

What is the IFTA® Model International Licensing Agreements 7th Edition (Version 2022) and what does it include?

The IFTA® Model International Licensing Agreements (MILA) is a long-established set of contractual forms (IFTA Forms) that assist in documenting international distribution deals. Periodically, the entire MILA including the IFTA® International Multiple Rights Distribution Agreement (Multiple Rights Agreement) and the IFTA® International Outright Agreement, which include the IFTA® Deal Terms, Additional Terms, and Standard Terms, the IFTA® Deal Memo, the IFTA® Schedules of Definitions and Territory, and other contractual templates like the Censorship Rider, Laboratory Access Letter and Financing Attachments. The IFTA Model Forms are reviewed and revised to keep pace with the evolving worldwide film and television industry.

Promulgated in the 1980s, the IFTA® MILA, now in its 7th Edition (Version 2022), reflects current industry standard terms and definitions for licensing international right in motion pictures and television programming. The IFTA Standard Terms have been updated to designate the ICDR Rules for IFTA arbitrations for the dispute resolution process, these newly promulgated Rules can be found [HERE](#).

What are the major changes to the Deal Terms and Standard Terms?

Outright Agreement

In 2021, an IFTA International Outright Agreement was added to the MILA for so called “flat sales” deals in which unnecessary provisions have been eliminated such as ‘overages”. During and since that time, the entire Multiple Rights Agreement has been thoroughly reviewed to ensure that the widely adopted IFTA® Standard Terms are balanced and reflect current industry practices.

Arbitration Provisions

Substantive changes have been made to the arbitration provisions in the Deal and Standard Terms, which now refer to newly promulgated International Center for Dispute Resolution International Rules for IFTA Arbitrations (“Rules”). **Effective January 1, 2022, all arbitrations designating IFTA Arbitration and using IFTA Arbitration Rules, or IFTA’s Model Arbitration provisions (including those contained in previous versions of the IFTA Model Agreements designating IFTA Arbitration or the IFTA Rules) will be administered by the International Center for Dispute Resolution (ICDR), the international arm of the American Arbitration Association (AAA).**

The new arrangement between IFTA and ICDR AAA will utilize the same film and television industry expert panel of arbitrators augmented by ICDR and AAA’s expert panels located worldwide, and provide parties if they agree, the opportunity to resolve disputes through mediation prior to or concurrently with arbitration proceedings.

IFTA Model Arbitration provisions are found in:

The Deal Terms: **B. Dispute Resolution:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with ICDR International Arbitration Rules for IFTA Arbitrations (the “Rules”) effective as of the commencement of the arbitration.

and the Standard Terms: 16.7. **Arbitration:** Any controversy or claim arising out of or relating to

this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with ICDR International Arbitration Rules for IFTA Arbitrations (the “Rules”) effective as of the commencement of the arbitration.

Please see the ICDR Rules referred to in the Model Agreement at <https://www.icdr.org/>.

Miscellaneous Provisions:

The words “or amendment” have been added to Paragraph 23.5 Modification: No modification **or amendment** of this Agreement is effective unless contained in a record authenticated by both Parties.

A new provision has been added - **23.11. Service of Process: Any petition, notice, or legal process in any action to confirm, enforce, or challenge an arbitration award issued pursuant to the arbitration provisions of this Agreement may be served in the same manner as giving Notice under Paragraph 22. of this Agreement.**

Are there any changes to the Cover Page, Deal Terms, or Additional Terms?

The Deal Terms

The Deal Terms and alternatives indicated through the Model Agreement and that are negotiated by the Parties remain substantially the same.

Cover Page

now provides options to make it clear who the parties are to the Agreement. There is an option on the Cover Page if the “Sales Agent” signs on behalf of a Licensor.

Additional Terms

Since LIBOR has been phased out, the Model Agreement designates the 3-month Secured Overnight Financing Rate (SOFR) on the date payment was due as the Finance Charge rate.

“Finance Charge: Any payment not made when due will, in addition to any other right or remedy of Licensor, incur a finance charge at the lesser of: (i) the finance charge set out in the Deal Terms; or (ii) three basis points over the 3-month Secured Overnight Financing Rate (SOFR) on the date payment was due; or (iii) the highest applicable legal contract rate. This finance charge will accrue from the date the payment was due until it is paid in full.”

Parties may agree to another rate, and if so, should add the name of the agreed is to the Additional Terms. Remember that when a Standard Term is contrary or conflicts with a Deal Term, the Deal Term prevails so special attention should be paid when adding Additional Terms.

Has the IFTA® International Schedule of Definitions changed?

The *IFTA® International Schedule of Definitions* has not changed from the 6th to the 7th Edition. The changes made to this Schedule in 2018 provided a solid framework for the definitions of the Licensed Rights, especially on demand rights, and have stood the test of time. The transformative changes previously made to the MILA 6th Edition have stood the test of time and continue to reflect current legal and industry licensing practices and standards. No substantive changes have been made.

Recall that the most notable changes to the IFTA® International Schedule of Definitions in the previous edition had been renaming of the ClosedNet and Internet Rights to VOD (Streaming) Rights (AdVOD, FVOD -free to user, SVOD and TVOD) and (Downloading) Rights (EST). Other changes included a 30-day Catch-Up period that is now included in Pay and Free TV Rights; new subcategories for Basic and Premium Pay TV Rights, the elimination of the term Commercial Video (previously under Video Rights) and merger into a slightly redefined NonTheatrical Right (notably that the exhibition of a Picture previously licensed under Commercial Video (Video Right) is now included in the definition of NonTheatrical. PayPerView was no longer included in the subcategory Demand View (which is now understood to be a VOD Right).

