

## NAVIGATING A MEDIA DISTRIBUTION AGREEMENT

This sample Media Distribution Agreement is designed to be an easy-to-read document allowing those new to Acquisition or Distribution Agreements to gain a basic understanding of how such contracts are generally formatted, what information they contain, and how they function. If you seek more information or wish to see a variety of examples, there are numerous template and boilerplate samples online; also, I highly recommend the excellent texts written by entertainment attorney Mark Litwak as an eye-opening resource:

DATE: As of \_\_\_\_\_, 20\_\_

DISTRIBUTOR: International Distribution Company, LLC  
123 Sunset Blvd., Suite 456  
Hollywood, CA 90028  
Tel. (323) 555-5555  
Fax (323) 555-5555  
Email: legal@distribution.com

PRODUCER: Susan Producer  
789 Production Street, Apt. 3D  
Los Angeles, CA 90028  
Tel. (310) 555-5555  
Email: Jessica@screenwriter.com

(If Susan Producer has an Agent, Susan's address will still remain as listed above; her Agent's company & contact information would be written as a second billing, meaning exactly where you're reading this text block.)

TITLE: "NEW COMMERCIAL FEATURE FILM"

Please note that all companies format their agreements differently; the above information identifying the rights holder (defined here as 'Producer') and the party acquiring/buying or being granted rights (defined here as 'Distributor') might be described in a paragraph form of text rather than the block-style used herein. Also, different names might be used to define the above information (terms such as 'Licensor' and 'Licensee' might be used to identify the parties; the 'Title' of the movie might be called a 'Program' or 'Property').

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Although agreements might appear different as you skim through them, they all essentially have the same information throughout (usually following a similar order). And nearly every agreement you encounter will begin with identifying (i) the date, (ii) the parties along with (iii) the movie, series or project up for discussion. Thereafter, the general relationship is outlined as seen below.

#### THE PARTIES HEREBY AGREE AS FOLLOWS:

GRANT OF RIGHTS – This block of text essentially describes what the Producer is granting to the Distributor, generally stating that the Producer is hereafter permitting the Distributor the right to exploit and monetize the Title across all conceivable rights categories. Very rarely is the Copyright being handed over. In most everyday situations, the Producer will continue to ‘own’ the Title; this agreement is simply allowing the Distributor to borrow the Title’s rights for a period of time with the expectation that they will be generating revenue during the term.

Occasionally, this block of text can get extremely detailed with what rights categories the Distributor is taking on. Other times, it uses more wide-reaching language (e.g., ‘by any and all means of transmission now known or hereafter devised,’ etc.).

If this is an ‘all rights’ deal, this block of text is usually quite basic. If this is a ‘select rights’ deal—where the Distributor is only acquiring the specific rights they need (or are strong with)—then the descriptions either dive into extreme detail or re-direct the reader to a schedule of ‘definitions’ elsewhere in the agreement (generally tacked on as an Appendix, Exhibit or Schedule).

TERRITORY – Here the geographical boundaries of the Distributor’s zone of exploitation are defined. These can be listed as a single country (e.g., The United States of America) or as a ‘territory’ (e.g., North America defined as The United States of America and Canada). It is not uncommon for multi-territorial deals to work in reverse, meaning they might begin their territorial definition extremely far-reaching by stating the territory as “The Universe excluding the following territories...” (which only restricts the countries/territories listed). Other terminology, including ‘The World’ or ‘The Universe’ can be used for a worldwide or global territorial reach. For information on territorial definitions, check out the International Film & Television Alliance ([www.ifta-online.org](http://www.ifta-online.org)) and look up their ‘IFTA International Schedule of Territories’.

