

UNDERSTANDING LICENSING CONTRACTS:

AN ANNOTATED GUIDE



TABLETOP
GAME DESIGNERS
ASSOCIATION

Introduction

The process of reading through a contract can be painful, but think of it like editing a rulebook. The contract lays out the rules that you and your publisher will follow in your business relationship. It's just as important to get this right as it is to get the rules right in the game you're publishing — and it can have real-world consequences for you and your game.

If all goes well, you might never have to look at your contract again after you sign it. Most of the time, you'll have no major disputes and no huge windfalls. When you're reading the contract language, though, also think about the edge cases. If things go really wrong, will you be well protected? If things go amazingly well, will you be fairly compensated?

This document walks through TTGDA's model contract, comparing and contrasting with other contract language we've seen. This document was not written by a lawyer — it is not legal advice and is not a substitute for having a lawyer look at a contract you've been offered. Our goal is to help you understand more about contracts, so that when you have the chance to sign one, you can advocate for changes that would make it better for you. If all game designers do this, we can move the industry forward.

Note: In TTRPGs, it is also common to see contracts that are set up as *work for hire* — that is, the publisher treats you as a contractor or employee, and has total permanent ownership of your work (not just a license). TTGDA will develop a separate guide for that type of contract.

This is a new document and we expect it to evolve! If you have suggestions for additions or revisions please email info@ttgda.org.

Sources

We have drawn heavily from:

- [SAZ model license agreement](#)
- [The Authors Guild model trade book contract](#)
- Materials from the [Science Fiction and Fantasy Writers Association Contracts Committee](#)
- **Board game contracts shared by TTGDA members**
 - Review by several industry lawyers

1. THE LICENSE

The Parties

This License Agreement ("Agreement") is entered into as of [date] ("Effective Date") by and between [designer] ("Designer"), whose address is [designer's address], and [publisher] ("Publisher"), a business maintaining its principal place of business at [publisher's address].

The beginning of the contract establishes the parties entering the agreement. Note that in legal documents, defined terms are capitalized, and the same capitalized word is used throughout the document (much like in some game rulebooks!). There are many acceptable variations in the terms a contract can use in this opening text, including variations in the basic terms for who the parties are. Throughout the TTGDA model contract, we use Publisher, Designer, and Game. The contract you are given may use the following synonyms:

- For Publisher: Licensee, the Company, or the company's actual name
- For Designer: Licensor, Owner, Author
- For Game: the Work, the Product

If you want to use text from the TTGDA model contract to suggest clauses to your publisher, try to follow their format and replace the capitalized words with the language used in the opening clause of the publisher's contract.

The License

1.A. Designer grants to Publisher the exclusive right to reproduce, publish, distribute, transmit, sell, and otherwise make available Covered Products for the Term, in the Territory in the Languages as listed in the Deal Terms in Exhibit A.

When you design a new game, you own it and the exclusive right to make copies of it. A typical publishing contract will give your publisher a *license* to publish your game. This is something like a rental agreement: you own the intellectual property, and they are paying you for the right to use it for a certain period. Everything else in your contract stems from the granting of this license.

Note that this paragraph, and many others, refer to several specifics included in the Deal Terms table at the back of the contract. The items included in that table are the ones most likely to change from contract to contract, and we find it useful to pull them out into one place for easy review and reference. The following sections go through the Term, Territory and Language, and Covered Products.

Term

Term	3 years from the Effective Date.. The Term will renew automatically for additional 1-year periods, unless either Party terminates as described in Section 10.
-------------	---

Your contract should specify a limited time period that it is good for — often a base period of 3 to 5 years. The cleanest contract language will offer clear dates for the beginning and end of the contract period. This could be either a specific date written out in the contract language, or a specific number of years starting on the day the contract is signed.

TTGDA's model contract also includes language that allows the Term to auto-renew. If your game is successful, and stays in print, you don't want your contract to accidentally lapse. Auto-renewal allows you to just let things keep rolling when times are good. However, it is essential that the contract is also clear about how to end the contract. We cover much more on this in a later section.



Defining the Term based on future events can lead to ambiguity or frustration if the events never happen. For example:

- One contract was set to expire two years after *publication* of the game. Several years after the contract was signed, the game had still not been published. The designer asked for the rights back, but the publisher refused.
- Some contracts start the license when you *hand off* the game to the publisher. This could create ambiguity if there is ever disagreement about what constitutes handing over the game — did what you gave them count? (This is a more common dispute in book publishing.)

Territories and Languages

Territory	[regions in which the publisher can reasonably expect to publish or sublicense game]
------------------	--

Languages	[languages in which the publisher can reasonably expect to publish or sublicense game]
------------------	--

It is possible to grant rights to a publisher only for a certain market -- defined by geography, language, or both. For example, a publisher might have worldwide rights to publish a product in English, or might have all rights to publish in North America in any language.

Many publishers ask for worldwide rights in all languages, even when the scope of their business is more limited. They may then sublicense your game to other publishers who cover other markets. In general, allowing a company to do this is easier than splitting up the rights yourself, because they have established relationships with localization partners. However, if a publisher is unlikely to seek localization partners, you may be giving them rights that will go unused.

In the uncommon event that you want to license your game to different publishers in specific countries or regions, each contract needs to clearly specify the territory.



In areas where multiple languages are spoken, take extra care if you are splitting the territories among publishers yourself. For example, we heard about one game that granted a Russian publisher exclusive right to distribute games in all areas where Russian is spoken, including multi-language areas like Ukraine. This led to a problem when a different publisher wanted to issue a translation in Ukrainian. Similarly, if you grant a publisher worldwide rights to sell an English-language version, be careful with how this might overlap with rights for countries where English is not the primary language.

Covered Products

Licensing contracts vary widely on how they outline the products covered. It is best to be as clear as possible both on what is covered, and what royalty rate applies to each covered category. (We talk about royalties in Section 2.)

The TTGDA model contract splits products into three categories:

- Covered: publisher has rights to make these products right away, subject to the terms in the agreement.
- Requiring addenda. These items have a section defining them and outlining expected royalty rates. However, the designer's approval is required on an addendum to the contract before the publisher can proceed with them.

- Non-covered: publisher has no rights to these uses of the game. (In theory, this could *also* be re-negotiated with an addendum.)