Of course, the marketplace will continue to evolve, new types of exploitation and uses, territories, or legal practices may emerge and the IFTA® MILA will evolve under the outstanding guidance of the IFTA Legal Committee, and the IFTA Membership at large through MyIFTA.

The IFTA® International Schedule of Territory Definitions Version 2022 has been updated. What are the major changes?

The IFTA® International [Schedule of Territory Definitions](#) has been updated periodically between 2018 and 2022 to reflect the regulatory changes that have occurred in Europe, the new territorial demands that buyers are making, and to provide greater clarity with regard to the complexities encountered when licensing rights in the Caribbean. Additionally, the Schedule provides a more complete “Language Listing” section than has been previously available. The most recent Schedule issued in November 2020 made clarifying revisions related to Ukraine, Brexit, and Macedonia’s name change to North Macedonia.

If you have any questions regarding the new MILA 7th Edition or any other IFTA Form, please contact **Susan Cleary** at scleary@ifta-online.org or **Ian Bonifield** at IBonifield@ifta-online.org. For information regarding the IFTA® International Schedule of Territory Definitions, please contact **Bill Anderson** at wanderson@ifta-online.org.

Regulatory Changes:

Portability - The regulatory changes that are occurring in the European Union have necessitated the inclusion of a definition for the EU in the new Schedule.

One such regulation, which provides for the portability of online content, went into effect April 1, 2018. Because of this, the EU definition needed to include not only the Member Countries in continental Europe but also certain of the overseas territories of France, Portugal and Spain, that are classed by the EU as “Outermost Regions.” These territories are subject to all EU regulations, including Portability.

An important annex to the EU definition is a footnote that briefly describes “Portability” and directs the user to the regulation on the EU website for more information.

Brexit: The United Kingdom is still scheduled to withdraw from the European Union and negotiations between the EU and the UK concerning are now in full swing. At this time, any potential outcome to these negotiations is unclear. An additional footnote to the EU definition informs readers of this situation.

The fate of Gibraltar, the British Overseas Territory (BOT) most directly affected by EU regulations is also up-in-the-air. It has been reported that U.K. withdrawal most likely will trigger separate negotiations about Gibraltar’s continued status as a BOT. A note in the U.K. definition informs readers of this possibility.

Swiss Language Licensing:

The [“Linguistic Diversity” provisions of the Swiss Film Act](#), which were previously limited to a film’s first public showing in a cinema, have been extended to include “other uses.” As a result, the Swiss government takes a dim view of the individual, language- specific licensing practices that sellers have been employing. The “Switzerland” definition reflects this by providing a footnote informing the user of this situation and providing links to the Swiss government website for more information. The “French-speaking Europe,” “German-speaking Europe,” and “Italian-speaking Europe” definitions found in the “Language Listing,” rather than including “Switzerland” as before, all direct the user to the “Switzerland” entry in the Listing’s “Other” section for an explanation of the situation. Macedonian Referendum – In the fall of 2018 the people of Macedonia will vote on a proposed change of their country’s name to “North Macedonia.” It is unclear at this point what the outcome will be. Under the “Eastern Europe” definition, we have added a note informing the reader of this situation.

New Buyer Territorial Demands:

It has been reported that two new territorial licensing demands are now being sought – “Worldwide Rights” and “Rights to the Universe.” Definitions for both are included in this new schedule to provide the user with guidance in granting these rights.

The Caribbean:

Licensing rights to the Caribbean is difficult. This schedule of definitions provides the user with three new tools: a new definition for “English-speaking Caribbean;” a note added to the “Latin America,” “South America,” and “West Indies” definitions that reminds users that “Guyana” can be licensed with any of the three, depending upon the deal; a definition added in the “Other” section of the “Language Listing” that provides insight into licensing Caribbean territories by language.

New to the “Language Listing”:

The “Language Listing” section of this new definitions schedule includes three new entries: “Portuguese-Speaking Territories” and “Spanish-speaking Territories” which includes a definition for “Spanish-speaking South America.” All are intended to provide the reader with greater clarity about language licensing.

Other New Listings:

A licensing definition that has been reported recently is “French P.O.M.,” an “unofficial” term that some use for “French Polynesia.” This is included in the new schedule as an “F.Y.I.” The “Kingdom of the Netherlands” is the formal name for the sovereign country which includes The Netherlands (aka Holland), Aruba, Curacao, and Sint Maarten. The EU has ruled that only The Netherlands is part of the EU and thus subject to its regulations.

Is there an IFTA® Deal Memo?

Yes, an IFTA® Deal Memo (Version 2022) which corresponds with the Deal Terms of the IFTA® International Multiple Rights Agreements (Version 2022) is available. The Deal Memo incorporates by reference the IFTA® Standard Terms, IFTA® International Schedule of Definitions, and IFTA® International Schedule of Territory Definitions (Version 2022). The Front/Page 1 of the Deal Memo consists of the Deal Terms, IFTA Arbitration clause, and signatures of Parties, and the Back/Second Page of the Deal Memo consists of selected definitions from the IFTA® Schedule of Definitions. The new IFTA® Deal Memo is user friendly and available in Word format with minimal formatting so that it can be quickly tailored for each deal and printed for signature. The IFTA® Deal Memo will also be provided in a blank PDF form which can be pre-printed on two sides of a sheet of legal-size paper and completed by hand. IFTA also offers for sale at a member discount IFTA® Deal Memo multi-page tear off sheets.