is more developer friendly as many publishers may want to have source code *and* object code. Developers may not want to give the source code as a predatory publisher could rewrite the code, however with an attorney drafting and negotiating the agreement there is language that can protect that.**
  2. Publisher to Determine Marketing: Publisher will determine, in its sole discretion, the manner and method of marketing and distributing the Game, including marketing expenditures, advertising and promotion, packaging, channels of distribution, distributor discounts, and the suggested retail license fee of the Game provided that:
     1. Publisher shall, in good faith, involve Developer in determining the manner and method of marketing and distribution of the Game. Publisher shall, to the extent reasonably practicable, accommodate any reasonable concerns or requests raised by Developer concerning the marketing and distribution of the game.
        1. **Note: This sample language gives the publisher the exclusive rights and autonomy they seek concerning marketing and distribution as well as provide the developer with some security and involvement. Again, this is only a sample, and this section of the agreement can (and most cases should) contain more terms specific to both the publisher’s wants/needs and the developers.**
  3. Right of First Refusal on Future Games: The Publisher shall have a right of first refusal for the exclusive worldwide publishing rights to sequels, add-ons, mission packs, and downloadable content (DLCs). Any such right of first refusal must be exercised in writing within thirty (30) days of Publisher’s receipt of a written request to act by the Developer.
     1. **Note: Publisher’s like to have first dibs on sequels in a game series. So, this clause gives them the right to accept or refuse to participate in subsequent games first. However, a lot of developers would prefer not to feel stuck with a publisher should the business relationship turn sour. This sample clause combines the Publisher’s desire as well as the Developer’s concerns by including a time element.**
     2. **Note 2: These rights can have expiration dates, and the parties may be able to revisit this clause before the expiration date or even after it. Typically, developers will want an expiration date specified to ensure that they are not tied down to a publisher who they feel isn’t acting in their best interest.**
  4. **Bonus Note: Some publishing agreements may hinge on a particular developer or staff member to work on the project because they are, at least in the publisher’s eyes, exceptionally talented. Having this person could be a part of the wishes of the Publisher. These provisions are called “key-man provisions.” Wanted to mention that these could come up with publishing agreements and negotiations.**

1. MARKETING AND DISTRIBUTION.

**Note: This section discusses how costs and activities with marketing the game will be handled. This section is particularly complex and often the bulk of publishing agreement negotiations. It is highly recommended that one has an attorney walk them through every aspect of this section and its implications.**

* 1. Costs: Except as expressly set forth herein, Publisher will bear all costs of manufacturing, marketing, and distributing the Game.
     1. **Note: Once again, this is a part of the agreement that varies and is typically negotiated between the parties. Although Developers and their attorneys would ideally want Publishers to bear all these costs, that does not always occur. It is common to see terms involving deductions or the “Net Revenue Sections” that state that the publisher and developer will share in the “net revenue” which is the gross revenue after deductions – those deductions may include the costs. This effectively places the costs on both parties. It is very important to discuss this section with an attorney.**
  2. Time: Publisher shall, unless otherwise agreed in writing by the parties, use commercially reasonable efforts to have the game released within \_\_\_\_\_\_\_\_\_\_\_\_ month(s) of delivery of the Gold Master from the Developer to the Publisher.
     1. **Note: This clause is important as it ensures that a Publisher is not just sitting on a Developer’s game for an indeterminable amount of time. I would highly recommend this type of time-frame being articulated in some fashion in a publishing agreement. It also doesn’t use strict language with use of “commercially reasonable efforts.” In other words, it suggests that as long as the Publisher is actively trying, then they may not be in breach of this clause. The amount of time should be negotiated between the parties with an attorney present.**
  3. Marketing Budget: Publisher shall commit to spending a minimum of $\_\_\_\_\_\_\_\_\_\_\_ [and not to exceed $\_\_\_\_\_\_\_\_\_\_] on marketing and distribution activities of the Game as determined by the Publisher.
     1. **Note: It is important to have language regarding the marketing budget and language that requires disclosure of receipts and how the money is being used. This may also be an area where the publisher will wish to recoup money spent on marketing and distribution – it is pretty common. To do this, there may be language such as: “***Publisher will deduct the Marketing Budget from the Gross Revenue until 100% of the marketing budget has been recovered.”* **Or in some cases deducting it from the net profit.** Please also note that some publishing agreements have language that states that the developer will not receive revenue until this marketing budget is 100% or fully recouped. Watch out for language like this and discuss it with an experienced attorney to see how this is being presented and what can be done.
  4. Developer Cooperation: Developer shall cooperate and support Publisher as reasonably practicable with its efforts to produce, perform, reproduce, promote, advertise, export, import, license, sub-license, rent, translate, localize, manufacture, package, market, merchandise, distribute through any channels, display, sell, lease, or otherwise exploit the Game…
     1. **Note: Not every agreement will have this clause as some developers may want no part in marketing and simply want to make the game and some Publishers may want to not involve developers in their process either. However, it is common to see this clause, so I wanted to include it here. This can include cooperation for merchandise based on the game as well.**
  5. No Representation of Success: The parties acknowledge that there is no representation as to the possible or expected success from exploitation of or perceived need for the Game. Each party understands and acknowledges that no officer of either party or any other person is authorized to make any such representations on the party’s behalf. Each party further acknowledges that in entering into this Agreement it is not relying upon any representation by the other party (including any employee or independent contractor) except for representations, if any, expressly set forth herein.
     1. **Note: This clause should be mutually applicable. Success is subjective and a hard standard to measure at times. This ensures that both parties are protected, and other standards are applied.**