Covered Products	• Non-electronic versions of Game • Promotional items to promote and sell Game, including but not limited to clothing, plush, dice, posters and pins
Products Requiring Addenda	• Follow-up Games, as described in Section 7.A • Other Derivative Media, as described in Section 7.B
Non-Covered Products	• Training GenAI, as described in Section 8

The model contract moves two categories of products to “requiring addenda” that most publishers include as “covered products”: Follow-up products like expansions, and Derivative Media like comics, books, and movies. This is based on the assumption that designers would like to sign off on these products individually, rather than giving the publisher a blanket license for them. Like everything else in your contract, the question of which items belong in each of these three categories is negotiable.

As noted in the table, there is more language on the products requiring addenda and the non-covered products in Sections 7 and 8.

Reservation of Rights

1.B. Designer retains all other rights to Game. For avoidance of doubt, Designer reserves the rights, and Publisher has no rights, to Products Requiring Addenda and the Non-Covered Uses listed in the Deal Terms in Exhibit A.

The second paragraph in this section is a basic reservation of rights clause, stating that if a right has not been specifically granted by the contract, then the designer has retained that right. This can allow you to negotiate separate terms if, say, some new technology emerges.

2. PAYMENT

Royalties are a contractually required payment that the publisher will give you in exchange for the license to publish your game. In general, your royalty will be a percentage of the money that the publisher makes from the game — but how that is structured can make a huge difference.

The Advance

2.A. Within 30 days of the Effective Date, Publisher will pay Designer the Advance listed in the Deal Terms in Exhibit A. This Advance is a non-refundable advance on Designer's Royalties.

You should make sure that you receive an *advance* on royalties — a payment that literally gives you some of your royalties in advance. This is a non-refundable payment: you keep the advance no matter whether your game gets made, and no matter how many copies sell. This creates a financial incentive for the publisher to actually publish and market your game.

When the game starts selling, you *earn out* your advance. Your first royalty statement(s) will show the royalties you've earned, but will also show that you were already paid in advance for some of them. Once the value of your earned royalties is more than your advance, you start getting royalty checks.

Publishers do not always put an advance in their first offer, but it is absolutely reasonable for you to ask for one. [Cardboard Edison reports](#) that the most common advance amount is \$1,000-\$2,000. [Stonemaier Games has announced](#) that they now pay an advance of \$10,000. Our contract review team has seen even higher advances for established designers working with mass-market publishers.



Do not make your advance contingent on anything other than signing your contract and handing over a copy of your game.

The Royalty

2.B. Within 45 days of the end of each Accounting Period, Publisher will pay Designer a royalty ("Royalty") at the Royalty Rates listed in the Deal Terms in Exhibit A. Royalty payments will be made by check or electronic transfer in a manner mutually agreed by Publisher and Designer. Publisher will pay any fees related to the selected payment method.

It is extremely important that your contract is clear about when your royalties are to be paid and how your royalties are to be calculated — and that you understand what it says. This paragraph references the Deal Terms for these questions, and the sections below walk through how to think about those terms.

Frequency

It is critical to define the schedule that the publisher will use to pay you royalties. The contract should include two pieces of information:

1. The accounting periods that will be used to calculate your royalties (e.g. quarterly), and
2. The payment due date after that time period.

Failure to include one or the other can put the designer in a difficult situation of not being able to hold the publisher accountable.

TTGDA recommends quarterly accounting periods, with payments due 45 days after the end of the accounting period. Quarterly is the most common frequency we see in the contracts that we review. A few publishers pay monthly. Some smaller publishers may wish to pay less frequently, because of the accounting costs. However, allowing them to hold your money for longer can have costs as well, if you would otherwise be earning interest on that income.

The TTGDA model contract does include a provision that allows publishers to hold payments until the end of the calendar year if they are below \$50:

2.D. If Royalties accumulated for any Accounting Period are less than \$50, Publisher may hold the Royalties until the end of the calendar year or until the amount exceeds \$50, whichever is sooner. Publisher must continue to send the corresponding Royalty Statements to Designer, noting that Royalties are below the minimum amount.

Methodology and Rates

This section of the Deal Terms is the most open-ended section of the TTGDA model contract, because publishers use different methodologies, and expected rates can vary by publisher, designer, and product. It is important to understand the major methodologies so that you can evaluate your proposed royalty rate and decide whether you want to ask for more.

Base Game Royalty Rate	For physical copies of Game manufactured by Publisher, including copies manufactured on behalf of sublicensees: [choose one]: • ___% of suggested retail list price, paid as copies are manufactured, OR • ___% of gross revenue received by Publisher (excluding sales discounts, sales taxes and returns), paid as revenue is received (including any crowdfunding revenue)
-------------------------------	---

Most transparent: Royalty based on MSRP

In book publishing, authors are regularly paid based on the Manufacturer's Suggested Retail Price (MSRP) rather than the publisher's revenue. This is less common in games publishing, but does sometimes happen. This methodology is easy to track and fairly transparent, because the MSRP is a single, consistent amount for all copies sold within a certain time period. Designers can negotiate their royalty percentage with a good understanding of the base amount that the percentage is applied to — it is uncommon to know what the exact MSRP will be at the time you sign your contract, but you'll have an idea of what similar games sell for.

TTGDA has seen some publishers combine this methodology with paying designers upfront at the time of manufacturing their games, and we have included this model as an option in our model contract. The designer receives one royalty check at the time of each print run. This reduces the accounting burden on small publishers. The downside is that for games that are crowdfunded, royalties can be delayed: the publisher does not owe the designer money until they manufacture the game, which can sometimes be significantly later than when they receive revenue from the crowdfunding campaign.

Most common: Royalty based on gross revenue

The most common type of royalty provision is one based on a publisher's *gross revenue* or *selling price* for copies of your game. If the publisher sells a copy for full price, their revenue for that copy is equal to MSRP. But when they sell at wholesale rates, the revenue can be much less — usually about 40% of MSRP.

Under the gross revenue methodology, typical royalties are 5%-8%, according to Cardboard Edison. If the game is based on a major licensed IP (Marvel or Star Wars, for example), royalties are typically half as much to cover licensing fees for that IP.