TERM – The duration of the grant of rights. Can range from a few days up to decades. Might be listed as units (such as ‘24 months’ in lieu of ‘2 years’). Specific dates can also be stated as the official start and end of term (e.g., ‘10 years

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commencing on October 1, 2018 and concluding September 30, 2028). Generally, all encompassing ‘all rights’ deals have a large number of years whereas more focused ‘select rights’ deals have shorter and more targeted terms of exploitation. This block might also be referred to as a ‘License Period’ (and the starting date of when a Distributor is permitted to commence exploitation might be referred to as a ‘License Period Start Date’ or LPSD).

ADVANCE / GUARANTEE – If the Distributor is putting any up front monies on the table, this is where that sum will be listed. For a feature film or one-off title, it will be a lump sum; for serialized content, this value might be listed as a ‘per episode’ or ‘per hour’ basis. Although the money listed can range from a small figure to a very large one, it’s important to note these are usually paid out over several payments (usually contingent on the Producer meeting certain obligations).

DISTRIBUTION FEE – After recoupment of any upfront monies paid, the Distributor will take a percentage of every gross dollar earned during the term of exploitation. Generally these range from 10 percent up to 50 percent (the majority landing more in the 15-35 percentage zone). Larger projects with less perceivable risk can usually negotiate for a lower Distribution Fee; smaller projects with higher risk usually require a higher distribution fee.

ACCOUNTING –Occasionally, the details of the Accounting workflow are split into several different definitions—under different headers throughout the agreement. Here we’ll simply focus on the key concepts to focus on:

- (a) Any and All Recoupable Expenses – One must have a very clear understanding of which monies a Distributor has the right to withhold *on top* of their Distribution Fee or recoupment of advanced payments. These can be hidden as ‘marketing fees’, ‘advertising costs’, ‘materials expenses’, etc. (and therefore can be placed in a variety of locations throughout the agreement). One should calculate the total amount of cash a Distributor has the right to withhold and verify it during any discussion. It’s also very important to place ‘caps’ or ‘limits’ on these figures so that there is a finite amount that can be recouped (and keep track as royalty statements begin arriving);
- (b) Financial Waterfall – As every dollar associated with the Title enters the hands of the Distributor, a Producer must have a very clear understanding of how those monies will be allocated, recouped, siphoned before arriving in the Producer’s hands as a ‘net receipt’. A Producer must not focus on the totals but also take time to understand in what sequential order these skims will be taking place;
- (c) Gross versus Net – Gross versus Net fees & expenses are drastically different in terms of where they fall in the overall Financial Waterfall. If a

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sum, figure, or definition associated with money is not clearly defined as a Gross or Net figure, then a Producer should request such wording to be included (ideally, to their benefit);

- (d) Reporting & Payments – How often will the Distributor be ‘reporting’ sales to the Producer (e.g., quarterly, bi-annually, etc.)? And once a report is sent with a positive sum owed to the Producer, how soon—and by what means—will the Producer receive those monies? One should also ensure that it’s stated in writing that any default in reporting on the Distributor’s part should be considered a breach of contract; and
- (e) Auditing – A rights holder should always have the ability to conduct an audit of the Distributor’s books if they feel monies associated with their title are being mismanaged. Generally, a producer or rights holder is permitted to conducting a maximum of one audit per year and must provide reasonable advanced notice to the Distributor. Conducting an audit is the financial responsibility of the producer or rights holder; however, if a discrepancy is discovered, the expense might shift to the Distributor.

PRODUCER’S REPRESENTATIONS & WARRANTIES – This block of text essentially puts truth-telling responsibility onto the producer or rights holders shoulders. It essentially states or confirms that the producer actually owns the rights they’re signing away, that they’re not hiding or withholding any information, that they are not making false representations about themselves or the work they’re presenting and that they have the legal right to enter into the agreement.

DISTRIBUTOR’S REPRESENTATIONS & WARRANTIES – Same as with the Producer’s Representations & Warranties clause, here the Distributor must also attest that they have they are not hiding or withholding information and that they have the legal right to enter into this agreement.

