

The model publishing agreement has been drafted by Advocate Marcin Balicki, PhD, of the Law Firm T. Studnicki, K. Płaszka, Z. Ćwiakalski, J. Górski sp.k. ("SPCG", [www.spcg.pl](http://www.spcg.pl)). Sharing this model does not constitute legal advice and its use may require adaptation hereof to the circumstances. The symbol [•] indicates that the particular provision or its element require completion, but are optional.

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## PUBLISHING AGREEMENT

made in [place] on [date] by and between:

[company's business name and legal form] with its registered office in [place], street [name and number], [postal code and city], entered by the District Court in [place where the court is located] Commercial Division [division number] of the National Court Register under number [number], NIP (tax ID) [number], REGON (stat. ID), [number], share capital of [amount of the share capital] zlotys, paid up in [whole/part], represented by [name and surname and position in the company], hereinafter referred to as "**Publisher**",

and

[company's business name and legal form] with its registered office in [place], street [name and number], [postal code and city], entered by the District Court in [place where the court is located] Commercial Division [division number] of the National Court Register under number [number], NIP (tax ID) [number], REGON (stat. ID), [number], share capital of [amount of the share capital] zlotys, paid up in [whole/part], represented by [name and surname and position in the company], hereinafter referred to as "**Studio**",

hereinafter referred to collectively as "**Parties**", and individually also as "**Party**",

## 1. Contractual Definitions

- 1.1. **Advance** – shall mean the advance paid to the Studio by the Publisher on account of the Basic Fee upon the terms and conditions set out in the Agreement. The amounts and terms of payment of the particular Advances are set out in the Schedule.
- 1.2. **Agreement** – shall mean this agreement and all annexes hereto.
- 1.3. **Business Day** – shall mean a day from Monday to Friday, excluding public holidays as defined by Polish law. If the Agreement does not expressly specify a term counted in Business Days, the term shall be counted in calendar days.
- 1.4. **Civil Code** – shall mean the Act of 23 April 1964 – Civil Code (consolidated text in Dz.U. /Journal of Laws/ of 2022, item 1360).
- 1.5. **Copyright Law** – shall mean the Act of 4 February 1994 on Copyright and Related Rights (consolidated text in Dz. U. of 2021, item 1062, as amended).
- 1.6. **Deliverables** – shall mean all performances, in particular the work of authorship or parts thereof and services, constituting the Game, Marketing Materials, elements forming part of or necessary for the production of the Game or Marketing Materials, or other performances agreed upon by the Parties, provided to the Publisher by the Developer in accordance with the Schedule, "Game Design Document", "List of Marketing Materials" and [•].
- 1.7. **Fee** – shall mean the total fee which the Publisher shall pay to the Studio in accordance with the provisions of the Agreement, which is the total of the Basic Fee and the Additional Fee.
  - 1.7.1. **Basic Fee** – shall mean the fee referred to in Clause 6.1.1.
  - 1.7.2. **Additional Fee** – shall mean the fee referred to in Clause 6.1.2.
- 1.8. **Game** – shall mean video game for personal computers entitled [game title] created and delivered to the Publisher by the Studio in performance of the Agreement, in accordance with the "Game Design Document" which forms Annex No. 1 hereto and [•], which consists in particular of the computer program, graphic design, sound design and the text layer of the video game, as well as any updates and versions of the Game created during the term of the Agreement and delivered to the Publisher by the Studio.
- 1.9. **GDPR** – shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJEU. L. of 2016, No. 119, p. 1, as amended).
- 1.10. **Income from Game Distribution** – shall mean the sum of money due to the Publisher for the distribution of the Game, less the (i) taxes and other public charges paid by the Publisher, which are necessary and strictly connected with the distribution of the Game; (ii) price discounts, bonuses and rebates, including price discounts, bonuses and rebates billed after the sale of the Game; (iii) commissions charged by the Selling Platforms on the sale of the Game; (iv) [•].

- 1.11. **Industrial Property Law** – shall mean the Act of 30 June 2000 – Industrial Property Law (consolidated text in Dz. U. of 2021, item 324, as amended).
- 1.12. **Intellectual Property Rights** – economic and moral copyright, related rights to artistic performances, phonograms and videograms, industrial property rights, *sui generis* rights to the databases, the Game, the Marketing Materials and the Trademarks or used therein.
- 1.13. **Marketing Materials** – shall mean materials for the marketing of the Game, such as conceptual graphics and teasers, created and delivered to the Publisher by the Studio in performance of the Agreement, in accordance with the “List of Marketing Materials” which forms Annex No. 2 hereto.
- 1.14. **Publisher’s Costs** – shall mean the costs necessary for the distribution and marketing of the Game under the terms and conditions of the Agreement, which shall include: (i) the costs of marketing the Game in the media, in particular maintenance and operation of the Game website, the Game's social media profiles, organisation of competitions and other promotional activities, contact with journalists and the preparation of presskits, remuneration of advertising agencies, youtubers, influencers and streamers, the recording and publication of trailers and video advertisements, participation in trade fairs such as PGA and GAMESCOM; (ii) other than the commission on the sale of the Game, charged by Selling Platforms to the Publisher in connection with the distribution or marketing of the Game; (iii) [•].
- 1.15. **Sales Report** – shall mean the report made by the Publisher for the particular quarter of the year comprising the amount of the Income from Game Distribution, Selling Platforms and the number of copies of the Game which have been sold and the calculated amount of the Additional Fee. The Sales Report shall each time include also a statement of the Publisher’s Costs incurred from the beginning of the term of the Agreement.
- 1.16. **Schedule** – shall mean the itemised financial schedule of the work on the Game and the Marketing Materials, specifying the particular dates for the completion of particular elements of the Game and Marketing Materials, as well as the terms of payment of the Basic Fee and the Advances. The Schedule forms Annex No. 4 hereto.
- 1.17. **Selling Platforms** – shall mean the following digital video game distribution platforms: Steam, Epic Games, GOG, [•], as well as platforms created as a result of their transformation or merger.
- 1.18. **Territory** – shall mean the territories of the European Union countries, United Kingdom, Norway, Iceland, Liechtenstein, Switzerland, United States of America, Canada, Japan and [•].
- 1.19. **Trademarks** – trademarks used for the identification of the Game or the Studio, comprising in particular the title of the Game or the Studio’s business name. The List of Trademarks forms Annex No. 3 hereto.
- 1.20. All definitions in this section apply to both the singular and plural of the terms herein defined.
- 1.21. Unless the Agreement expressly provides otherwise, all references in its content to clauses and annexes shall apply to the clauses of the Agreement and the Annexes hereto, accordingly.

*[SPCG comment: The definitions which are used in the subsequent provisions of the Agreement are part of it and may regulate important issues, e.g. what exactly the Game is within the meaning of the Agreement and what documents or materials will be needed to assess whether the Game has been properly created. For instance, will the reference point for the content of the Game be only the "Game Design Document" attached to the Agreement or other materials too (e.g. vertical slice)? Such materials should constitute an annex hereto. In the model, the proposed definitions are consistent with further provisions of the Agreement. Should it be amended, it needs to be checked whether, for example, in the section concerning the settlements of the Parties, other costs incurred by the Publisher than those listed in the definition of "Publisher's Costs" would be added. In this proposal we have left room for the possible addition of further items in the definitions of the Income from Game Distribution and the Publisher's Costs, but in the final version of the Agreement these catalogues should be closed. The wording of the definitions may significantly affect the scope of the business relationship, for example "Territory" may mean the territory of one country, more countries (as in the proposed definition), or even the territories of all countries in the world. The definitions adopted in this model are sufficient, but may need to be tailored to specific business conditions.]*

## **2. Subject of the Agreement and Representations of the Parties**

- 2.1. The subject of the Agreement is to set out the terms and conditions on which: (i) the Game and Marketing Materials will be created by the Studio and the Game and the Marketing Materials will be delivered to the Publisher; (ii) a licence will be granted by the Studio to the Publisher to use the Game, the Marketing Materials and the Trademarks; (iii) the Game will be distributed and marketed by the Publisher; (iv) the Published will pay the Fee to the Studio.
- 2.2. The Studio undertakes that the individual works performed under the Agreement shall be carried out with due professional diligence and in a timely fashion, taking into account the Schedule planned by the Parties, in particular the Studio shall create the Game following the generally accepted standards for the creation of video games of this type.
- 2.3. The Studio also declares that the Game shall not contain: (i) elements not communicated to the Publisher, including so-called "easter eggs", which in particular may affect the age categorisation of the Game; (ii) so-called malicious software, in particular [•]; or (iii) software based on so-called copyleft licenses.
- 2.4. The Publisher shall pay the Fee and the Advances in a timely fashion, distribute and market the Game with due professional diligence and in a timely fashion, in accordance with the Schedule and the "Framework Marketing Plan" which forms Annex No. 5 hereto. The Publisher shall consult with the Studio the manner in which the Game is published and distributed and, to the extent not specified in the "Framework Marketing Plan", the manner in which the Game is marketed.
- 2.5. The Publisher shall also cooperate with the Studio in the creation of the Game by timely partial acceptance and final acceptance of the Game, the Deliverables and delivery to the Studio within the timeframes indicated in the Schedule of the programming tools and musical

works listed in the "List of Materials to be Provided by the Publisher" which forms Annex No. 6 hereto - together with the licenses for their use. The costs of obtaining the licences referred to in the preceding sentence, shall be included in the Publisher's Costs.

- 2.6. In consultation with the Publisher the Studio shall place: (i) the Publisher's trademark – on the second opening screen of the Game and (ii) the persons engaged in the production of the Game, indicated by the Publisher – in the "credits" section. The model license for the use of the Publisher's trademark ("Publisher's Licence Agreement Model") forms Annex No. 7 hereto.
- 2.7. Subject to Clause 4.3., the Parties shall specify the detailed terms and conditions for the maintenance and development of the Game after its release date.

*[SPCG comment: The subject of the Agreement is the essence of the obligations of both Parties. The proposed subject matter of the Agreement can be supplemented by such obligations as substantive support from the Publisher in the Game production process, arranging for the creation of language versions of the Game, ensuring quality control of the Game (quality assurance). The draft provides for the Parties to conclude a separate agreement covering the maintenance and development of the Game after its release date. However, such obligations may be included in the Agreement itself or in the Schedules hereto. Irrespective of this, should an update of the Game nevertheless be created by the Studio and delivered to the Publisher, the provisions of the Agreement shall apply to the updated version of the Game, e.g. it shall be covered by the license, as expressly provided for in Clause 4.3. This group of provisions may also indicate what criteria or benchmarks will be taken into account in assessing the Parties' proper performance of their obligations.]*

### **3. Delivering the Game**

- 3.1. Between the conclusion of the Agreement and the date of release of the Game, the Studio shall regularly, but at least once a month, inform the Publisher by e-mail about the progress of the work on the Game. Such information shall also be provided immediately to the Publisher upon any request by the Publisher. Unless otherwise indicated by the Publisher, such information shall be communicated to the person mentioned in Clause 12.1.1.
- 3.2. The Studio shall provide the Publisher with the Deliverables produced as part of the subsequent stages of work on the Game according to the Schedule, by uploading them to the repository [•]. The Deliverables shall constitute in particular the Game and the Marketing Materials.
- 3.3. If the Studio fails to provide a Deliverable within the timeframe indicated in the Schedule, the Publisher shall, pursuant to Article 54(2) of the Copyright Law, grant the Studio an additional period of 5 Business Days for its provision. If the Studio fails to provide the Publisher with the Deliverable within this additional period, the Publisher shall be entitled to withdraw from the Agreement with retroactive effect (*ex tunc*).

- 3.4. The Publisher shall, within 10 Business Days of receipt of a Deliverable, notify the Studio of: (i) acceptance of the Deliverable without reservations; or (ii) making the acceptance of the Deliverable conditional upon the making of changes indicated by the Publisher and necessary to bring the Deliverable into compliance with the requirements set out in the Agreement and in the Annexes hereto, including the rectification of defects or faults. If the Publisher fails to give notice within the period specified above, the Deliverable shall, on the expiry of the last day of that period, be deemed to have been accepted by the Publisher without reservations as to its compliance with the Agreement and the Annexes hereto.
- 3.5. The acceptance of the Deliverable shall be confirmed in the acceptance form signed by the Parties the model of which forms Annex No. 8 hereto (hereinafter: “**Acceptance Form**”). If, without providing a reason, the Publisher fails to sign the Acceptance Form within 5 Business Days of the date of acceptance of the Deliverable on a no-reservation basis, the Studio shall be entitled to sign this report unilaterally, with the effect of having it signed by both Parties.
- 3.6. If the Publisher reports reservations to the Deliverable in a timely manner, the Studio shall correct the Deliverable account being taken of these reservations and present the corrected Deliverable to the Publisher for acceptance within 10 Business Days of receiving the reservations.
- 3.7. Within 5 Business Days of receipt of the revised Deliverable, the Publisher shall have the right to make further reservations to the revised Deliverable. The reservations may not concern elements that are in accordance with the Agreement, including the “Game Design Document” or which have been previously accepted, unless the need for a reservation result from changes made by the Studio during the revision of the Deliverable. Failure by the Publisher to make further reservations shall mean acceptance of the revised Deliverable.
- 3.8. If the Publisher makes reservations to the revised Deliverable in a timely fashion, the Studio shall correct the Deliverable taking the reservations into account and shall present the revised Deliverable to the Publisher for acceptance within 5 Business Days of the date of receipt of the reservations.
- 3.9. In the event where the Publisher does not accept a Deliverable received by the Publisher, corrected for the second time, the Publisher may, within 5 Business Days of the date of receipt of the Deliverable corrected for the second time, refuse to accept the same and withdraw from the Agreement with retroactive effect (*ex tunc*) in accordance with Article 55(1) of the Copyright Law.
- 3.10. As part of the acceptance of the last Deliverable, the Publisher shall also perform the final acceptance of Game. In the case of final acceptance, the terms indicated in Clauses 3.3., 3.4., 3.6., 3.7. and 3.8. above shall cover the following number of Business Days: 10 (Clause 3.3.), 15 (Clause 3.4.), 15 (Clause 3.6.), 10 (Clause 3.7.), 10 (Clause 3.8.). For the avoidance of any doubt, the Parties confirm that in the context of final acceptance, the Publisher shall is not be entitled to make reservations to the Game elements already accepted, unless the need to make the reservations is due to changes made by the Studio after the acceptance of that element.

- 3.11. As part of the final acceptance of the Game, the Studio shall also hand over the Game information sheet according to the model provided to the Studio by the Publisher, as well as information about the copyright notes and third-party trademarks and computer programs used in the Game based on the so-called open-source licences.

*[SPCG comment: The proposed acceptance procedure provides for only two iterations of corrections. It is possible to introduce more of them or, in addition, to restrict reservations to material errors. The option of performing acceptance can also be added to the acceptance procedure, but with the obligation to implement the changes requested by the Publisher at a later date, e.g. at the acceptance of the next Deliverable or at the final acceptance. The deadlines for the individual steps could also be formulated more flexibly, with a maximum deadline in each case, e.g. "within a time limit indicated by the Publisher, no longer, however, than [•] Business Days". If the activities related to the acceptance of the Deliverables are to suspend or postpone the time limits specified in the Schedule, this should be expressly written. Withdrawal from the Agreement shall be with retroactive effect (ex tunc) which means that the Parties shall return to each other everything they have rendered to each other, including the Advances or the Basic Fee and the Deliverables previously accepted. The Agreement may contain alternative provisions for discontinuance of the business relationship, including the Publisher's acquisition of rights to individual Deliverables and the settlements between the Parties].*

## **4. Intellectual Property**

- 4.1. Upon the final acceptance of the Game, the Studio shall grant the Publisher an exclusive licence for a period of five years to use Game within the scope specified in the Agreement and with the right to grant sub-licences to the parties listed in Annex no. 9 hereto ("List of Sublicensees"). The licence shall cover the use of the Game, which shall also include the use of the individual works of authorship, artistic performances, phonograms and databases included in the Game, in the Territory and in the following fields of exploitation:
- 4.1.1. digital reproduction of the Game in whole or in part;
  - 4.1.2. distribution of the Game without making copies available to the public, which means making the Game available to the public in such a way that everyone can access it from a place and at a time of their choice via the Internet, which includes distribution via Selling Platforms, streaming of the gameplay recordings, especially on websites such as Twitch, and distribution of such recordings, including on websites such as YouTube;
  - 4.1.3. translation of the Game's software, its adaptation and alteration, including changes to its arrangement, insofar as this is necessary to correct errors or integrate it into Selling Platforms;
  - 4.1.4. use of the Game in marketing activities.
- 4.2. As soon as the licence is granted, the Studio shall permit the Publisher to exercise derivative copyright in the elaborations of the Game in the fields of exploitation indicated in Clause 4.1.1

- 4.1.4 above and to the extent to which it is necessary and justified for the purpose of correcting errors in the Game or integration into Selling Platforms.
- 4.3. With regard to the field of exploitation indicated in Clause 4.1.2., the licence shall be an exclusive, strong licence, which means that the Studio shall not use the Game in this field of exploitation.
- 4.4. In the event that during the term of the Agreement the Publisher provides the Studio with any modifications to the Game, including updates or subsequent versions of the Game, the Studio shall at that time grant the Publisher a licence and permission to use the modified version of the Game to the extent referred to in this Clause 4.
- 4.5. Each time the Publisher is provided with a Deliverable, the Studio shall grant the Publisher an exclusive licence to use that Deliverable for the purposes of collaborating on the Game. This licence shall be valid for the fields of exploitation indicated in Clauses 4.1.1. and 4.1.3. above, in the territory [name of country] and shall expire upon the granting of a license for the Game or upon the expiry of the Agreement for any reason, whichever is earlier.
- 4.6. Each time a Deliverable constituting Marketing Material is accepted and until the expiry of the licence indicated in Clause 4.1. above, the Studio shall grant the Publisher an exclusive license to use the Marketing Materials to the extent indicated in Clauses 4.1. – 4.3. above, respectively, provided that (i) the exercise of derivative rights in the Marketing Materials shall not be limited to the necessity of correcting errors, and the use of the elaborations of Marketing Materials shall also cover the fields of exploitation listed in this clause; (ii) the licence is granted in addition to the following fields of exploitation:
  - 4.6.1. production of copies of Marketing Materials by means of the printing process, and [•];
  - 4.6.2. putting on the market copies of the Marketing Materials;
  - 4.6.3. public presentation, display and reproduction of the Marketing Materials, their broadcasting and re-broadcasting, as well as making them available to the public in such a way that anyone can access them from a place and at a time of their choice via the Internet, which includes in particular distribution on websites, social media and websites such as Twitch and YouTube.
- 4.7. The Studio undertakes to the Publisher that the moral copyright in the Game, including its elements and in the Marketing Materials, including the right of integrity shall not be exercised vis-à-vis the Publisher by parties entitled to exercise the same.
- 4.8. Upon the conclusion of the Agreement, the Studio shall grant the Publisher a licence to use the Trademarks in connection with the distribution and marketing of the Game, in particular to use them in connection with the offering, putting on the market and advertising of the Game and the use of the Marketing Materials. The licence shall be a non-exclusive licence and shall be valid on the Territory. The Studio warrants that the Trademarks are not limited or encumbered by any third-party rights that would restrict the Publisher in the use of the Trademarks to the extent following from the Agreement.