The gross in gross revenue means this amount includes *all* income received by the publisher for your game — no expenses should be deducted. However, publishers often include language clarifying some things that don't count as revenue. These might legitimately include:

- Crowdfunding fees: In a Kickstarter campaign for a \$100 game, the publisher never gets the full \$100 as revenue. Kickstarter takes their cut first.
- Shipping and taxes: These are usually pass-through costs, not actual income from the game.
- Returns: The revenue the publisher originally received (and then refunded) doesn't count.
- Bad debt: If a publisher sends games to a distributor, but that distributor does not pay for the games, this is bad debt. The publisher hasn't actually received any revenue.



Some German publishers have begun trying to deduct additional costs from the “net selling price” calculation, such as the cost of an insurance policy that protects against bad debt (*del credere* insurance). This is a business expense, and not an appropriate deduction from gross revenue. (See SAZ white paper, [Definition of the calculation basis for license fees to game authors in publishing contracts.](#))



Be extremely wary of a contract offering royalties based on net *profits*. Profits are revenue minus costs, and costs can be quite broadly defined. It would be easy for the publisher to manipulate the ways that they allocate costs to a game. For example, operating costs like convention booths or the CEO’s salary could be allocated to your game. There are egregious examples of Hollywood blockbusters that managed to deduct expenses until they had no profits on their books — avoiding paying some actors any royalties at all.

Royalties for Sublicenses

Publishers fall into two camps regarding how they receive money from their localization partners. However, most contracts are silent on this, which can have serious implications. It is important to understand which accounting method your publisher uses, and to build in safeguards that guarantee that you get paid reasonably for international copies.

Sublicensees treated like distributors

To lower manufacturing costs, some publishers lump the international copies of the game with their own print runs to lower manufacturing costs. Under this arrangement, the localizing company pays your publisher for the manufacturing cost plus a licensing fee. Publishers using this model typically pay you a royalty for these international copies at your base royalty rate. This should work out to be similar to the amount you’d get for a game your publisher sells to an in-country distributor. To capture these instances, the royalty calculation in the section above refers to copies “manufactured by Publisher, including copies manufactured on behalf of sublicensees.”

Sublicensees pay only a sublicensing fee

Most localization partners pay the manufacturer directly for their own print runs. They pay the primary publisher a licensing fee for each copy. Under this model, publishers typically give roughly 33% to 50% of that licensing fee to you. This is a common approach.

Other Royalty Rates	- For physical copies of Game manufactured by <i>sublicensors</i>, the larger of: 50% of the sublicensing fee paid to Publisher, or - a per-copy amount equal to 90% of the average per-copy royalties for physical copies of Game manufactured by Publisher.
----------------------------	---

The main problem with this approach is that even though the percentage rate seems much higher than your base royalty rate, it is a percentage of a smaller, unknown number. In fact, there is no requirement that your publisher charge their sublicensees any fee at all. One designer tells TTGDA that their publisher struck a deal with another publisher: they each had a game the other wanted to localize, so they each waived the other's sublicensing fees on the two games. With no fees exchanging hands, there were no royalties to be paid.

To address this, the TTGDA model contract creates floor for sublicense royalties, based on a percentage of the average royalties for the publisher's manufactured copies.

Royalty Statements

2.C. Within 45 days of the end of each Accounting Period, Publisher will provide a statement of account ("Statement") to Designer for each Product. Statements will contain, at a minimum:

- Number of copies printed;
- Number of copies sold;
- Gross revenue for copies sold, by distribution channel or sublicense;
- the Royalty Rate and basis for calculation of Royalties due; and
- The remaining amount on the Advance (if any).

A royalty statement helps you understand the royalty payments that you are receiving. TTGDA hopes to work with publishers to improve the quality of royalty statements over time. Designers often receive reports that are minimal or difficult to parse, which can lead to confusion and distrust.

Enforcing Payment

2.E. Any payment not made when due will be subject to an initial late fee of 1.5%, plus an additional 1.5% late fee for each additional month that payment has not been made, or the maximum amount allowable by law, whichever is less.

2.F. Publisher agrees to pay for each check returned for insufficient funds or any other reason \$25 per occurrence or five percent (5%) of the value of each returned item, whichever is greater, subject to any maximum caps mandated by applicable state law.

2.G. Publisher agrees to pay all reasonable attorney's fees (at least 15% of all amounts due, including interest) if any account is placed with an attorney for collection.

These paragraphs all give you tools to enforce your royalty payments. A payment schedule isn't really a schedule unless there is some penalty on the publisher for being late. Similarly, you should be able to recoup your costs if their checks bounce or you have to take other legal action to get paid.

Right to Audit

2.H. At any time after the Game's publication, and for up to two years after termination of this Agreement, Designer may conduct an audit.

a. Publisher agrees to allow Designer or an accountant working on Designer's behalf to examine Publisher's books and records which relate to Game, and to take copies and extracts of such books and records.

b. Any such inspection will be during normal office hours and not carried out more than once per calendar year.

c. The inspection will be at Designer's expense unless the inspection reveals an underpayment to Designer of either (i) 5% or more of Royalties during the Accounting Periods being examined, or (ii) \$1,000, whichever is less. In such an event, Publisher will reimburse Designer for the actual, out-of-pocket costs of the inspection within 30 days of receiving the inspector's invoice and report.

d. Publisher will be responsible to pay any shortfall uncovered in the audit, plus 1% per month interest computed from when the royalty should have been paid.

If something seems amiss in your royalty statements, and you cannot resolve it with the publisher, you need the right to audit their records — that is, to get an independent party to review and confirm that you have been paid correctly. Audits can be expensive to you and annoying to your publisher, so this is not a right that you will want to exercise regularly. But having the right to audit can be an important protection when you really need to see what's going on behind your royalty checks (or lack thereof).

The contract should specify that if the audit finds significant shortfalls in royalty payments, the publisher must pay the cost of the audit. Any shortfall in royalty payments would become due under your normal royalty payment provisions — with interest, if you have a provision for late fees as described above.

3. DEVELOPMENT

Working with a publisher can involve a lot more than collecting royalty checks. Many publishers will make significant changes to your game as they get it ready for publication, a phase that the board game industry refers to as development. Designers are usually appreciative of the work that publishers do to refine their game during this time -- you have a team of experts making it into what they believe will be the best possible product.. Even if you trust that the publisher knows what they are doing, however, it is still entirely reasonable to want to sign off on their changes to your work.

In this and the following section on the pre-production process, we have set forth a expectations for you to have a say in both the process and the final product. In addition to what you negotiate in your contract on these questions, talk with your publisher up front about how involved (or uninvolved) you want to be in the process along the way.

Ongoing Communication

3.A. Publisher and Designer will meet within 15 days of the Effective Date to discuss the overall schedule for development and publication. Thereafter, the Publisher will communicate at least once every 90 days to Designer:

1. Any changes that have been made to the development and publication schedule.
2. Any changes that have been made to Game. Designer will have the opportunity to review the current version, playtest it, and provide feedback.

Ongoing communication between the publisher and the designer is the single best way to ensure that everyone is on the same page before the rush that happens when it is time for your game to go to print. This paragraph creates minimum quarterly check-ins that should prevent big surprises later. It is not unusual for designers to be involved on a much more regular basis, sometimes meeting as often as weekly.

Art Direction

3.B. Publisher will consult with Designer on Game's art direction before commissioning Game art, and will solicit Designer's feedback on potential artists.

Some designers care deeply about the look of their game, and some are happy to have professionals run with the process. If you want a say as the publisher sets the vision for your game, you can ask for one.

Approval of Substantive Changes

3.C. Prior to producing the Final Draft described in Section 4, Publisher will seek Designer's approval for any changes to Game name, theme, characters, text, and rules. If Designer does not grant approval, Publisher will not produce the Final Draft until Designer's concerns are addressed to Designer's reasonable satisfaction. Failure to resolve these concerns 90 days after the submissions are made to Designer will be grounds for either Party to terminate this Agreement, or to submit the dispute to arbitration, at its sole discretion.

You should have the right to sign off on changes to your game's mechanics and story, because they remain your intellectual property throughout this process. The time for this level of review is before the publisher produces print-ready files, when it is easier to negotiate changes.

Navigating disagreements over a game's rules can sometimes be tricky. The publisher can often have a better sense of what will work well in the market, and they are the ones taking on financial risk for making your game. At the same time, they should also want you to be happy with the final result. It is very uncommon that designer and publisher come to an impasse and can't agree on a way forward. But your contract needs to say how such an impasse would be resolved -- again, we write contracts mostly to protect us in the unusual times when things go badly.

4. PRE-PRODUCTION

It is too common that publishers send files to the printer without the designer seeing them, or only after giving the designer extremely limited time to review them. Not everyone wants to be involved in a careful final review of the print files, but this is your last chance to catch typos and

other little problems that could have a big effect on your game. In many cases, you will be the person who knows the game best -- and therefore the person who is best-equipped to spot problems.

In this section, we outline some of the common things that designers might want to ask publishers to include in the final version of the game, and we suggest a framework for how that final version should go through final review. It's much easier to get a publisher to agree to these parameters at the beginning of the process than when they are under a time crunch.

Outside the contracting process, be proactive about repeatedly discussing the review timeframes that you put in your contract, so that your review is built into your publisher's schedule — and yours. Things often run late, and “we need to print this now so we can have it at Gen Con” is a real constraint. Work with your publisher to plan ahead, and everyone will be happier for it.

Expectations for the Final Draft

4.A. Prior to the start of Game production, Publisher will develop a draft of Game materials that includes all proposed final production files, including art and graphic design for the rulebook, packaging, and all components (the "Final Draft").

4.B. The Final Draft will meet the following requirements:

Designer credit

The first three items on the list have to do with designer credit.

1. Designer will be credited as Game's designer on the front of the packaging and in Game's rules in a clearly legible manner, using the name(s) listed in Exhibit A ("Design Credit").

2. Packaging and rulebooks will include the statement: "[Game Name] copyright [Year] [Designer Name] under license to [Publisher]."

3. The rulebook will include a short bio of Designer, with a link to Designer's website.

Putting the designer's name on the box has become standard in most instances. TTGDA believes the next two items on this list should be more standard:

- Under a licensing agreement, you retain the copyright to your game. The game's packaging should reflect this, to avoid any confusion.
- Publishers often include advertisements for their other games in a game box. Including a small bio and a link to how customers can follow you is essentially also including an advertisement for *you* in the game, as well.

Inclusivity

TTGDA has also included several paragraphs related to making games more inclusive and accessible to different types of gamers.

4. Publisher will review and optimize all Game materials for usability by players with colorblindness and low vision, including considerations such as color choices, token shapes, font choices, and level of contrast.

An estimated 4-5 percent of the general population have a color vision deficiency, and others suffer from low vision. Yet games are published every year that pose significant problems for those gamers.

5. The Game rulebook and other materials will be written in gender-neutral language, and will not refer to all players as if they are only male.

Too many boardgames still have rulebooks that refer to players as “he” throughout the rules, which many non-male gamers find off-putting — as if a publisher or designer did not expect them to be playing the game. Asking your publisher not to do this is especially important for countries where the language’s default “neutral” pronoun is “he.” Even in those languages, “he” is avoidable with some care — especially by switching the rules to using “you.”

6. In the depiction of humans and human-like characters, Publisher agrees:

i. To use characterizations and images that represent variety in age, gender, race and ethnicity, sexuality, body size, and ability;

ii. To avoid depictions of characters that would reinforce negative stereotypes based on age, gender, race and ethnicity, sexuality, body size, or ability; and

iii. To avoid sexualizing depictions of female characters more than other characters.

[Research in videogames has increasingly shown](#) that players want games to include characters who are diverse. If appropriate for your game, a contract clause asking your publisher to pay attention to representation might look like this. Be clear with your publisher up front if diversity and inclusion is important to you, so they can keep this in mind throughout the development process. It can be much harder to fix some of these things if you only bring them up in a final review before the game goes to print.

7. [If relevant to game: Publisher will contract with a professional cultural consultant to review all Game materials. Publisher will share the results of this review with Designer, and work with Designer to address any concerns raised by the consultant.]

Games that make reference to human culture — both historically accurate and works of fantasy — can often benefit from a sensitivity review. For example, [Isaac Childres has written about how he improved the fantasy world of Gloomhaven](#) after hiring a professional to review it. Consider whether the content of your game would suggest that your publisher should hire a cultural consultant to do a sensitivity review.

Review Process

4.C. Publisher will provide a copy of the Final Draft to Designer for review [and approval] in physical or digital format. Designer will reasonably cooperate in reading, correcting, and returning all files within 10 business days of receiving them. If Designer does not respond within 10 business days of receipt, approval will be deemed granted. Publisher will make all reasonable efforts to address the corrections and issues raised by Designer.

4.D. Prior to starting manufacturing, Publisher will conduct at least 3 playtests of the Final Draft with players who have not played any prior version of Game. Players will play a physical copy of Game, learning from the rulebook with no assistance, and note parts of the rulebook or other game components that are not clear. Publisher will make all reasonable efforts to address the issues raised by these playtests, in consultation with Designer. If changes are widespread, Publisher will submit a new Final Draft to Designer for review and approval.

Having a defined checkpoint for you to review the production files is an important step for both you and the publisher. It is a last chance to catch typos, issues with rules layout or graphic design, and more. We have included “approval” as an option. Most publishers will want final say over the presentation of the product. Depending on the publisher, your reputation as a designer, and other factors you may be able to (and want to) negotiate for ‘final cut’ approval on the production files.

If you do so, it is very important that you develop a clear approval process with the publisher, artist, graphic designer, and others working on the project. The designer raising last minute issues with the art or graphic design direction does not help anyone, and can create a challenging and financially contentious revision process with artists and other professionals.

Right to Remove Your Name

4.E. At any time during this Agreement, Designer may direct the Publisher to remove their name from future printings of the Game and related marketing materials. At the request of Publisher, Designer will provide a mutually acceptable pseudonym.

A name removal clause is another protection in the case that a publisher makes decisions about your game, or other personal or business practices, so egregious that you do not want to be publicly associated.

5. DESIGNER COPIES

5.A. Publisher will, at its expense, provide Designer with units of each commercial Product, as described in the Deal Terms in Exhibit A.

5.B. If Publisher or a sublicensee creates a digital Product based on Game, Publisher will provide, or require sublicensee to provide, Designer with 1 copy, license key, free or comp account, or other method of Product access, for each platform.

Often, a publisher will give designers 6 copies of the game from the first printing, because this is often the number of copies in a case of games. If your publisher's contract offers a "case," this

should be fine if it's a standard-size game, but you might want to clarify. Similarly, you'll want access to digital copies of your game, if they get made.

5.C. Designer may purchase any Product units from Publisher at a discount of 60% off of the MSRP or the price Publisher is currently offering the units for sale to any third party, whichever is lower. These Product copies may not be resold by Designer without permission of Publisher, except that Designer may sell copies directly to end consumers at signing events where Publisher is not also selling Game.

In general, if you are signing your game with a publisher, it is expected that you will not also be competing with them to sell your game. However, some designers do sell at events where the publisher wouldn't normally attend.

6. SUBLICENSES

6.A. Publisher may grant sublicenses under this Agreement. Any sublicenses:

1. Will impose the same obligations upon sublicensees as those defined in this Agreement.
2. Will have a maximum term of 3 years with an extension of 1 year.
3. Will be at arm's length and will not include sublicenses to individuals or entities directly or indirectly controlled by the directors, officers or shareholders of Publisher.
4. Will be explicitly disclosed to the Designer, and all gross revenues or fees derived therefrom shall be fully accounted for in the standard Royalty Statements.

Most boardgame publishers do not directly sell their products in all regions of the world. Instead, they grant sublicenses to other publishers. Each sublicense carves out a piece of territory and gives it to another publisher in exchange for a sublicensing fee.

You want these sublicenses to follow the same basic obligations as your contract, and to be time-limited (items 1 and 2).

You don't want your publisher to create a shell company and then sublicense to them. This kind of structure is sometimes used to avoid paying sublicensing fees, which could lower your royalties (item 3).

Item 4 says your publisher has to tell you about sublicenses, and then reaffirms that they have to account for them in your royalty statements (and by implication, in your royalties).

7. PRODUCTS REQUIRING ADDENDA

The model contract moves two categories of products to "requiring addenda" that most publishers include as "covered products": Follow-up products like expansions, and Derivative Media like comics, books, and movies. This is based on the assumption that designers would like to sign off on these products individually, rather than giving the publisher a blanket license for them.

Follow-Up Games

7.A. FOLLOW-UP GAMES. Publisher will consult with Designer and seek approval before commissioning any potential expansions, line extensions, and new versions of Game ("Follow-up Games") subject to the following:

1. Designer has first right of refusal to design the mechanisms for Follow-Up Games. Publisher will provide Designer an addendum to this Agreement for each Follow-Up Game. The Royalty rate offered will be at least as high as the Base Game Royalty Rate. Designer will have 90 days to consider Publisher's proposed addendum and agree in writing.
2. If Designer does not agree within 90 days to design the mechanisms for Follow-Up Games, Publisher will provide Designer an addendum to this Agreement proposing another developer. The Royalty rate offered will be at least 50% of the Base Game Royalty Rate. Designer will have 30 days to consider Publisher's proposed addendum and agree in writing. If Designer objects to the proposed developer, Designer must state their reasonable objections in writing, and Publisher shall have the right to propose an alternative developer, triggering a new 30 day review window.
3. Unless explicitly stated in the addendum, Publisher will follow the processes in this Agreement for all Follow-On Games, whether designed by Designer, Publisher, or a third

party. This includes but is not limited to all processes described under Payment, Development, Pre-Production, and Termination.

The designer should have the initial option to design any expansions or derivative products. This clause ensures that you get the first chance to design an expansion, while giving the publisher the option to use another designer if you do not wish to.

There is also a review opportunity for the concept for the expansion. This is intended to be collaborative (hence the use of “reasonable objections” in the clause) rather than just allowing the designer to shut down any expansions.

Other Derivative Media

7.B. OTHER DERIVATIVE MEDIA. Publisher may propose to create derivative works based on Game ("Derivative Media") subject to the following:

1. Derivative Media includes but is not limited to:

- a. Books, newspapers, magazines, graphic novels & comics, television series and movies
- b. Add-on items designed to be used with Game, including but not limited to miniatures, player mats, and other upgraded components; and
- c. Electronic versions of Game.