INDEMNIFICATION – This clause is generally included to protect the Distribution company. Essentially it states that any damages or losses incurred due to the producer’s false representations would be the financial responsibility of the producer to resolve. Unlike the Warrants & Representations clauses, where the onus is placed upon both parties, it’s quite common that this one rests squarely against the producer; that said, a more equal share of responsibility can usually be included during the negotiation process.

ERRORS & OMISSIONS – This block usually requires the Producer to include the distribution company as an ‘additional insured’ on their E&O policy. It usually lists the specific minimum financial parameters the Distributor requires. Most distributors carry their own E&O policies and will occasionally add the producer to their policies as well.

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MATERIAL DELIVERY – Within the Agreement, there is usually a basic clause outlining the time frame or basic overview of delivery expectations. Essentially, the Producer is required to deliver Quality-Control (QC) approved materials matching the Distributors minimum technical requirements (attached to the agreement as an addendum or presented via email or by any other means). This clause focuses more on the time-line of delivery (e.g., that after full execution of this deal, the producer will delivery materials within 30-days, etc.).

DEFAULT – If one of the party defaults to fails to deliver on their contractually agreed actions, they will be considered to have ‘defaulted’ on their obligations and be in breach of agreement. This paragraph usually defines reasonable and logical steps in the event of a default (allowing the other party an opportunity to correct the matter). In the event the breach is not cured, then this paragraph explains what the next steps might be (usually arbitration or termination).

ARBITRATION – If both parties have a conflict, they can bypass the strenuous lawsuit process and instead opt to ‘arbitrate’ the matter. An Arbitration hearing is much more of a low-key discussion of the conflict whereby an assigned Arbitrator—one both parties agree to hear the matter—makes a final and binding decision within the same hearing. This process great speeds up the conflict resolution process while avoiding the expenses associated with larger forms of legal action.

NOTICES – This clause is a quick breakdown of the contact details to be used throughout the duration of the deal. Generally, this is the legal business address, but might instead include the contact details of a third party or other representative(s). Both parties are required to keep one another up to date if the information within this clause changes since both parties need to know how to formally contact one another. Although the Notices section can be used for purposes of reporting revenues or royalties, these would also be the contact details used in the event one party wishes to request an audit or legal claim that the other party is in breach of terms.

FORCE MAJEURE – A French phrase found in all contracts defining those events out of anyone’s reasonable control (e.g., a natural disaster, war, riot, or any other unforeseen and unstoppable event). This phrase is included to protect both parties in the event they are incapable of fulfilling a contractual obligation due to such unforeseen and unstoppable events; the party at fault cannot be held ‘in breach’ if their failure to meet a contractual obligation was caused by an event they had no reasonable way of stopping or avoiding.

GOVERNING LAW & JURISDICTION – Yes they even get this detailed, so that in the event of a dispute, you know the exact State, County, and City with which the laws will be reviewed. Generally it will read something akin to: “in accordance with the internal laws of the State of California in the city of Los Angeles.” But it can be anywhere (including overseas if the Distribution company is based abroad).

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MISCELLANEOUS – This is where they squeeze in all the other terms that didn't neatly fit in elsewhere. Let's highlight a few common terms you're likely to see here to cover any other contingency:

- (a) Entire Agreement – Because one sentence on page 3 could mean one thing when taken out of context and potentially contradict a sentence found elsewhere, an Arbitrator or Lawyer should only be reading both conflicting sentences in context of how they read in the scope of the “entire Agreement”; this term ensures that.
- (b) Definitions or examples of events that wouldn't constitute a 'default' or 'breach'.
- (c) Definitions on what constitutes acceptance of material delivery.
- (d) Additional payment obligations.
- (e) Details explaining the distributor is not responsible for SAG/AFTRA or Union dues incurred by the producer.
- (f) Time constraints, etc.

And then both parties sign.

AGREED AND ACCEPTED:

INTERNATIONAL DISTRIBUTION  
COMPANY, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Name: JESSICA NOVICE

Its: