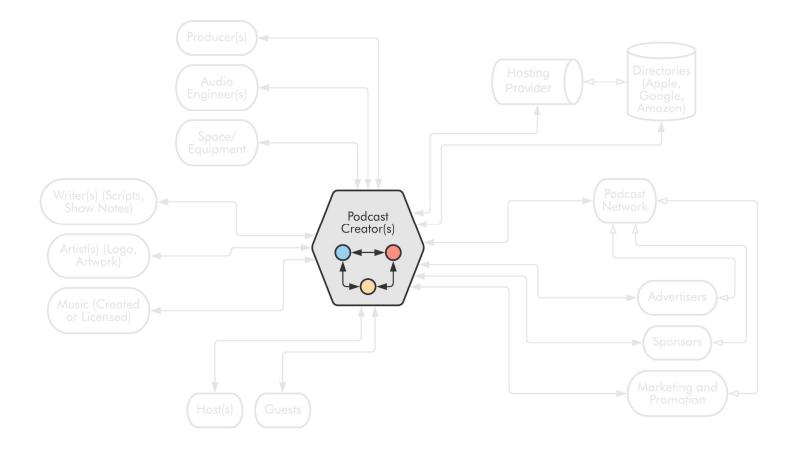
How to Negotiate a Podcasting Agreement

Business and Legal Issues in the Podcast Contract Ecosystem

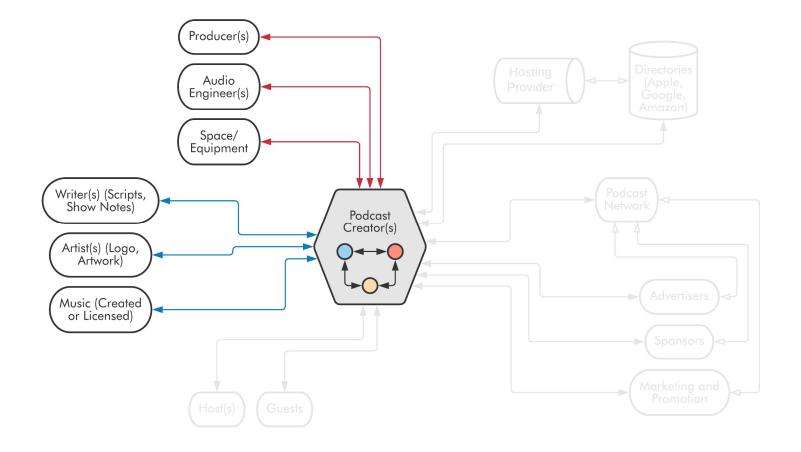
Thursday, October 8, 2020 Laura Frederick & Gabe Meister laura@frederick.law • gabe@gabemeisterlaw.com