2. Publisher must seek Designer's approval before proceeding to develop Derivative Media. Publisher will provide Designer a proposed addendum to this contract for each form of Derivative Media, provided that any such addendum establishes a royalty rate of no less than:

- a. 30% of gross revenue for electronic/digital versions of the Game;
- b. 10% of gross revenue for upgraded components (e.g., miniatures, mats);
- c. 50% of all licensing fees received by Publisher for media adaptations (e.g., film, television, books)

It is perfectly reasonable to exclude licensing for these purposes on an initial contract, and having later discussions if it is needed. This can sometimes extend the negotiations for something that rarely happens (like book and movie adaptations of your game).

8. USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

As a fundamentally creative endeavor, the design of a game, from rules, to art, to physical implementation are an expression of humanity. As AI technology rapidly changes, it behooves designers and publishers to use it in a way that enhances, rather than diminishes, the ability to bring that creativity to life.

8.A. Publisher agrees not to use generative artificial intelligence tools ("GenAI") to create text, images, design, or other elements for any part of Game without Designer's prior express approval. Any questions about whether a tool is acceptable for use shall be directed to Designer before using the tool.

8.B. Publisher agrees not to use GenAI to translate Game materials into other languages, and agrees to prohibit sublicensors from doing so.

8.C. Publisher agrees not to use Game in any GenAI program, license the Work for use in any GenAI program, or otherwise cause it to be used in any GenAI program, including for training, without the written consent of Creator.

8.D. For purposes of clarification, a human artist may use programs that include AI technology (such as Adobe products), provided that the human artist has control over the final artwork and the artwork substantially comprises human creation.

8.E. If GenAI tools were used in the creation of the submitted Game, Designer will disclose to Publisher which materials were created with GenAI tools, in whole or in part.

These suggested clauses establish ground rules for what tools are appropriate, and opens a dialog between designer and publisher.

9. INTELLECTUAL PROPERTY RIGHTS

This section reaffirms your underlying intellectual rights in the game you are licensing.

9.A. The Publisher agrees that the Designer's copyrights, trademarks, and common law rights are and remain the Designer's exclusive property, and understands that they acquire no right, title, or interest in the copyrights, trademarks, and common law rights

through the licensed Game other than the rights described by the express terms of this Agreement.

9.B. The Publisher agrees that any and all rights that may be acquired by the use of the Designer's copyrights and trademarks shall inure to the sole benefit of the Designer, provided that all rights relating to the Publisher's existing copyrights and marks shall inure solely to the benefit of the Publisher.

9.C. The Publisher shall not at any time do or suffer to be done any act which would impair materially the Designer's proprietary rights in or to, or infringe, their copyrights, trademarks, and common law rights.

While the publisher is producing and selling the game, you as the designer should hold the copyright. If you look at the copyright page of any book you will see that it is copyrighted by the author, not the publisher. The same applies with games.

9.D. The parties intend that this Agreement is, for purposes of section 365(n) of the Bankruptcy Code, a license of rights to "intellectual property," as that term is defined in section 101 of the Bankruptcy Code. The Parties agree that if Publisher rejects this Agreement under the Code, Designer may fully elect to retain all intellectual property rights, free from any claims of the bankruptcy estate or its creditors.

This paragraph is intended to help you get the rights back to your game more quickly in the event that your publisher declares bankruptcy. When a company declares bankruptcy, all of their assets -- including their licenses -- can be tied up in court for years. Section 365 of the bankruptcy code allows the company declaring bankruptcy to end contracts that they do not want to continue if they relate to copyrightable material (but not trademarks).

10. TERMINATION

Having a way to end your licensing contract -- and therefore to get the rights back for your game -- is one of the most important things you need to secure in your contract. In general, you want these to create a right to terminate, but not an automatic termination. For example, if a game is late, and you and the publisher are clearly working towards publication, you don't want to technically be left without a valid contract.

Why the Contract Can End

The model contract includes 4 categories of reasons that you can end your contract: failure to launch, failure to sell, failure to pay, and other breaches of contract. It also allows the publisher to end the contract for any reason.

10.A. Designer is entitled to terminate this Agreement, upon written notice to Publisher, if:

Failure to Launch

1. Publisher has not produced the minimum number of copies of the Game (not including add-ons, accessories, digital versions, etc.) by the Publication Deadline stated in the Deal Terms in Exhibit A.

Publication Deadline	A minimum of [x] copies by [date]
-----------------------------	-----------------------------------

There needs to be some time frame within which the publisher must actually publish the game, or it reverts back to you. We also recommend specifying a minimum number of copies for initial publication. We have heard about one publisher who printed 100 copies of a game just to prevent a designer from terminating a contract. (A “failure to sell” clause, described below, is another protection against this.)

Failure to Sell

2. Publisher does not pay Designer the Minimum Royalty Amount described in the Deal Terms in any 12 month period following the first 12 months after the Product is first offered for sale to the public.

This type of clause allows you to get your game back when a publisher has allowed it to go out of print or is not actively marketing it. You can make a clause based on a certain number of games, a certain amount of royalties, or both. The level of royalties is preferable -- if your game is on its way out of print and the publisher sells copies at a deep discount, the number of games sold might be above a threshold that would delay you getting the rights back.

Failure to Pay and Other Breaches

3. Publisher does not pay Royalties owed by the due date either (i) within 30 days of Designer's written notice of non-payment, or (ii) at least 3 times during the Term.
4. Publisher commits a material breach of this Agreement that is not remedied within 30 days after written notice by Designer to Publisher.

Failure to pay you your royalties or carry out other responsibilities included in the agreement is a *breach of contract*. If the publisher does not hold up their end of the deal, you should be entitled to take back the rights to your game. Many contracts include language allowing the publisher a chance to fix the problem before you can terminate the contract.

At Publisher's Will

- 10.B. Publisher is entitled to terminate this Agreement for any reason, upon written notice to Designer.

Under the clauses above, a publisher can effectively end this contract by choosing not to print your game. This clause also allows them to terminate the contract directly, which would allow you to look for another publisher more quickly.