1. DEVELOPER’S RIGHTS AND OBLIGATIONS.
   1. Competing Games: During the term of this Agreement Developer will not develop, for its own exploitation or for any party other than Publisher, products directly competitive to the Game, including any product containing any of the same characters or characterizations or any product which is or might reasonably be considered to be a sequel to the Game or otherwise confusable to the game, and also including a game using the same source code as the Game but with only minor esthetical changes.
      1. **Note: This language restricts the time frame for the term of the agreement. It does not extend beyond that time frame to comply with the recent ban on non-compete clauses except and save for very limited exceptions that are not applicable in these agreements.**
   2. Developer Reporting: If the Game has not been developed or completed at the time of the execution of the Agreement, the Parties agree that specifications and/or milestones of the Game development for each Game shall be detailed in Exhibit \_\_\_\_\_\_.
      1. **Note 1: This section is about the milestones a developer needs to meet for the game and reporting the progress to the Publisher. Because the Publisher is investing money as well as access to their market, they have an interest in seeing the progress of the game. These clauses can be fixed (as in they have a set date/time for each milestone, and these can also have monetary attachments – such as additional advances from the Publisher after each milestone). Or, they can have language where there isn’t a fixed date/time but the Publisher can request an update or progress report at any time and obtain it within a certain time period. This aspect of the agreement usually has language that points to an Exhibit or Addendum that is attached to the publishing agreement. That way the parties can negotiate terms that work for them and the particular game involved. It is ideal to have broad milestone language as too specific or too subjective could possibly cause one party (often the Publisher) seeks to terminate the agreement if it does not meet the subjective criteria. Having an experienced attorney involved in these negotiations is key.**
      2. **Note 2: With this provision, the developer would ideally want a short approval time on milestones and if there is a disapproval, a detailed response as to why and a period to reexamine things. That way, the Developer is closer to being paid and the game being released. Having specified times for approval are key to ensuring that a game is not sitting around for an indefinite period.**
   3. Intellectual Property: Developer shall retain all Intellectual Property Rights in and to the Game, including all original elements of design and game software, and all rights in all source code and object code, tools, technology, and other development aids embodied in and used in connection with the development of the Game. Any rights not explicitly granted to Publisher hereunder are reserved by Developer.
   4. License of Intellectual Property: Developer hereby grants Publisher an irrevocable, transferrable, sublicensable (through multiple chains of sublicensees) exclusive license over the entirety of Developer’s rights in the Game and Related Content. This license is for the Territory and the Term, and covers all media, platforms, distribution channels, derivative works, and types of exploitation of the Game and Related Content, including merchandising and film rights.
      1. **Note 1: This sample language is ideal for the Developer as the creator and originator of the Game. With this type of clause, one would have additional clauses granting the Publisher a copyright and/or trademark license (usually exclusive but doesn’t have to be) enabling them to further carry out their part of the agreement and have incentive.**
      2. **Note 2: It’s worth noting that some agreements contain language where the Publisher would receive some percentage of the intellectual property rights. It is important to discuss an agreement with this type of clause with an attorney to see what you can negotiate with the Publisher, as that type of agreement is not necessarily ideal for the Developer.**
      3. **IP rights are crucial when negotiating a publishing agreement. A developer would ideally not want to give away any of their IP rights. However, it is important to discuss with an attorney what options are available and what the terms of your agreement state as to IP.**
2. REVENUE AND ROYALTIES
   1. Revenue Sharing: Publisher shall pay Developer fifty percent (50%) of the Net Revenue generated from the sale and distribution of the Game. “Net Revenue” shall mean the gross revenue actually received by Publisher from the sale and distribution of the Game, less any applicable taxes, refunds, chargebacks, and third-party platform fees.
   2. Royalty Rate: The royalty rate payable to Developer shall be twenty percent (20%) of the Net Revenue. The royalty payments shall be calculated and paid on a quarterly basis, within thirty (30) days following the end of each calendar quarter.
   3. Payment Terms: Publisher shall provide Developer with a detailed statement of account, showing the calculation of Net Revenue and the corresponding royalty payment for each calendar quarter. Developer shall have the right to audit Publisher’s records related to the sale and distribution of the Game, upon reasonable notice and during regular business hours, to verify the accuracy of the royalty payments.
   4. Advances: Publisher may, at its discretion, provide Developer with an advance against future royalties. Any such advance shall be recoupable from Developer’s share of Net Revenue before any further royalty payments are made.
   5. Dispute Resolution: In the event of any dispute regarding the calculation or payment of royalties, the parties shall first attempt to resolve the dispute through good faith negotiations. If the dispute cannot be resolved through negotiations, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.
      1. **Note: This section *greatly varies* depending on the type of relationship established between the parties. For example, if the project is fully developed and the publisher is only participating in distributing and marketing the game, then there would not be a need for recoupment language. It’s more common to see the scenario of the developer presenting a publisher with the game concept/idea/early stages, and the publisher funding the development. In those cases, there will most likely be recoupment language. How the recoupment will be done varies, as some agreements have where the developer won’t see any revenue until recoupment has been met, others provide a smaller revenue until recoupment, and then there are those rare clauses that take it from the gross and the parties split the net. Here I’ve illustrated the second point where the developer’s share is affected until recoupment as that is the more common clause – since it technically benefits both parties with developer getting paid something and publisher getting their money back.**
      2. **Note 2: Please note that the royalty rates are negotiated and vary depending on many factors: the game product (think: sale expectations), success of the company, any DLCs that may be had in the future, current state of the industry, ancillary products (like merch), and more. It can vary, on average, between 10-20%. Again, 10-20% is not a hard number but is the average that we see in these types of agreements. Royalties can also be applied differently within an agreement based on ancillary products – maybe there will be a higher percentage for film adaptations but that same percentage does not apply to DLC’s, for example. This is why it is *extremely important* to discuss this section with an attorney who can advocate on your behalf.**
      3. **Note 3: If development for the game requires more funds, the Publisher may provide an additional advance but this one against future royalties – meaning it will need to be paid before the Developer receives a royalty payment. For example, Publisher may provide an advance of $50,000, which will be recouped from Developer’s share of Net Revenue.**
      4. **Note 4: Please take into consideration that payments to developers are often on a fee schedule that is attached to the agreement as an addendum or exhibit. The fee schedule will be drafted based on the goals/metrics, wishes, and preferred deadlines of the parties. *Again, and I cannot stress this enough, this particular aspect of the agreement needs attorney oversight and advising.***

**STANDARD AND BOILERPLATE LANGUAGE SECTION: This section is labeled “standard and boiler plate” as it contains clauses that are pretty consistent across the board. Meaning, these are clauses with minimal to no variation between publishing agreements that are found in virtually all publishing agreements, or they are found in pretty much every agreement. Only exception within this section would be the clauses regarding terminations, as this may vary based on the relationship between the parties as well as other agreement factors. However, just because these clauses are “standard” in most agreements, does not mean that one should fail to seek attorney advice on the ramifications of these clauses as it pertains to the entirety of the agreement.**

1. CONFIDENTIALITY

(a) **Confidential Information.** For purposes of this Agreement, "Confidential Information" means any information or material that is proprietary to the disclosing party or designated as Confidential Information by the disclosing party and not generally known other than by the disclosing party. Confidential Information also includes any information that the disclosing party obtains from any third party that the disclosing party treats as proprietary or designates as Confidential Information, whether or not owned by the disclosing party. "Confidential Information" does not include the following:

(i) information that is known by the receiving party at the time of receipt from the disclosing party that is not subject to any other nondisclosure agreement between the parties;

(ii) information that is now, or that hereafter becomes, generally known to the industry through no fault of the receiving party, or that is later published or generally disclosed to the public by the disclosing party; or

(iii) information that is otherwise lawfully developed by the receiving party, or lawfully acquired from a third party without any obligation of confidentiality.

(b) **No Disclosure.** The receiving party agrees to hold in confidence and not to disclose or reveal to any person or entity any Confidential Information disclosed hereunder without the clear and express prior written consent of a duly authorized representative of the disclosing party. The receiving party further agrees not to use or disclose any of the Confidential Information for any purpose at any time, other than for the limited purpose(s) of this confidence. In the event that either party is directed to disclose any portion of any Confidential Information of the other party or any other materials proprietary to the other party in conjunction with a judicial proceeding or arbitration, the party so directed will immediately notify the other party both orally and in writing. Each party agrees to provide the other with reasonable cooperation and assistance in obtaining a suitable protective order and in taking any other steps to preserve confidentiality.

(c) **Published Reports.** Without limiting the generality of the foregoing, the parties specifically agree that any reports concerning Confidential Information that are not made or authorized by the disclosing party and that appear in any publication prior to the disclosing party's official disclosure of such Confidential Information will not release the receiving party from its obligations hereunder with respect to such Confidential Information.

(d) **No Confidential Information of Other Parties.** Developer represents and warrants that it will not use in the course of its performance hereunder, and will not disclose to Publisher, any confidential information of any third party (including competitors of Publisher or Developer) unless Developer is expressly authorized in writing by such third party to do so.

1. **Note: Confidentiality clauses are imperative in video game publishing agreements as the parties (especially the developers) would prefer pertinent information about the game and their development process leaked. This clause means that any proprietary information shared between the parties must be kept confidential and only used for the purposes specified in the agreement. It excludes information already known, publicly available, or independently developed. If required by law to disclose the information, the receiving party must notify the disclosing party and help protect it. Even if the information is published without authorization, the receiving party must still keep it confidential until officially disclosed. The developer also promises not to use or disclose any third-party confidential information without permission.**
2. LIMITATION OF LIABILITY:

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, EXCEPT AS EXPRESSLY PROVIDED, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

1. **Note: This clause means that, except for specific situations mentioned in the agreement, neither party (developer or publisher) will be responsible for paying the other party for indirect damages, such as lost profits, even if they were warned that such damages might happen. This helps limit the financial risk for both parties. This clause can have additional limitations depending on the interests of the parties – perhaps adding language for other forms of tort liability.**
2. REPRESENTATIONS AND WARRANTIES

8.1 By Developer: Developer hereby represents, warrants and covenants that:

1. Developer has the power and authority to grant the licenses contained

herein;

(b) the Developer Content, Game Content and Developer Logo(s) provided or licensed to Publisher by Developer hereunder are not the subject of any lien, encumbrance, claim, litigation or arbitration, whether pending, suspected or threatened;

(c) the Developer Content, Game Content and Developer Logo(s) provided or licensed to Publisher by Developer hereunder does not and will not violate any law or infringe any Intellectual Property Right or other right of any third party, including without limitation any rights of publicity or privacy or other rights, or give rise to any legal claim by any third party.

(d) Developer is a company duly organized and validly existing under the

laws of the jurisdiction set forth in the preamble above.

(e) The execution, delivery, and performance by Developer of this Agreement

are within the corporate powers of Developer; have been duly authorized

by all necessary corporate action on the part of Developer; and will not

violate any other agreement or instrument to which Developer is a party.

8.2 By Publisher. Publisher hereby represents, warrants, and covenants that:

(a) Publisher has the power and authority to grant the licenses contained

herein;

(b) the Publisher Content provided to Developer by Publisher hereunder is not the subject of any lien, encumbrance, claim, litigation or arbitration, whether pending, suspected or threatened;

(c) the Publisher Content and translated version of the Game provided by Publisher to Developer hereunder does not and will not violate any law or infringe any Intellectual Property Right or other right of any third party, including without limitation any rights of publicity or privacy or other rights, or give rise to any legal claim by any third party.

(d) Publisher is a corporation duly organized and validly existing under the

laws of the jurisdiction set forth in the preamble above.

(e) The execution, delivery, and performance by Publisher of this Agreement

are within the corporate powers of Publisher; have been duly authorized by all necessary corporate action on the part of Publisher; and will not violate any other agreement or instrument to which Publisher is a party.

* + 1. **Note: Simply put, this section contains the promises from one party to the other that they are who they say they are and are legally able to perform this agreement without any other having a legitimate legal state or basis as to why they shouldn’t. If it turns out that they do, the parties may have grounds to seek legal recourse.**

8.3 DISCLAMER OF WARRANTIES: PUBLISHER AND DEVELOPER EACH HEREBY DISCLAIM ANY AND ALL IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ERROR-FREE OR UNINTERRUPTED SERVICE, WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE.

1. **Note 2: This clause means that both the publisher and developer are stating that they do not guarantee any implied promises about the game, such as it being suitable for a specific purpose, being free of errors, or running without interruptions. They are not responsible for any expectations that might arise from laws, industry practices, or past interactions. I made it clear that this disclaimer applies to BOTH parties as opposed to just one, but please note that I have seen some agreements where it only applies to one party.**
2. INDEMNIFICATION

Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party and its Affiliates, along with their respective officers, directors, employees, and agents, from and against any and all third-party claims, losses, liabilities, damages, expenses, and costs, including attorney's fees and court costs, arising out of the Indemnifying Party's (i) gross negligence or willful misconduct, or (ii) material breach of any terms of this Agreement. The Indemnifying Party's liability under this Section shall be reduced proportionally to the extent that any act or omission of the other Party, or its employees or agents, contributed to such liability. The Party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any claim and grant the Indemnifying Party complete control over the defense and settlement of such claim. The Party seeking indemnification shall also cooperate with the Indemnifying Party, its insurance company, and its legal counsel in the defense of such claim(s). This indemnity shall not cover any claim where there is a failure to provide the Indemnifying Party with prompt notice, to the extent that such lack of notice prejudices the defense of the claim.

* + 1. **Note: This clause means that each party agrees to protect the other party from any third-party claims or damages resulting from their own gross negligence, willful misconduct, or significant breach of the agreement. It ensures that the responsible party will cover legal costs and any related expenses. The importance of this clause lies in its ability to allocate risk and provide a clear process for handling claims, thereby protecting both parties from unforeseen liabilities.**

1. TERMINATION

(a) By Either Party. This Agreement may be terminated by either Party immediately: (i) upon delivery of written notice of termination to the other Party if the other Party fails to perform any material term or condition in this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the non-breaching Party; (ii) in the event of a material non-remediable breach by the other Party, or upon a successive material breach that was the subject of a prior notice under Section 12(a)(i); or (iii) in the event that the other Party ceases to conduct its operations in the

normal course of business, files for or becomes the subject of a bankruptcy

petition, or is placed in receivership.

(b) Effect of Termination. Within thirty (30) days after expiration or

termination of the Agreement, Publisher shall (i) promptly return to

Developer or destroy all copies, in whole or in part, of the Developer

Content, Developer’s Confidential Information and any other materials

related to the Game, (ii) provide Developer with user names and

passwords to all Game-related social media and Channel accounts such

that Developer has administrative access to the same, and (iii) disable,

remove, or delete all accounts giving Publisher access to the Channels for

the Game and certify the same upon Developer’s written request. All rights

and licenses granted to either Party by the other Party under this

Agreement shall terminate upon thirty (30)-days after such expiration or

termination or upon Publisher’s completion of the aforementioned

requirements, whichever occurs earlier.

(c) Survival. (Insert sections you’d like to survive termination), as well as all payment obligations accrued hereunder prior to expiration or termination shall

survive expiration or termination of this Agreement for any reasons.

1. **Note: This clause explains how either party can end the agreement if the other party breaches important terms or faces financial issues like bankruptcy. It also details the steps the publisher must take after termination, such as returning or destroying the developer’s content and providing access to game-related accounts. Additionally, it specifies that certain obligations, like payments, will continue even after the agreement ends. This ensures a clear and fair process for both parties when the agreement needs to be terminated.**
2. **Note 2: I left the front part of sub-section “c” blank to account for other sections that the parties may wish to survive termination. That can vary based on the relationship of the parties.**
3. **Note 3: As stated, this clause may vary. Some agreements may have language that state: “neither party can terminate within [insert time period] except for material breach of the agreement or bankruptcy” and include language outlining early termination penalties if termination occurs for any other reason other than material breach or bankruptcy, such as paying a fee or continuing to pay according to the schedule, etc.**
4. FORCE MAJEURE

Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, except for the payment of money, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, pandemics, epidemics, local disease outbreaks, public health emergencies, communicable diseases, quarantines, DDos attacks, hacking, or acts of God, in addition to any and all events, regardless of their dissimilarity to the foregoing, beyond the reasonable control of the Party deemed to render performance of the Agreement impracticable or impossible, for so long as such force majeure event is in effect. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within five (5) business days of its occurrence.

* + 1. **Note: This clause means that if either party cannot fulfill their obligations due to events beyond their control (like natural disasters, war, or pandemics), they won’t be held responsible for the delay or failure, except for payment obligations. It’s important because it protects both parties from being penalized for circumstances they can’t control, ensuring fairness in the agreement.**

1. MISCELLANEOUS
2. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties.
3. Amendments: No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by both parties.
4. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the [Insert State/Country], without regard to its conflict of law principles.
5. Dispute Resolution: Any disputes arising out of or in connection with this Agreement shall be resolved through good faith negotiations between the parties. If the dispute cannot be resolved through negotiations, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.
6. Assignment: Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, except that Publisher may assign this Agreement to an affiliate or in connection with a merger, acquisition, or sale of all or substantially all of its assets.
7. Severability: If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.
8. Notices: All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally, sent by registered or certified mail, return receipt requested, or sent by email with confirmation of receipt, to the addresses specified by the parties.
9. Waiver: No waiver of any term or condition of this Agreement shall be valid or binding unless made in writing and signed by the party against whom the waiver is to be enforced. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or of the right to enforce it at a later time.
   * 1. **Note: This section ensures that the agreement is comprehensive and overrides any previous discussions. It requires any changes to be in writing and signed by both parties. It specifies the governing law and outlines how disputes will be resolved, typically through arbitration. It restricts the transfer of rights or obligations without consent, except in certain cases. It also ensures that if any part of the agreement is invalid, the rest remains effective, and it sets out how notices should be given. Lastly, it clarifies that not enforcing a provision doesn’t mean waiving the right to enforce it later. This section is crucial for maintaining clarity, fairness, and legal integrity in the agreement. Although this section is standard apart from choice of jurisdiction varying, it is still important to discuss with an attorney as this still affects the other tailored aspects of the agreement.**