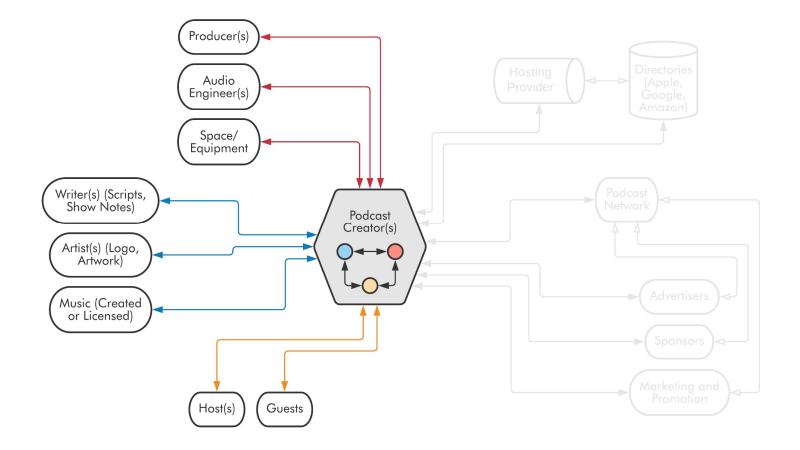




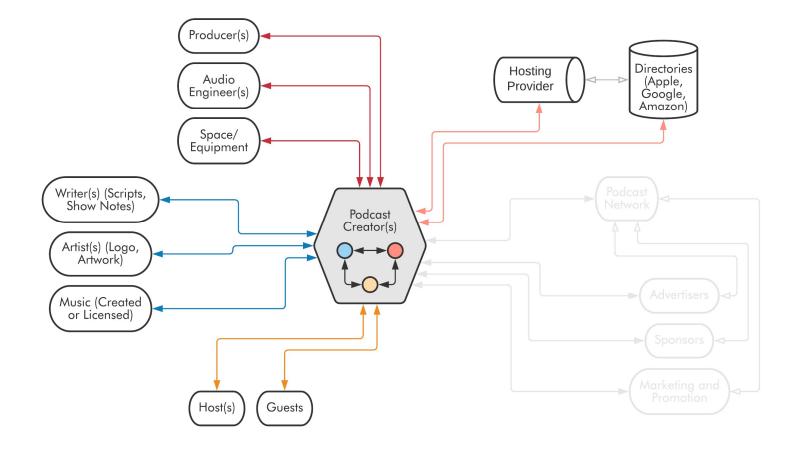




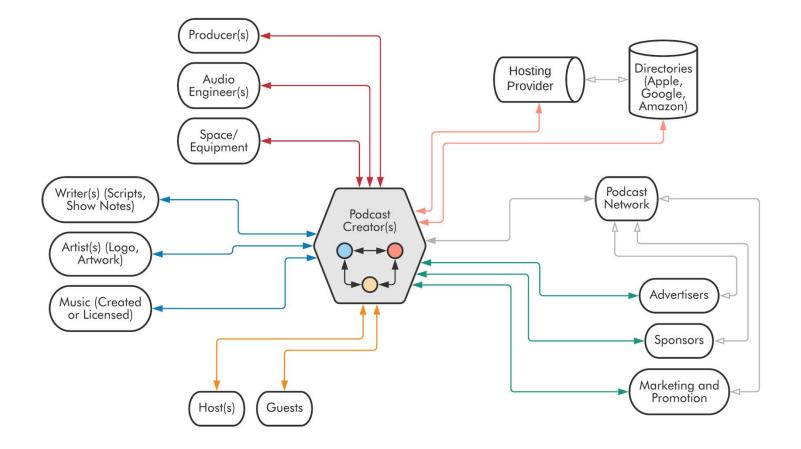




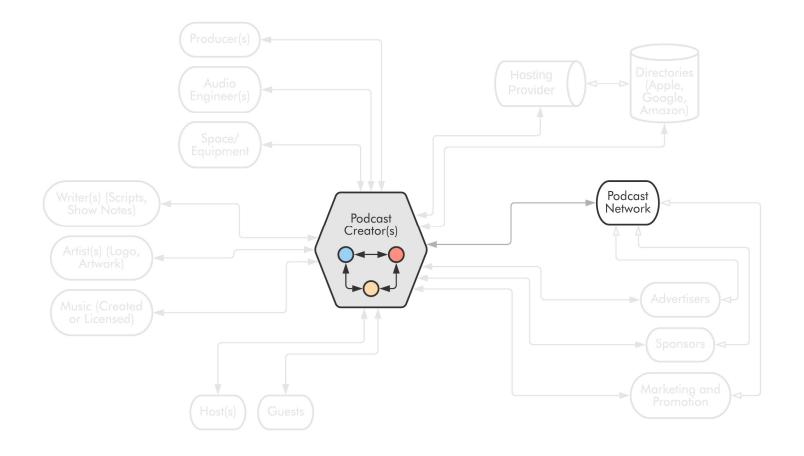








Podcast Network Agreements



A Handful of Core Commercial/Legal Issues

lssue	Description
Content Requirement	What do I have to create? How do I have to deliver it? How many episodes, and over what time period? Can I maintain creative control?
Licensing/IP	Who owns what? What should the scope of the license be? Can I repurpose my episodes for other platforms?
Liability/Indemnification	Who's responsible if something goes wrong? Who's in a better position to manage specific risks? How deep are our respective pockets?
Revenue	Who's responsible for which costs? How do we split ad/sponsorship revenue? Syndication revenue? If I sell merch, do they get a cut?
Termination	How long is the relationship? When can either side get out, and why? Will I have access to my materials if we part ways?

Sample Podcast Network Agreement

PODCAST PRODUCTION AGREEMENT

This Podcast Production Agreement (the "Agreement") is entered into between [_____], with its principal place of business at [_____] (the "Company") and the recording group (the "Artist") with a mailing address of for production of a podcast show named (the "Podcast").

Members of the recording group are listed with their full names below:

The parties agree as follows:

1. Use of Recording Facilities

Company agrees to record the Podcast audio material on behalf of the Artist using Company-owned equipment and facilities, provided that the Artist schedules recording time with a representative of the Company. Access to the equipment or offices of the Company is not permitted to the Artist or any affiliate of the Artist at any time other than scheduled, except as approved by a Company representative. Additionally, a Company representative must be present at all times during any recording.

2. Podcast Schedule

During the period in which this Agreement remains in effect, Artist will make regular recordings of the Podcast according to the terms described in Section 1, or will provide recordings to the Company created with equipment and facilities acquired by the Artist. The schedule agreed upon between the Artist and the Company is the following, chosen by the initials from a member of the recording group and a representative of the Company:

(a member of the recording group and the Company representative must sign their initials for one option only)

____ Weekly ____ Bi-weekly ____ Monthly

The schedule will start on the date of the first recorded episode of the Podcast. From that date, the Artist is obligated to record or to provide a recording for publishing within the time period agreed above, except if rescheduled by written approval from a representative of the Company.

The Artist may choose to record multiple episodes to stay ahead of the recording schedule, and may optionally request to publish extra episodes in between the normal schedule. Multiple episodes are considered to adhere to the schedule as long as they are published at the agreed-upon scheduled intervals.

If episodes are published between the agreed-upon schedule, it is understood that these in-between episodes are not a replacement for the regularscheduled episodes, and that the normal schedule is still in effect for the next episode, unless an exception is approved by a representative of the Company.

SOURCE: https://www.lawinsider.com/contracts/5PWXDeZpw7r

Bird's-Eye View of Sample Agreement

PODCAST PRODUCTION AGREEMENT	3. Fee Assessment for Late or Missed Episodes	5B. Promotional Materials
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Content Requirement

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5. Podcast Content Obligations

5A. Show Materials

At least two (2) weeks before the recording of the first episode of the Podcast, the Artist must provide to the Company the following items:

- A logo in PNG or JPG format at least 600 pixels by 600 pixels at 300 DPI
 Audio containing show intro, outro, and any other recurring audio intended to be used in every published episode
- If not needed, Company representative should initial here: _____

Company may refuse to accept the start of the podcast recording schedule until these materials are provided.

5B. Promotional Materials

As a condition of being a member of the podcast network, the Artist agrees to record certain material in every episode of the Podcast, hereafter referred to as "Network Promotion", as part of advertising of the Company and its podcast network. Guidelines for the Network Promotion will be provided by the Company. Any recording of the Network Promotion is subject to approval by the Company before it can be provided for public consumption.

5C. Length of Content

The length of each episode of the Podcast shall be no less than 20 minutes and no more than 1 hour. A recording of less than 20 minutes will be rejected. A recording of more than 1 hour will be edited for content, if possible, to render a final length of 1 hour or less. If edits to the recording to bring it to 1 hour or less are not reasonably possible, the recording will be rejected.

6. Cost of Services to Artis

Company agrees that no payments will be charged to the Artist for the services described in this Agreement, except for the fees mentioned in Section 3 and legal expenses described in Section 4, and that the Company will bear all costs that the Company and its representatives incur relating to recording, editing, publishing, marketing, advertising, and any other production for the Podcast. This shall not be interpreted as covering any costs incurred by the Artist with any other agent or agency for any services related to the Podcast or any unrelated services.

Company will provide an RSS feed of the Podcast to the Artist. Artist will be responsible for submitting the feed to iTunes, Stitcher, and Google Play platforms.

7. Compensation of Artis

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5.	Podcast (Content	t Obligat	ions										
5A	. Show M	Naterial	ls											
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Company will provide the Artist with weekly reports detailing the download statistics for each Podcast episode produced by the Company.

10. Ownership of Unedited Recordings

Company will be the sole owner and will have perpetual use and control of all unedited audio recordings produced under this Agreement. Company will be free to dispose of and treat in any way all unedited audio recordings produced under this Agreement, including but not limited to selling, advertising, distributing, permitting their use in other mediums, and including them in masters containing the work of other artists.

11. Ownership of Published Recordings

Artist will be the sole owner and will have perpetual use and control of all published audio recordings produced under this Agreement. The term "published" will be understood as the final edited version of the audio recording that the Company provides as part of the services described in this Agreement. Artist will be free to dispose of and treat in any way all published audio recordings produced under this Agreement, including but not limited to selling, advertising, distributing, permitting their use in other mediums, and including them in masters containing the work of other artists.