What Happens When the Contract Ends

Most standard contracts in the tabletop game industry include some language around rights reversion. However, it is important that the contract is clear about exactly what happens and what reverts to you when the contract is terminated.

- 10.C. Upon termination of this Agreement, for whatever reason:

Publisher cannot produce new games, but may sell remaining stock

1. The licenses granted will cease at once and all rights granted under this Agreement will revert to Designer.
2. Unless rights are granted under a separate contract with Designer, Publisher will not produce or market games with the rules of Game (or game rules substantially similar) or based on the Designer's characters and world-building for Game, and will not grant such rights to third parties.

7. Publisher and sublicensees may sell any remaining stock for a period of 6 months after the termination date if not terminated for cause, and provided all royalty payments are properly and timely made thereon. Publisher and sublicensees will not produce any additional copies of Game following the expiry or termination of this Agreement.

The publisher loses rights to manufacture games right away, but they will probably want a *sell-off period*: some amount of time after the contract is terminated to sell off their remaining stock and for sublicensees to wind down. This can be good for you, because they still owe you royalties on anything they sell during that period.

A standard sell-off period is usually 6 or 12 months. You may want to exclude the publisher from selling stock if they are terminated for cause -- in other words, for not holding up their end of the agreement. For example, if they are in breach of contract for not paying your royalties, do you want them to have an opportunity to continue selling your game?

Gameplay as developed belongs to designer

3. Designer can freely utilize any gameplay development created for Game by either party between the Effective Date and such termination.

At the time that you sign your game, it can be hard to predict how much it will change before it goes to print. Some publishers put in a significant amount of work on developing the rules of the game, or creating additional content. As the designer, you may also have input into this development process, making it difficult in the end to determine exactly what parts of your game were due to your work versus the work of the publisher.

The simplest solution, and most favorable to the designer, is to include a clause that says that the game rules and content all revert to you, even if some of that content includes contributions by the publisher or third parties hired by the publisher.

Trademark and patents assigned to designer

4. If Publisher has acquired any rights of its own, such as trademark and patent rights, in connection with the title, rules, or gameplay of Game, such rights will be assigned to Designer, and Publisher will, at no cost or expense to Designer, sign such documents and instruments reasonably requested by Designer to evidence same.

There are three major IP protections that might be associated with your game:

1. Copyright: Copyright protects original works of creative authorship. Game ideas and mechanics are not copyrightable, but the text used to convey those things is. Once you create an original work, you are the author and the owner of the copyright, without having to register it.
2. Trademarks: A trademark provides the trademark's owner with the exclusive right to use a particular brand name or logo in connection with the sale of goods or services, for as long as they are actively using that brand. This is meant to prevent confusion in the marketplace, so that there aren't multiple different games with the same name.
3. Patents: Patents are less common, because they require an application process with the government. However, some game publishers do register patents for a unique physical component or process in the game. For example, WizKids patented a base for Heroclix minis that has a movable dial for tracking stats.

It is TTGDA's position that if a publisher is no longer going to be making a game, they should not retain any of these IP protections -- they should all pass to you as the designer and originator of the IP.

The publisher may try to include language in your contract that says they keep that trademark even if your contract ends. This could make it harder for you to pitch your game to another publisher: they would have to publish the game with a new name, and you would not get the benefit of any name recognition that it might have.

Designer can buy art rights

5. With respect to other rights that are not based on Game itself (e.g. illustrations, design of game pieces, and including production documents) that have been created by Publisher or third parties during the course of the implementation of Game, these rights will remain with Publisher or their authors after termination. At Designer's option following termination, the parties will discuss the terms of a buyout of such rights in good faith and at a cost reasonably related to Publisher's actual cost of creation/acquisition.

Almost always, the publisher keeps ownership of art and graphic design that they commissioned for a game, even after the contract is terminated. If you want to republish with another publisher after the rights revert to you, the new publisher will need to create their own artwork. The publisher may include clauses to this effect in your contract.

If you are signing a game that already has art that you made or commissioned, be sure to read this section carefully and make sure that the language is specific to art created or commissioned

by the publisher. Avoid any clause allowing the publisher to keep your art, and proactively include language making sure the rights to your art will revert to you.

Sublicenses end or can convert

6. All sublicenses granted by Publisher shall automatically terminate simultaneously with the termination of this Agreement, except that any third-party sublicensee that is in full financial and operational compliance with its respective sublicense may enter into an agreement with Designer to convert into a direct license agreement. Following such election, all future royalty statements, financial accounting, and direct payments shall bypass the Publisher and be delivered directly to the Creator according to the terms of the original sublicense.

Sublicenses often have different timing than the main license to the publisher, as it may take some time for the publisher to find interested parties and negotiate an agreement. This clause provides a way for the sublicensor to continue to be able to sell the game without having to go through the original licensee.

Often contracts will say that sublicenses continue with the original publisher being responsible for paying royalties, etc. However, if the designer has had issues with the publisher which led to the contract termination, having the publisher remain as the middleman in this transaction is less than ideal.

11. TRANSFER OF AGREEMENT

There are cases in which either the designer's rights or the publisher's license to a game may be transferred to someone else. Most commonly, these would include the death of the designer or the sale of the publisher. It is also theoretically possible that either party might want to assign their rights to someone else for some other reason. Asking for the right to approve of an assignment of rights prevents you from a situation where the publisher might sell their right to publish your game without your consent.

11.A. This Agreement is binding upon, and will inure to the benefit of, the successors and permitted assigns of Designer and Publisher. Neither party may assign this Agreement, except with the written consent of the other. Any assignment without such consent will be null and void. For clarity, transfers by will or inheritance will not be deemed an assignment.

11.B. In the event that the Publisher proposes to assign this Agreement or to sell, merge, or transfer its assets or a controlling interest in its business to a third-party entity:

1. Publisher must provide written notice to Designer no less than 60 days prior to the closing of such transaction. Designer shall have the right to either consent to the assignment of this Agreement to the acquiring entity or terminate this Agreement.
2. Publisher shall provide a complete accounting of all royalties owed up to the exact date of termination or assignment within 15 business days of that date. All accrued royalties, unpaid balances, or pending revenues earned by Game shall become immediately due and payable to Designer upon the closing date of the assignment or termination.
3. The acquiring entity must expressly assume in writing all financial liabilities, payment obligations, and accrued or unpaid royalties owed by Publisher to Designer under this Agreement.
4. Until such time as the acquiring entity executes a written assumption of liabilities directly with Designer, the original Publisher and the acquiring entity shall remain jointly and severally liable.

12. WARRANTIES; INDEMNITIES

Most contracts will include language about warranties and indemnities. A warranty is a promise you make about the game you are licensing — usually that it's actually yours to license. Making an indemnity is promising to cover the costs of damages if the things you promised in the warranties section were not true.

Warranties by the Designer

12.A. Designer warrants to the best of their knowledge that:

1. Designer is legally allowed to enter into this Agreement with Publisher;
2. Designer is the exclusive owner and/or sole representative of the exclusive owner of the copyright in Game, and
3. No other third party has right, title, or interest in Game.

Except for the above warranties, the parties agree that Designer delivers Game “as is.”

When you license a game to a publisher, you are representing to them that you are the designer, and that you came up with the design, and there is not a hidden co-designer or someone else that may pop up later demanding royalties or that you are not actually the designer.

Warranties by the Publisher

12.B. Publisher represents and warrants to the best of their knowledge that:

1. Publisher has the full right and ability to enter into this Agreement;
2. Publisher complies with all applicable laws in all jurisdictions in which it does business;
3. Publisher will perform its services and obligations under this Agreement at no less standard than can be reasonably expected from a publisher of tabletop games of a similar quality and market share as Publisher;
4. Publisher will perform its obligations hereunder using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;
5. No materials produced or provided by Publisher in connection with Game will infringe any intellectual property right, be defamatory, or otherwise violate any other right of any kind of any person or entity or contain anything that is unlawful or deceptive; and
6. Publisher will perform its services and obligations under this Agreement in accordance with all applicable laws and regulations.

Similar to the last clause, the publisher is confirming that they have the ability to successfully publish your game.

Indemnities by the Publisher

12.C. Publisher agrees to indemnify and hold harmless Designer:

1. against any losses arising out of any claim resulting from a breach of any of Publisher's above representations and warranties or the acts or omissions by Publisher;
2. from any recovery, finally sustained, by reason of any violations of copyright or other property of personal right on the part of Publisher; provided, however, that Designer shall with all reasonable promptness notify Publisher of any claim or suit which may involve the warranties of Publisher hereunder; and Publisher agrees fully to cooperate in the defense thereof;
3. against all costs, expenses, and losses (including reasonable attorneys' fees and costs) incurred as a result of claims, or threatened claims, of third parties against

Designer based on the design, development, production, hosting, maintenance, support, marketing, promotion, sale, publication, and distribution of Game, including, without limitations, claims founded on:

- a. product defects, product liability, or false or misleading advertising;
- b. any negligent or more culpable act or omission on the part of Publisher or its sub-licensees;
- c. any act or omission on the part of Publisher or its sub-licensee that constitutes a breach of this Agreement; or
- d. any act or omission on the part of Publisher that constitutes a violation of any applicable law.

12.D. Any out of court settlement of any suit filed jointly against the Publisher and the Designer will be made only by mutual agreement in writing between the same.

12.E. Except as otherwise provided in this Agreement, neither Party makes any express or implied warranties or conditions of any kind, including without limitation, any implied warranties of merchantability or fitness for a particular purpose.

If there is an issue with the physical design or manufacture of the game that results in harm to a consumer, the designer should not be responsible for that. In addition if there are any other issues around the product like copying of artwork or regulatory compliance that is the responsibility of the publisher, not the designer.

13. CONFIDENTIALITY

Each party may provide to the other party information which is deemed to be confidential and which shall be clearly labeled as “Confidential Information.” Neither party shall either during the term of this Agreement or at any time after it, use or disclose to any person, firm, or company any Confidential Information. This restriction does not apply to any use or disclosure authorized by the disclosing party or required by law, or any information which is already in, or comes into, the public domain otherwise than through unauthorized disclosure.

This clause is optional, but if both parties deem it necessary to protect confidential information it is important that it specifically be marked as 'confidential'. Some confidentiality clauses broadly categorize all communications as confidential, which can cause issues and confusion down the road.

14. GOVERNING LAW

Contracts usually have a section that describes how disputes will be handled. If disputes are to be resolved in court, the main thing to establish is the place of jurisdiction: having this set as your place of residence could save you considerable funds if you ever need to go to court.

This Agreement is governed by the laws of the State of [designer's state] applicable to contracts executed and performed without reference to conflict of laws. Any disputes arising under this Agreement will be subject exclusively to the jurisdiction of the state and federal courts having jurisdiction over [designer's county] County. Each party will submit to the sole and exclusive jurisdiction of such courts in connection with any such dispute.

15. GENERAL TERMS

This Agreement constitutes the full understanding of the parties and supersedes all prior agreements, understandings and proposals, whether written or oral, with respect to Game. No modification of this Agreement will be binding unless contained in a writing signed by both parties. Subject to applicable statutes of limitations, no waiver by either party of any breach or default under this Agreement will be deemed a waiver of any future breach or default or will in any other way affect any of the terms or conditions of this Agreement.

This is saying that informal agreements to change something about the terms of your contract aren't legally binding unless you actually make a formal, signed amendment to your contract.

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, unenforceable, or void, such decision will not invalidate or void the remainder of this Agreement. The part or parts of this Agreement held to be invalid, unenforceable, or void will be deemed to have been deleted from this Agreement.

This is just saying that a problem in one part of your contract doesn't invalidate the whole thing.

This Agreement may be executed in counterparts, including by electronic signature, each deemed an original and together one instrument. Notices must be in writing and are deemed given when delivered by hand, nationally recognized overnight courier, or email with confirmation, to the recipient's last provided contact details; either party may update such details by notice.

The parties are independent contractors and have no authority to bind each other except as expressly stated. Each party will comply with applicable export, sanctions, and anti-corruption laws (including the U.S. FCPA and U.K. Bribery Act).

BY SIGNING BELOW, each Party acknowledges that it has carefully read and fully understood this Agreement, and each agrees to be bound by the terms of this Agreement.

This boilerplate further defines the role of the parties and how they interact with each other.