

# Documentation Relating to a Royalty Transaction ©

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1. Confidentiality agreements – Frequently, privately owned company business owners and managers seeking to sell a royalty will require prospective Investors or others to sign a confidentiality agreement before making data available. The confidentiality agreement should have an expiration date and exclude information which has been or will be disclosed publicly. All aspects of the information provided by the company, including that which is made available to royalty owners which are deemed by the parties to be confidential, should be declared.

2. Royalty Agreement – following are issues and elements of an agreement which can be either included in a single agreement with multiple parts appendices or exhibits, or be a collection of separate agreements that clearly reference each other.

a. The parties to the agreement must be clearly defined as to role and authority, address, etc.

b. The amount to be paid for the royalty and the timing of payment(s) must be agreed. Although it is possible to structure a royalty based on staged result-dependent financing I do not favor staged investment in privately owned companies.

c. The royalty rate, during different periods and under specific conditions of either revenue or royalty levels achieved, must be agreed and clearly defined. There can be caps or maximum payment levels on royalty payments in specified periods or in total. If there are caps then it is reasonable for the royalty Investor to require minimum royalty payments, which may be periodic or total. This possibility, and methods of carrying out the necessary calculations, is addressed in [REX-RIAR.com](http://REX-RIAR.com) and the other website calculators [REXRoyalties.com](http://REXRoyalties.com), [REXdebt-shareRoyalties.com](http://REXdebt-shareRoyalties.com) and [REXScaledRoyalties.com](http://REXScaledRoyalties.com).

d. The maturity or total duration of the royalty payment obligation must be defined.

e. The payment terms, scheduling and process must be defined. In the approach we recommend, the agreed royalty rate percentage of gross revenues is deducted and transferred to the royalty owner's agent at the time of the royalty issuing company's receipt of revenues, daily if necessary. This can be accomplished by the designated bank(s) into which the company is obliged to make all revenue deposits, offering a "lockbox" service, or tby an independent entity holding a limited power of attorney for the company's bank account entitling deduction and transfer of the agreed percentage of every deposit of revenue.

The term "gross revenue" must be carefully defined as including all forms of revenue, from all sources and territories. However, the defined revenues can exclude revenues from certain geographic areas or particular products, all depending on the negotiation.

f. The royalty collection and payment procedures have to be agreed and defined. We suggest collection upon the Issuer's receipt of revenue, and remittance to royalty owners quarterly, including interest earned on deposit of funds, after debiting account fees and "lockbox" costs described above. The royalty owners will have to designate the address to be used for royalty distributions.

g. The financial and other data the Issuer has agreed to make available should be defined including the schedule of provision. The royalty Issuer may deem the amounts paid in royalties to be confidential due to competitive concerns.

h. The transfer of ownership of a royalty can be restricted or fully negotiable. The restrictions can be a result of contract negotiation or regulatory requirements regarding the need for offerees to be Accredited Investors.

i. The royalty Issuer's securing of its contractual compliance will, we recommend, require the transfer or conditional assignment of the "critical assets" of the company, without which the company cannot function. The company is granted an international exclusive right to use these critical assets without charge for so long as the company is in contractual compliance with the royalty agreement.

Upon terms to be agreed the ownership or unfettered right to use these assets will be returned to the company.

j. The mechanics for securing the royalty issuer's contractual obligations will, we suggest, involve the appointment of an entity acting as a trustee for the royalty Investor(s), which on the cessation of royalty payments as agreed, may trigger cancellation the company's right to use the assets. The entity can be required to license use of the assets to a reorganized company, within an agreed period, on the same terms as originally agreed. If the company is not reorganized the entity is to use the assets as in the best interests of the Investors.

3. The royalty can be convertible into the royalty issuing company's equity under agreed terms and conditions, though we do not recommend this potential course due to the complexity of valuation and other inherent conflicts.

4. The royalty Issuer should hold, in most cases, a Right of Redemption, resulting in the termination of the company's royalty payment obligation. The redemption can be a result of direct negotiation with one or more royalty owners, one of several forms of tender to all of the royalty owners or the exercise of the redemption on the terms agreed at the time of the royalty issuance. The exercise of the redemption right will produce the worst case for the royalty issuer as the other approaches may allow for the purchase of the royalties on more favorable terms than in the redemption right.

5. The royalty financing process may involve financial intermediaries. If so these individuals or entities will seek fees, possibly from both royalty Issuers and royalty Investors.

a. The royalty issuer will likely be required to indemnify the financial intermediaries as to damage or liability arising from acts of the Issuer in the provision of information to the royalty Investors or for breach of agreements made with the royalty Investors.

b. It is also possible the financial intermediary may be retained to provide consulting services on a continuing basis to either the royalty Investors or the royalty issuing company.

**6. In the event of there being multiple royalty Investors in a single issue, it is likely that the functions of a Registrar, Transfer Agent, Trustee-like entity which holds and manages the royalty issuer's critical assets during an agreed period, and a royalty collection and distribution agent will be required. The royalty issuing company will pay the expense of some of the functions and the Investors others, all as a result of agreement.**

**7. There may be an agreement between issuer and investors that if royalty distributions exceed the anticipated amount by a given percentage for a given period (for example, 20% for two concurrent years), the royalty rate may be adjusted downward for as long as the excess performance persists. Conversely, there may also be an agreement that if royalty distributions fall short of the anticipated amounts by a given percentage for a given period, the issuer may be required to make up the shortfall using a variety of methods.**

**The foregoing is not intended to be complete or all-inclusive. The intent is to highlight the key contractual elements, which will need to be addressed in most revenue royalty financing agreements.**

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