12. Right of Refusal

Company has final rights of approval on all material to be recorded by Artist under this Agreement. Company may for any reason refuse to publish a recording made under this Agreement. If the refusal is exercised, the Artist is still obligated to record replacement material in order to meet the schedule terms described in Section 2, except that the schedule shall be extended by seven (7) calendar days to allow time for re-recording, editing, and publishing. The fees described in Section 3 will not be accrued until after this extended date.

If any single episode of the Podcast is rejected by the Company three (3) times, this will be considered a breach of contract.

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13. Representations

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Company will provide the Artist with weekly reports detailing the download statistics for each Podcast episode produced by the Company.

10. Ownership of Unedited-License to Recordings

Subject to and conditioned on Company's compliance with this Agreement, Artist grants Company a limited, <u>non-exclusive</u>, <u>non-transferable</u>, <u>non-sublicensable</u>, <u>revocable</u> license, <u>during the Term</u>, to (a) edit and create derivative works from the Raw Recordings (defined below) provided by Artist to Company hereunder, <u>solely for purposes of creating the Published Recordings</u> (defined below); and (b) distribute, transmit, perform, and display the Published Recordings solely through Company's [PODCAST NETWORK NAME] network. All Published Recordings will be subject to <u>Artist's prior</u> review and written approval, including any <u>advertisements</u> incorporated into Published Recordings produced under this Agreement. Company will be free to dispose of and treat in any way all unedited audio recordings produced under this Agreement, including but not limited to selling, advertising, distributing, permitting their use in other mediums, and including them in masters containing the work of other artists.

11. Ownership of Published Recordings

Artist will be the sole owner of, and will have perpetual use and control of, (a) all unedited audio recordings produced under this Agreement (the "Raw Recordings"), (b) all published audio recordings produced under this Agreement ("Published Recordings"), and (c) all other materials provided by or on behalf of Artist in connection with this Agreement (collectively, "Artist Materials"). The term "published" will be understood as the final edited version of the audio recording that the Company provides as part of the services described in this Agreement. Artist will be free to dispose of and treat in any way all published audio recordings produced under this AgreementArtist Materials, including but not limited to selling, advertising, distributing, permitting their use in other mediums, and including them in masters containing the work of other artists. All rights in Artist Materials that are not aranted by Artist herein are reserved to Artist.

12. Right of Refusa

Company has final rights of approval on all material to be recorded by Artist under this Agreement. Company may for any reason refuse to publish a recording made under this Agreement. If the refusal is exercised, the Artist is still obligated to record replacement material in order to meet the schedule terms described in Section 2, except that the schedule shall be extended by seven (7) 281 words D C Cracestalling Unavailable D C content of the content of the terms of terms of the terms of the terms of the terms of terms of

Liability/Indemnification

By the Artist, These tees can only be warved by a written exception by the Company or an emergency exception as described in Section 2 of this document for the late or missed episodes.	Less tees can only be waived by a written exception by the Company or an emergency exception as described in Section 2 of this document for the late or missed episodes.
4. Podcast Content Liability	4. Podcast Content Liability
Artist understands that the Company bears no responsibility for the legal disposition of the content of the Podcast and that it is the responsibility of the Artist to obtain any rights and releases for the material recorded as part of the Podcast, if it is legally necessary. Artist agrees to hold harmless and indemnify Company and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the negligence or misconduct of Artist agrees to reimburse the Company for any legal expenses incurred by the Company arising from legal actions regarding the content of the Podcast that is recorded by the Company and presented to the Artist as an invoice, payable within thirty (30) calendar days from the date of receipt by the Artist.	Artist understands that Artist the Company bears no responsibility for the legal disposition of the content of the Podcast recordings as provided to Company hereunder[, and that it is the responsibility of the Artist to obtain any rights and releases for the material recorded as part of the Podcast, if it is legally necessary]. [INTERNAL NOTE: We need to discuss releases, permissions, etc. Are we using pre-recorded music in the intro, etc.? If so, do we need g license or are we creating it in-house? Also, need to make sure releases cover IP, risk allocation, etc. Let's discuss—and worth asking whether Company can provide pre-cleared music for us (they might have something they use for other podcasts in the network, although that could limit our flexibility in the future).] Artist agrees to hold harmless and indemnify Company and its officers, directors, agents and employees from and against third-party claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the negligence or [willful] misconduct of Artist in connection with the content of recording of the Podcast described in this Agreement
5. Podcast Content Obligations	as provided to Company hereunder. [INTERNAL NOTE: (1) Indemnity is pretty general, which could be good for us—although if Company is cutting the podcasts for publication, we can't take on the risk unless
5A. Show Materials	we have approval rights. (2) Note that there's NO indemnity by Company , even though they're purporting to have the broadest possible rights w/r/t our original recordings (?). To consider for Company's indemnity:
At least two (2) weeks before the recording of the first episode of the Podcast, the Artist must provide to the Company the following items:	ads, including Network Promotion; claims arising re: the network; Company's own negligence or (willful) misconduct; IP infringement (although they're likely to flip this back on us if they're paying attention).]
 A logo in PNG or JPG format at least 600 pixels by 600 pixels at 300 DPI Audio containing show intro, outro, and any other recurring audio intended to be used in every published episode If not needed, Company representative should initial here:	In addition, Artist agrees to reimburse the Company for any those reasonable attorneys' fees described in the foregoing paragraph, provided that such legal expenses incurred by the Company arising from legal actions regarding the content of the Podcast that is recorded by the Artist. Such expenses must be itemized by the Company and presented to the Artist as an invoice, payable within thirty (30) calendar days from the date of receipt by the Artist. [INTERNAL NOTE: This reads like a supplemental additional indemnification
Company may refuse to accept the start of the podcast recording schedule until these materials are provided.	obligation-confusing. We have no idea what "legal expenses" they'd incur, or what a "legal action regarding the content of the Podcast" means. E.g., if the legal action is around ads they insert, do we have to cover their legal expenses? Or what if they settle a claim—do we have to pay it even if we weren't consulted?
5B. Promotional Materials	INTERNAL NOTE: Need to add indemnification procedure language.
As a condition of being a member of the podcast network, the Artist agrees to record certain material in every episode of the Podcast, hereafter referred to as "Network Promotion", as part of advertising of the Company and its podcast network. Guidelines for the Network Promotion will be provided by the	5. Podcast Content Obligations
Company. Any recording of the Network Promotion is subject to approval by the Company before it can be provided for public consumption.	5A. Show Materials
5C. Length of Content	At least two (2) weeks before the recording of the first episode of the Podcast, the Artist must provide to the Company the following items:

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Revenue

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Company will provide an RSS feed of the Podcast to the Artist. Artist will be responsible for submitting the feed to iTunes, Stitcher, and Google Play platforms.

7. Compensation of Artist

Artist will receive opportunities to share in revenue gained from income streams received by the Company. For each source of income received by the Company, the Company will produce a separate Revenue Contract detailing the obligations of the Artist to receive the income, and the share of income to the Artist once those obligations are met. Upon agreement and signature between the Artist and the Company of the Revenue Contract, the Company will send payment to the Artist per the terms of the Revenue Contract. A breach of the Revenue Contract will only be subject to the breach terms described in the Revenue Contract, and will not be considered a breach of this Agreement.

8. Podcast Income and Expenses

Company shall provide the Artist with quarterly reports detailing the income received and expenses incurred by the Company that are related to the Podcast. This report will be provided no later than thirty (30) calendar days after the end of the quarter. Each quarter will end on the last day of the following months of every year: March, June, September, December.

9. Podcast Statistics

Company will provide the Artist with weekly reports detailing the download statistics for each Podcast episode produced by the Company.

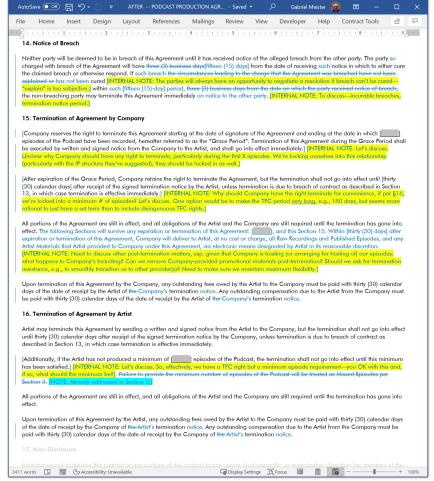
10. Ownership of Unedited Recordings

Company will be the sole owner and will have perpetual use and control of all unedited audio recordings produced under this Agreement. Company will be free to dispose of and treat in any way all unedited audio recordings produced under this Agreement, including but not limited to selling, advertising, distributing, permitting their use in other mediums, and including them in masters containing the work of other artists.

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Termination

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14. Notice of Breach	14. Notice of Breach
Neither party will be deemed to be in breach of this Agreement until it has received notice of the alleged breach from the other party. The party charged with breach of the Agreement will have three (3) business days from the date of receiving notice in which to either cure the claimed breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been explained or cured within three (3) business days from the date on which the party received notice of breach, the non-breaching party may terminate this Agreement immediately. 15. Termination of Agreement by Company Company reserves the right to terminate this Agreement starting at the date of signature of the Agreement and ending at the date in which [Neither party will be deemed to be in charged with breach of the Agreeme the claimed breach or otherwise resp explained or-has not been cured [N] "explain" is to subjective, within so the non-breaching party may termine termination rotice period] 15. Termination of Agreement by [Company reserves the right to termi episodes of the Podcast have been re
Alles agriculturs on de l'endor, concertendo, company estans tier agrin o retinitate de Agreenein, por lite retinitation auto noy do not ened offin fany 7 (30) calendar days after receipt of the signed termination notice by the Artist, unless termination is due to breach of contract as described in Section 13, in which case termination is effective immediately.	be executed by written and signed no Unclear why Company should have (particularly with the IP structure they
All portions of the Agreement are still in effect, and all obligations of the Artist and the Company are still required until the termination has gone into iffect.	[After expiration of the Grace Period, (30) calendar days] after receipt of th
Upon termination of this Agreement by the Company, any outstanding fees owed by the Artist to the Company must be paid with thirty (30) calendar days of the date of receipt by the Artist of the termination. Any outstanding compensation due to the Artist from the Company must be paid with thirty (30) calendar days of the date of receipt by the Artist of the termination.	13, in which case termination is effective we're locked into a minimum # of eperational to just have a set term than the set of t
6. Termination of Agreement by Artist whist may terminate this Agreement by sending a written and signed notice from the Artist to the Company, but the termination shall not go into ffect unfil thirty (30) calendar days after receipt of the signed termination notice by the Company, unless termination is due to breach of contract as escribed in Section 13, in which case termination is effective immediately.	All portions of the Agreement are still effect. The following Sections will sur- expiration or termination of this Agree Artist Materials that Artist provided to INTERNAL NOTE: Need to discuss of what happens to Company's brandin
Additionally, if the Artist has not produced a minimum of [] episodes of the Podcast, the termination shall not go into effect until this minimum nas been satisfied. Failure to provide the minimum number of episodes of the Podcast will be treated as Missed Episodes per Section 3.	ussistance, e.g., to smoothly transition
All portions of the Agreement are still in effect, and all obligations of the Artist and the Company are still required until the termination has gone into effect.	days of the date of receipt by the Arti- be paid with thirty (30) calendar days
Upon termination of this Agreement by the Artist, any outstanding fees owed by the Artist to the Company must be paid with thirty (30) calendar days of the date of receipt by the Company of the termination. Any outstanding compensation due to the Artist from the Company must be paid with thirty (30) calendar days of the date of receipt by the Company of the termination.	16. Termination of Agreement by Artist may terminate this Agreement b until thirty (30) calendar days after re described in Section 13, in which cas
Visit agroup as listed in the introductory paragraphs of this contract to any person, business entity, or organization other than the members of the ecording group as listed in the introductory paragraphs of this contract, and any legal representatives of any of the members of the recording proup.	[Additionally, if the Artist has not proc has been satisfied.] [INTERNAL NOTE if so, what should the minimum be?] Section 3. [NOTE: Already addressed
18. Notices	All portions of the Agreement are still
All notices to the parties will be in writing and will be sent to the address of the party slated at the beginning of this Agreement.	effect.
9. Governing Law his Agreement will be governed in all respects by the law of the State of Oregon.	Upon termination of this Agreement of the date of receipt by the Compan paid with thirty (30) calendar days of
20. Legal Construction	17. Non-Disclosure
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Thank you!

The Law Office of Gabe Meister

https://gabemeisterlaw.com gabe@gabemeisterlaw.com (917) 364-0446

Webinar: http://bit.ly/PodcastAgrWebinar