- 4.9. The Studio shall not undertake any activities which could result in the expiry of the protection rights to the Trademarks, in particular the Studio shall pay, in a timely fashion, the administrative charges necessary for maintaining the rights of protection in force.
- 4.10. The Parties shall inform each other of infringements of Intellectual Property Rights of which they are aware. For the avoidance of any doubt, the Studio confirms that, within the scope of the licence which has been granted, the Publisher is entitled to assert claims for infringement of Intellectual Property Rights after having informed the Studio of its intention to do so. Unless otherwise agreed by the Parties, the costs of enforcing the protection shall be borne solely by the Publisher.
- 4.11. The Studio warrants that throughout the term of the license to use the Game, the Marketing Materials and the Trademarks, the Studio shall hold the Intellectual Property Rights to the necessary extent. The Studio shall be liable to the Publisher on a strict liability basis for any legal defects of the Game, Marketing Materials and Trademarks.
- 4.12. At the Publisher's request, the Studio shall promptly provide the Publisher with a list of all persons who have creatively contributed to the Game or the Marketing Materials and whose intangible property, including images, have been used in the Game or the Marketing Materials, and shall make available to the Publisher for inspection the contracts between the Studio and those persons to the extent necessary to assess the correctness and extent of the Studio's acquisition of the copyright or licenses from those persons.

*[SPCG comment: The Publisher has two options for obtaining rights to use the Game, the Marketing Materials and the Trademarks. Firstly, it can acquire the Intellectual Property Rights - either consistently in the course of production to the individual Deliverables or once as part of the final acceptance, e.g. to the completed Game. The second option is to use the Game, the Marketing Materials and the Trademarks based on a licence agreement. In the model proposed herein, the Studio shall grant the Publisher an exclusive licence to use digital copies of the Game - to the extent that this is needed for its distribution on the Selling Platforms and for marketing the Game. Of course, as soon as such a licence expires, the Studio will be able to re-use the Game itself or grant a licence to another party. The Studio shall also grant the Publisher a licence to use the Marketing Materials. The timing of the granting of this licence and its scope are slightly different than the licence for the use of the Game. Additionally, in this draft, the Studio shall grant the Publisher a licence to use the Trademarks. The Trademarks can both function "on their own", as well as being part of the Marketing Materials or can appear in the Game (splash screens, menus, credits). Even if the Studio, unlike in this model, transfers Intellectual Property Rights to the Game to the Publisher, it would be worth keeping the Trademarks. The Trademarks are sometimes crucial for the further development of the Game - sequels, spin-offs of the Game, merchandising.]*

## **5. Game Distribution and Marketing**

- 5.1. The Publisher shall distribute the Game in the Territory and at its own expense. This shall include all activities necessary to make the Game properly and legally available to end users,

in particular its publication and subsequent offering and sale on the Selling Platforms. The Publisher shall perform all actions required by the operator of the respective Selling Platform in order to commence the sale of the Game, including the preparation of product sheets on the basis of a model provided by the Studio and, in consultation with the Studio, shall prepare the EULA (End User License Agreement).

- 5.2. The Game shall be distributed by the Publisher at the latest from the date indicated as the date of release of the Game in the Schedule provided that until the acceptance of the last Deliverable, the Publisher shall not be obliged to distribute the Game.
- 5.3. For the avoidance of any doubt, the Parties confirm that the Publisher is not authorised to share the Game as part of subscription services, e.g. Game Pass, Humble Choice or game packages e.g. Humble Bundle.
- 5.4. Subject to the provisions of Clause 5.8., the Publisher shall not provide the Game free of charge, including in the context of promotional activities, unless the Studio has given its consent thereto. The consent must be given in writing or with an electronic signature under pain of invalidity.
- 5.5. The Publisher shall market the Game in the Territory and at its expense, which shall include advertising and promotional campaigns. The Publisher shall perform marketing activities identified as obligatory in the „Framework Marketing Plan“. The marketing expenses incurred by the Publisher in the period of the year preceding the release date of the Game and the year following the release date of the Game will not be less than [•] in total, but shall not exceed the amount of [•].
- 5.6. The Studio, including the Studio's employees and collaborators shall not undertake any marketing or disclose any information about the Game, including the production process of the Game and the cooperation with the Publisher, without the consent of the Publisher given in documentary form under pain of nullity.
- 5.7. At the Publisher's request made at least 15 Business Days in advance and at the Publisher's expense, the Studio employees it designates shall participate in events selected by the Publisher such as fairs, conferences and presentations of the Game. The Publisher shall agree with the Studio such participation of the Studio's employees in the aforementioned events that shall not interfere with Game production. The Studio shall also ensure that the designated Studio's employees or collaborators give permission for their images to be used for the marketing of the Game. The Publisher shall notify the Studio at least 5 Business Days in advance of the planned use of the abovementioned images for Game marketing.
- 5.8. In agreement with the Studio, the Publisher shall be entitled to provide, free of charge, review copies of the Game to editors and journalists specialized in video games selected by the Publisher. The Studio and the Publisher shall agree the detailed rules for the release of information about the Game by these persons before its release date (embargo on publications about the Game). After the release date, the Publisher shall also be entitled to provide free of charge [•] Game keys on the Selling Platforms to streamers and youtubers specialized in video games.

*[SPCG comment: A publishing agreement is usually concluded at the beginning of game production, so the release date can still change more than once. This makes it difficult to “rigidly” plan specific marketing activities. For instance, within a few years the popularity of a particular streamer may decrease noticeably. However, the Parties should agree on a minimum range of activities that the Publisher is obliged to undertake - in this model these are listed in the “Framework Marketing Plan”. The scope of marketing activities can also be optimised to a certain extent by the lower and upper limits of the marketing budget and by marking certain activities obligatory and others optional. In the case of games published in console versions, the Publisher's duties shall also include the management or support of the Studio in certifying the Game for the respective console. As mentioned in the comment to the provisions on the subject of the Agreement, another group of the Publisher's duties may be the management of the creation of language versions of the Game and the Marketing Materials, quality assurance, legal compliance, including the preparation of EULA and Terms & Conditions and checking that the Game does not contain elements the distribution of which would violate the laws of the country where the Game will be sold. If any intellectual property material is created in connection with the Publisher's performance of such obligations, it is advisable to agree in advance who will acquire the rights to such material. In the absence of such an agreement, it may be that the economic copyright in the translations of the Game's texts made on behalf of the Publisher will be acquired by the Publisher.]*

## **6. Fee**

6.1. The Publisher shall pay the Studio the Fee comprising:

6.1.1. Basic Fee – in the amount of [figure] (in words: [•]) zlotys net (lump-sum fee) subject to Clause 6.9.;

6.1.2. Additional Fee – in the amount which is [figure]% of the Income from Game Distribution (royalty payment).

6.2. The Basic Fee shall be due for the performance of the Studio for the Publisher under the Agreement for the period up to the date of the final acceptance of the Game, including the creation and delivery of the Game and the Marketing Materials and the granting of the licences and permissions to the Publisher indicated in Clause 4 (“Intellectual Property”), and the [figure]% of the Basic Fee shall be due for the granting of the aforementioned licenses. The Additional Fee shall be due in whole for granting the Publisher the licenses and permissions indicated in Clause 4. For the period from the final acceptance of the Game.

6.3. On the dates specified in the Schedule, the Publisher shall pay the Advances to the Studio. The Publisher shall pay the Basic Fee to the Studio for the portion not covered by the Advances due on the dates specified in the Schedule, after the Publisher has completed the final acceptance of the Game in accordance with Clause 3.10. The Publisher may withhold payment of the Basic Fee or an Advance if the Studio fails to provide a Deliverable or a revised Deliverable by the date specified in the Schedule or agreed by the Parties during the

acceptance procedure; such withholding shall not constitute a default in payment of the Advance or the Basic Fee.

- 6.4. The Additional Fee shall be paid quarterly. For the avoidance of any doubt, the Parties confirm that if the expiry of the Agreement falls on a day other than the last day of the quarter, the last payment of the Additional Fee shall cover a period of less than a quarter.
- 6.5. The Publisher shall notify the Studio promptly of the launch of the sale of the Game and shall further send the Sales Report to the e-mail address of the person indicated in Clause 12.1.2. by the 10<sup>th</sup> Business Day of each following quarter. The Parties agree that the Additional Fee shall only be due to the Studio if the Income from Game Distribution exceeds the total of the Publisher's Costs.
- 6.6. Upon a request by the Studio and within 20 Business Days of such request, the Publisher shall make available for inspection by representatives of the Studio or an accountant designated by the Studio, materials documenting how the Additional Fee amount was calculated. The Publisher may, before allowing the accountant referred to in the preceding sentence to access to the accounting supporting documents, require the accountant to sign an appropriate non-disclosure agreement.
- 6.7. The Advance and the Fee shall each time be paid under an invoice correctly issued by the Studio, and in the case of an Advance – a proforma invoice with a 14-day payment term counting from the date on which it is delivered to the Publisher, plus the VAT due at the applicable rate, by transfer to the Studio's bank account indicated in the invoice. The Studio represents that it is registered as a VAT payer in the "List of entities registered as VAT payers, not registered and deleted and reinstated in the VAT register" (so-called white VAT payers list) with an indication of the bank account provided in the invoice. The Studio shall inform the Publisher promptly about the Studio or the account being deleted from the said list.
- 6.8. Subject to Clause 3.5. and Clause 6.3., the Studio is entitled to issue a proforma invoice for the payment of the Advance once the Acceptance Form has been signed by the Parties. Immediately upon payment of the Advance by the Publisher, the Studio shall issue and send to the Publisher an advance invoice, and immediately upon the signing of the Acceptance Form for final acceptance, the Studio shall issue and send to the Publisher a final invoice covering the Basic Fee and the Advances which have been paid. The invoices for payment of the Additional Fee shall be issued by the Studio and sent to the Publisher upon receipt of the Sales Report.
- 6.9. At the request by the Studio, the amount of the outstanding Basic Fee after deduction of the Advances may be increased with effect from 1 January of each year of the term of the Agreement (hereinafter referred to as the "**Indexation Date**"), in accordance with the price increase documented by the Consumer Price Index published by the President of the Central Statistical Office (hereinafter: "**HICP**") for the 12 calendar months preceding the Indexation Date, but not more than [•]. The request referred to in the preceding sentence may not be made later than 30 calendar days after the publication of the HICP. In the event that the HICP is zero or negative, there shall be no downward indexation of the Basic Fee. The first Indexation Date shall be [e.g. 1 January of the year following the year in which the Agreement

is concluded]. The indexation of the Basic Fee under the terms of this clause shall not constitute an amendment to the Agreement.

- 6.10. The Publisher/Studio represents that it is a large entrepreneur within the meaning of Article 4c of the Act of 08.03.2013 on Counteracting Excessive Delays in Commercial Transactions (Dz.U. of 2020, item 935, as amended) [optional provision].

*[SPCG comment: In this draft, the Studio shall receive the Basic Fee the amount of which shall be determined at the time of concluding the Agreement and the Additional Fee the final amount of which will depend on the amount of the Income from Game Distribution. As long as the Income from Game Distribution does not exceed the Publisher's Costs, the Additional Fee shall not be due. As the entity controlling the distribution of the Game, having influence over the amount of the distribution and marketing costs, the Publisher has fuller knowledge of the actual amount of the Income from Game Distribution. It is therefore in the Studio's interest to at least ensure that it has access to the data on the basis of which the Additional Fee is calculated. Where possible, the Studio should have access on equal footing with the Publisher to the information from the Selling Platforms. In addition, the Studio may be entitled to carry out, e.g. once every six months, an audit at the Publisher's – either directly or through a specialised auditor. As a rule, if an incorrect calculation of the remuneration by the Publisher does not exceed a certain threshold, the costs of the audit shall be borne by the Studio. The parties may also introduce other, bonus-type remunerations, e.g. linked to the number of copies sold or ratings in the gaming industry press or on Metacritic portal. The point of reference for the assessment of whether additional remuneration is due should be as precise as possible, e.g. Metascore (critics reviews) on the date falling six months after the release of the Game.]*

## **7. Liability and Third-party Claims**

- 7.1. The Studio shall be liable to the Publisher for damage caused to the Publisher as a result of failure to perform or undue performance of the obligations set out in the Agreement, in particular the creation of the Game contrary to the Agreement, including the “Game Design Document” and as a result of infringement of third-party intellectual property rights.
- 7.2. The Parties shall be mutually obliged to pay the following contractual penalties:
- 7.2.1. for each day of delay by the Studio in presenting a Deliverable for acceptance – the Studio shall pay the Publisher a contractual penalty in the amount of PLN [amount], but not more than [figure]% of the Advance for the Deliverable concerned or the Basic Fee in case of final acceptance;
  - 7.2.2. for each day of delay by the Publisher in launching the sale of the Game on any Selling Platform – the Publisher shall pay the Studio a contractual penalty in the amount of PLN [amount] for each such Selling Platform, but not more than PLN [amount];

- 7.2.3. for the Studio breaching the obligation not to undertake the activities indicated in Clause 5.6. without the Publisher's approval – the Studio shall pay the Publisher a contractual penalty of PLN [amount] for each event of default;
- 7.2.4. for a Party's failure to keep the Confidential Information secret – the defaulting Party shall pay the other Party a contractual penalty of PLN [amount] for each event of default;
- 7.2.5. [•].
- 7.3. A claim for payment of a contractual penalty shall arise as soon as the basis for its accrual arises, and shall become due as soon as a request for payment of the contractual penalty is served on the other Party.
- 7.4. Contractual penalties shall be payable by the defaulting Party by transfer to the bank account of the aggrieved Party within 7 calendar days of the delivery of the relevant notice to pay the penalty.
- 7.5. The aggrieved Party shall be entitled to claim from the defaulting Party additional damages on general terms in the event that the damage suffered as a result of the default concerned exceeds the contractual penalty provided for this circumstance.
- 7.6. In the event that a third party asserts claims relating to the Publisher's use of the Game, the Marketing Materials or the Trademarks in accordance with the Agreement, or claims arising from the untruthfulness of any of the Studio's representations or warranties (hereinafter: "**Claims**"), the Studio shall be informed by the Publisher of the Claims within 20 Business Days and all documents and information relating to the Claims are made available to the Publisher.
- 7.7. The Studio shall indemnify the Publisher against any liability to persons asserting Claims and compensate the Publisher for any damage suffered by the Publisher as a result of defence or need to satisfy the same, in particular the Studio shall reimburse the Publisher for legal costs, legal assistance costs and sums of money awarded or agreed in the settlement.
- 7.8. If the Claims are asserted in litigation against the Publisher, at the Publisher's request the Studio shall join such litigation and, if possible, release the Publisher from its obligation to participate in the litigation. The conclusion of a settlement by the Publisher with a third party asserting the Claims shall require the consent of the Studio expressed in writing under pain of nullity.
- 7.9. The provisions of Clauses 7.6. to 7.8. above concerning the Publisher shall apply accordingly to the Publisher's legal successors, and also the entities which, in accordance with the provisions of Clause 4. ("Intellectual Property") have been authorized by the Publisher to use the Game, the Marketing Materials or the Trademarks.

*[SPCG comment: For the Publisher, the legal risk relating to the distribution of the Game is a third-party raising claims of actual or alleged infringement of its intellectual property rights. In a negative scenario, such a person may even obtain, at least temporarily, a prohibition to distribute the Game in certain territories. Therefore, it is in the Publisher's interest to oblige the Studio to remedy the damage*

*resulting from the infringement of the third party's rights. The second important issue is the Studio's liability for a delay in the creation of the Game. The tool to "discipline" the Studio is formed by contractual penalties, but "bonuses" (additional fee) for timely provision of the Deliverables can also be agreed. The third issue is the contractual penalty for breach of the confidentiality obligation. The Studio should agree with the Publisher rules, as clear as possible, for qualifying the Confidential Information as a business secret – this is particularly relevant in the context of marketing activities involving the Studio's employees. The fourth issue is the provisions, not introduced in this model, limiting the liability of the Parties for undue performance of the Agreement – to the extent permitted by mandatory provisions of law. The liability for damages of both Parties or one of them may be limited, e.g. to an agreed amount.]*

## **8. Business Secret**

- 8.1. The Parties shall keep secrecy meaning that during the term of the Agreement and for a period of [number] years after its termination on any grounds and in case of withdrawal from the Agreement, they shall not provide or disclose to any third party any information received from the other Party, including technical, organisational or financial information, if it has an economic value for this Party and has been made available subject to confidentiality (hereinafter: "**Confidential Information**").
- 8.2. Confidential Information shall include, in particular, the content of the Agreement and the Annexes hereto, the Publisher's financial information made available to the Studio in connection with the calculation of the fee, in particular the Sales Reports, as well as the Publisher's marketing plans, the course of the business relationship between the Studio and the Publisher, the fact and terms of cooperation between the Studio and the Publisher with Selling Platforms and subcontractors such as advertising agencies, etc. The Parties also regard as Confidential Information any information on the content of the Game that has not been made public by the Publisher.
- 8.3. The Parties shall keep Confidential Information secret regardless of the form in which it is processed and shall not use Confidential Information other than for due performance of their obligations under the Agreement.
- 8.4. A Party shall not be obliged to keep Confidential Information secret if:
  - 8.4.1. the Confidential Information is publicly known or has been made public by the disclosing Party or any other entity with the prior written consent of the other Party under pain of nullity;
  - 8.4.2. the disclosing Party demonstrates that, at the time of receipt from the other Party, the Confidential Information in question was already known to the disclosing Party;
  - 8.4.3. the Disclosing Party has lawfully obtained the Confidential Information concerned from a third party, unless the disclosure of the information by that party is prohibited by law or by a contractual obligation binding on that party and unless the Disclosing Party has undertaken an obligation of confidentiality;

- 8.4.4. the Confidential Information needs to be disclosed due to a decision of a court, another public administration body, an obligation under the applicable law or at the request of an auditing entity or entity or providing legal assistance.
- 8.5. In the event of the occurrence of any of the circumstances referred to in Clause 8.4. above, the disclosing Party shall promptly notify the other Party thereof and inform the recipient of the Confidential Information of its confidential nature.
- 8.6. In cases other than listed in Clause 8.4. above, Confidential Information may be disclosed by a Party to a third party only with the prior written approval of the other Party. In such a case, the disclosing Party shall ensure that the person to whom the Confidential Information is disclosed undertakes to maintain confidentiality on terms no less restrictive than those described in the Agreement.

*[SPCG comment: The Studio's obligations consist primarily in the creation of copyrighted material and the licensing of its use. For the Publisher, the "value" of its services may consist largely in the economic know-how, e.g. business contacts with the right partners in various markets, the apt choice of marketing agencies, etc. To the extent that the details of such business relationship do not need to be disclosed, there is value for the Publisher in keeping them secret. The categories of information which it is already known at the conclusion of the Agreement that will be treated as Confidential Information by the Parties are worth mentioning explicitly in the Agreement. In addition, in the course of the business relationship it is necessary to remember to take appropriate measures to keep Confidential Information (technical, technological, organisational or other, if they have economic value for the Party) secret, in particular to appropriately designate the Confidential Information. The obligation to keep Confidential Information secret should also be extended to an appropriate extent to subcontractors. This applies in particular to the Studio members many of whom may work with the Studio under a contract of mandate or piecework contract and not under an employment relationship. In the latter case, the obligation to keep secret confidential information the disclosure of which could expose the employer to harm, derives from the Labour Code. Especially if the Studio is in an investment process, it is worthwhile to provide in the Agreement for the possibility of passing on information to investors.]*

## **9. Personal Data**

- 9.1. The persons representing the Parties in the conclusion of the Agreement represent that they have familiarised themselves with the relevant information on the processing by the other Party of their personal data which forms Annex No. 10 hereto ("Personal Data Processing Information").
- 9.2. Each Party that, in connection with undertaking activities aimed at concluding the Agreement and in connection with its performance, shall make available to the other Party the data of natural persons and provide such persons with information on the processing of their personal data by the other Party. The model information forms constitute Annex No. 11 hereto ("Model Personal Data Processing Information Forms"). The information form shall be



provided place as soon as the personal data are made available to the other Party to the Agreement, and its receipt on the specified date shall be confirmed by each individual with their signature. The Parties shall immediately provide the forms signed by the said individuals to each other.

*[SPCG comment: In this model, the exchange of personal data is limited to the relationship between two personal data controllers (a controller is an entity that alone or jointly with others determines the purposes and means of processing personal data). Each of them is obliged to provide the persons whose data it processes with the information specified in the GDPR. It does not matter whether these persons provide the controller, e.g. the Publisher, with their data directly or through the Studio. Other cases of processing of personal data by the Parties may require the conclusion of an agreement for the outsourcing of personal data processing.]*

## **10. Term of the Agreement**

- 10.1. The Agreement shall come into force as of the date on which it is signed by the Parties and, subject to the provisions of Clause 4 hereof (“Intellectual Property”), is made for a time comprising in total the period between the conclusion of the Agreement and the date of final acceptance of the Game and the term of the license for using the Game indicated in Clause 4.1. hereof.
- 10.2. The Publisher shall be entitled to terminate the Agreement effective immediately in the event that: (i) the Studio breaches the secrecy obligation referred to in Clause 8. hereof; or (ii) [•].
- 10.3. The Studio shall be entitled to terminate the Agreement effective immediately in the event: (i) of the Publisher's delay in the payment of the entire Advance for the relevant Deliverable and, in the case of final acceptance, of the outstanding Basic Fee or the Additional Fee for the relevant quarter of the year of at least [number of days] calendar days or the Additional Fee; (ii) of failure to start the sale of the Game on at least one Selling Platform within [number of] calendar days of the release date; or (iii) that the Publisher breaches the scope of the license for the use of the Game.
- 10.4. The termination referred to in Clauses 10.1. and 10.2. may occur after a prior written request to the other Party to cease infringements, indicating either the correct action or the cause for termination, and the ineffective expiry of a period of at least [number of days] calendar days set for this purpose.
- 10.5. Upon termination of the Agreement, the Studio shall immediately cease the production of any Deliverables. In the event of termination of the Agreement by the Studio, the Publisher shall pay the Basic Fee in an amount equivalent to the Advances paid by the Publisher up to the time of termination of the Agreement. In the event of termination of the Agreement by the Publisher, the Publisher is not obliged to collect any unclaimed Deliverables or to pay the Basic Fee for the unclaimed Deliverables, and the Advances paid by the Publisher up to the time of termination shall be refunded by the Studio.

- 10.6. The notice of termination of the Agreement shall be given in writing failing which it shall be null and void and shall be sent by registered post, courier service, delivered in person to the registered address of the Party or by sending an electronic message with electronic signature to the address indicated in Clause. 12.1. hereof. The notice of termination shall be signed by a person authorised to represent the Studio or the Publisher in accordance with their rules of representation.
- 10.7. Unless otherwise agreed by the Parties, within [number of days] Business Days of the expiry of the Agreement for any reason, including its termination or dissolution by the Parties, as well as in the event of withdrawal from the Agreement, the Parties shall return to each other the documents and materials containing Confidential Information and all copies thereof and, if this is not possible, permanently delete or destroy them in such a way that they cannot be retrieved. The return shall be made by delivering the documents and materials referred to above to the address of the Party's registered office. The Parties may confirm the return by drawing up a written acceptance report. Destruction of the materials referred to in this clause hereof shall be confirmed in writing.
- 10.8. The termination of the Agreement for any reason whatsoever shall not affect any rights or obligations of the Parties arising prior to the date of its expiry, including the right to claim contractual penalty or compensation in respect of any breach of the Agreement which existed on or prior to the date of its expiry.
- 10.9. The following provisions shall remain in force after the expiry of the Agreement on any grounds and in the event of withdrawal from the Agreement: Clause 7. ("Liability and Third-party Claims"), Clause 8. ("Business Secret") and Clause 12. ("Final Provisions").

*[SPCG comment: For the execution of the Agreement, the landmark date is the date of acceptance of the Game. This is when the Studio's primary obligation to properly create the Game ends and the obligation to license the Game arises. In turn, the burden of the Publisher's obligations shifts from financing the production to carrying out the distribution of the Game (marketing activities somewhat escape this division, as they must at least be organised in advance of the Game acceptance and release date). In this model, even though the Agreement has been concluded for a specified term, but under certain circumstances it may cease to be in force before the expiry of that term, in particular as a result of its termination.]*

## **11. Force Majeure**

- 11.1. Neither Party shall be liable for failure to perform or undue performance of its obligations under the Agreement to the extent that performance of such obligations is rendered impossible or delayed by Force Majeure circumstances.
- 11.2. The circumstances referred to in Clause 11.1. above may follow in particular from: strikes, riots, embargoes, fires, floods or other natural disasters, epidemics or states of epidemic emergencies, acts of terrorism, acts of governmental authorities or other extraordinary external events beyond the control of the Party concerned, provided that it was impossible to

foresee and prevent the event and its consequences, which affected the ability of a Party to perform the Agreement, and that it was impossible to avoid the event itself or its consequences. Force Majeure shall not include actions for which the Party seeking indemnification has assumed risk under the provisions of the Agreement.

- 11.3. In order to exclude its liability for non-performance or undue performance of the Agreement, the Party relying on Force Majeure circumstances, no later than within 5 Business Days, shall be obliged to notify the other Party of the occurrence of such circumstances and their cause and provide the related information, including to document and justify the relationship between the Force Majeure circumstances and non-performance or undue performance of its obligations. The aforementioned period shall run from the date on which the Force Majeure circumstance occurred or, if such circumstances make notification impossible, from the date on which such notification became possible – in such case, however, the Party relying on Force Majeure circumstances must demonstrate that earlier notification was not possible.
- 11.4. Upon notification of Force Majeure circumstances, unless otherwise agreed by the Parties, the Parties shall perform their obligations under the Agreement to the extent possible and unaffected by the Force Majeure circumstances, and upon cessation of the Force Majeure circumstances, the Parties shall immediately resume the interrupted work.
- 11.5. To the extent that the inability to perform obligations under the Agreement is due to Force Majeure circumstances affecting one of the Parties, the other Party shall not be liable for the performance of its obligations either.

## **12. Final Provisions**

- 12.1. Unless otherwise expressly provided for in the Agreement, the following persons are authorised to make all binding declarations of will and knowledge on behalf of the Parties (power of attorney):
  - 12.1.1. for the Publisher: [name and surname], [e-mail address], [telephone number];
  - 12.1.2. for the Studio: [name and surname], [e-mail address], [telephone number].
- 12.2. Each Party shall be obliged to immediately notify the other Party of any change in the data indicated in the preceding clause or in the recitals of the Agreement. Until the other Party receives notice of such change, any correspondence sent to the current e-mail address shall be deemed effectively delivered and shall have the effects provided for in the Agreement.
- 12.3. The Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, oral or written, having the same purpose.
- 12.4. The Parties mutually agree that if any provision of the Agreement is validly declared invalid or ineffective in whole or in part by a court or other competent authority, or if such invalidity or ineffectiveness results from applicable law, or if any provision of the Agreement proves to be unenforceable in whole or in part, the remaining provisions of the Agreement shall remain in full force and effect. With regard to the provisions of the Agreement that are wholly or

partly invalid or ineffective or wholly or partly unenforceable, the Parties shall negotiate in good faith replacement provisions that will, to the greatest extent possible, reflect the original intent of the Parties and the economic purpose of the invalid or unenforceable provision, taking into account in particular the purpose of concluding the Agreement.

12.5. All amendments to the Agreement must be made in writing failing which they shall be null and void, except:

12.5.1. the Annexes;

12.5.2. Clause 12.1.1.;

12.5.3. Clause 12.1.2.;

which amendments require a documentary form.

12.6. Subject to the next sentence, neither Party shall be entitled to assign any rights (claims) or obligations (debt) under the Agreement to any third party without the prior consent of the other Party, expressed in writing under pain of nullity. The Publisher shall be entitled to transfer without the Studio's consent any rights (claims) under the Agreement to [•].

12.7. The Agreement shall be governed by Polish law and the provisions of the Civil Code, the Copyright Law and the Industrial Property Law shall apply in particular.

12.8. The Parties shall submit all disputes relating to the conclusion, performance, termination and interpretation of the Agreement to the court having *ratione materiae* competence over the registered office of the Publisher.

12.9. This Agreement is made in two counterparts, one for each of the Parties hereto.

12.10. The following Annexes shall form an integral part of this Agreement:

12.10.1. Annex No. 1 – Game Design Document;

12.10.2. Annex No. 2 – List of Marketing Materials;

12.10.3. Annex No. 3 – List of Trademarks;

12.10.4. Annex No. 4 – Schedule;

12.10.5. Annex No. 5 – Framework Marketing Plan;

12.10.6. Annex No. 6 – List of Materials to be Provided by the Publisher;

12.10.7. Annex No. 7 – Publisher's Licence Agreement Model;

12.10.8. Annex No. 8 – Acceptance Form;

12.10.9. Annex No. 9 – List of Sublicensees;

12.10.10. Annex No. 10 – Personal Data Processing Information;

12.10.11. Annex No. 11 – Model Personal Data Processing Information Forms

12.11. In the event of a conflict between the provisions of the Agreement and the provisions of the Annexes hereto, the provisions of the Agreement shall prevail, unless the content of the Annexes expressly indicates otherwise.

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Publisher

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Studio

*[SPCG comment: The final provisions usually contain provisions for the "handling" of the Agreement itself, e.g. the contact details of the persons responsible for the day-to-day contacts concerning the performance of the Agreement, the form required for an effective amendment of the provisions of the Agreement, and finally the country whose laws apply to the interpretation of the provisions of the Agreement and the jurisdiction of the court or arbitration for the settlement of disputes relating to the performance of the Agreement. If the Studio and the Publisher are established in different countries, the choice of so-called applicable law and jurisdiction is of particular importance. Always the law by which the Agreement is "governed" will always be "foreign" law to someone and that Party may not have full knowledge of the legal context in which the Agreement is concluded. In such a case, it is advisable to consult a lawyer who is qualified to advise on such "foreign" law. Polish lawyers usually work with foreign law firms and can provide advice in that regard. On the other hand, the jurisdiction of a foreign court may significantly increase the costs of a potential dispute. A compromise solution for the choice of the applicable law and jurisdiction may be to specify the law and court of a country foreign for both the Studio and the Publisher. The Parties may also include a so-called arbitration clause in the agreement. Then a dispute between the Parties shall be settled by the arbitration court indicated in the Agreement, e.g. the WIPO Arbitration and Mediation Center. Out-of-court resolution of commercial disputes is usually faster than court proceedings, and the dispute is resolved by professionals over whose selection the Parties have at least some control, but before deciding on this solution, it is worth at least to initially check the costs of the arbitration concerned. The initiation of court or arbitration proceedings may also be preceded by mediation – the mediator will not resolve the dispute (as a judge and an arbitrator do), but will help the Parties to attempt to reach a settlement. Under this model, the Agreement replaces previous agreements with the same purpose, including non-disclosure agreements.]*