**Title :**It is always important to name the agreement. Keep the description to a minimum, but the title identifies the type of contractual agreement. A sample would be **Endorsement Agreement** rather than **Endorsement Agreement between Athlete and Athletic Equipment Manufacturer.**

**Describe the Parties:**Establish the name and address of the parties to the contract. For example:

**This Agreement (the *Agreement*) is made as of *(date)* by and between *(Athletic Equipment Manufacturer)*, a corporation organized and existing under the laws of the state of *(name of state),* with its principal office located  at *(street address, city, county, state, zip code)*, referred to herein as *AEM*,and *(Name of Athlete)* of *(street address, city, county, state, zip code)*, hereinafter called *Athlete*.**

**Term:** It is always important to establish the duration of the agreement from the beginning date to the end date. For example:

 **The term of this Agreement shall begin on the effective date set forth above, and shall terminate on *(date).***

 **Grant of Rights:** This is where Athlete gives the Company the right to use his name, picture, etc.

**In consideration of the remuneration to be paid to *Athlete* pursuant to this Agreement, *Athlete* grants to *AEM* the right and license during the Contract Period to use the *Athlete’s* *Identification* solely in connection with the advertisement and promotion of *AEM’s* Services *and Products* within the Contract Territory. It is understood that *AEM* may not use the *Athlete’s Identification* in connection with any items for sale or resale, other than *AEM* Services *and Products* as specified in this Agreement. The foregoing rights to use the *Athlete Identification* is limited to television, radio and print advertising, advertising published over the Internet (provided such material is limited to advertising only), public relations materials, point-of-sale displays, free standing inserts, direct mail and billboards. *AEM* shall ensure that all uses of the *Athlete* *Identification* comply with applicable law.**

**Duties and Obligations:** Once the parties, term of the agreement, and purpose have been established, it is important to outline the rights, duties, and responsibilities of each party. This can include compensation, but usually compensation has its own paragraph for clarification purposes. It is important to describe the Athlete’s services in detail.

**Services of Athlete**

**A.        If *AEM* desires to use the services of *Athlete* at an *AEM* sponsored event, *Athlete* agrees to make one personal appearance as mutually agreed upon and at places reasonably convenient to his schedule. Such appearances shall not exceed *(number)* hours unless otherwise agreed upon. *AEM* further understands that failure to use services of *Athlete* pursuant to this Section shall not result in any reduction in payments to *Athlete* under this Agreement nor may the obligation to provide services be carried beyond the Contract Period. The obligation of *Athlete* to provide his services is subject to the condition that payments to *Athlete* are current and up to date.**

**B.**    **If *AEM* desires to use the services of *Athlete* for a *(number)*-hour commercial taped tie-in with *AEM*, *Athlete* and *AEM* must mutually agree upon a reasonable time and place of commercial activity.**

**C.       If *AEM* desires to use the services of *Athlete* as a model in connection with *AEM* advertising to promote its products in excess of *(number)* personal appearance and the commercial *(number)*-hour tie-in as mutually agreed upon and at places reasonably convenient to his schedule, each additional appearance will be at a rate of $\_\_\_\_\_\_\_\_\_\_  per day. Any additional appearances by *Athlete* at \_\_\_\_\_\_\_\_\_\_ per day and shall be subject to *Athlete*‘s sole approval, no matter how arbitrary or capricious *Athlete* might be in refusal. Such appearances shall not exceed *(number)* hours unless otherwise agreed upon. *AEM* agrees that it will reimburse *Athlete* for all reasonable travel, lodging and meal expenses incurred by *Athlete* in connection with such services. *AEM* further understands that failure to use services of *Athlete* pursuant to this Section shall not result in any reduction in payments to *Athlete* under this Agreement nor may the obligation to provide services be carried beyond the Contract Period. The obligation of *Athlete* to provide his services is subject to the condition that payments to *Athlete* are current and up to date.**

**D.       Should *AEM* use *Athlete* in television advertising to promote *AEM’s Services,* *AEM* will make all applicable required union scale and pension and welfare payments.**

**E.       If *AEM* confirms *Athlete* availability and an illness, injury or other cause beyond *Athlete*‘s control prevents *Athlete*‘s appearance on that date, then the parties will reschedule for another date, subject always to *Athlete*‘s prior bona fide commitments. *Athlete*‘s non-appearance for any of the foregoing reasons is not a breach of this Agreement and *Athlete* is not responsible for any expenses incurred by *AEM* in connection with that non-appearance.**

**Marketing Rights**

**The general marketing rights are as follows:**

**A.       During the Contract Period, *AEM* is granted use of *Athlete*‘s likeness and facsimile in advertising and promotion of *AEM*.**

**B.       During the Contract Period, *Athlete* shall make *(number)* personal appearance (not to exceed *(number)* hours). *Athlete* and *AEM* will mutually agree upon the nature of the appearances (which may include but are not limited to speaking engagements, *(name of sport)* exhibitions, and appearances at corporate meetings). Time and place of appearances are to be mutually agreed upon by *Athlete* and *AEM*.**

**Compensation:** This is often referred to as *legal consideration*.

**Payments**

***AEM* shall pay a base fee of $\_\_\_\_\_\_\_\_\_\_\_\_ upon execution of this Agreement. For additional appearances above and beyond the *(number of personal appearances)* guaranteed personal appearance and commercial tie-in, *AEM* shall pay *Athlete* within *(number)* days of the execution of this Agreement. *Athlete* may elect to have payments made by check, wire transfer, or bank transfer. Unless such election has been made in writing, all payments shall be made by check drawn to the order of *(Name of Athlete’s Agent)*. Past due payments under this Agreement shall bear interest at the rate of: (a) \_\_\_\_\_\_% per month; or (b) the maximum interest rate permissible under law, whichever is less. All amounts in this Agreement are in United States dollars**.

**Authorized Agent:** Often, the Athlete will want his agent to handle the details of carrying out the Agreement by making sure the Athlete is at the correct location (and getting him there) and other details like notice provisions and making sure the Athlete is paid what he is entitled under the contract.

***Athlete* designates *(Name of Athlete’s Agent)* as his authorized agent for all purposes under this Agreement. All notices of submissions to be made or delivered by *AEM* to *Athlete* pursuant to this Agreement shall be delivered to agent at *(address of Agent)* free of all charges such as, for example, shipping charges and customs charges. If any such charges are paid by *Athlete* or by his authorized Agent, *AEM* agrees to make prompt reimbursement.**

**Prior Approval:** The following clause protects how the Athlete’s identification is used.

***AEM* agrees that neither use of the *Athlete Identification* nor any item used in connection with the *Athlete Identification* will be made under this Agreement unless and until the same has been approved by *Athlete*. *Athlete* agrees that any material, advertising or otherwise, submitted for approval as provided in this Agreement may be deemed by *AEM* to have been approved under this Agreement if the same is not disapproved in writing within *(number of days)* business days after receipt of the material. *Athlete* agrees that any material submitted under this Agreement will not be unreasonably disapproved and, if it is disapproved, that *AEM* will be advised of the specific grounds for such disapproval. If *AEM* desires immediate approval of advertising material under this Agreement, *AEM* shall have the right to directly contact *Athlete*‘s authorized agent to obtain such approval. *AEM* agrees to protect, indemnify and save harmless *Athlete* and his authorized agent, or any of them, from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, arising out of, or in any way connected with, any advertising material furnished by, or on behalf of, *AEM*.**

**Default or Breach:** Default refers to a failure to fulfill a legal obligation or duty. A breach of contract is a failure to perform the contract in the manner called for by the contract.  A party is entitled to contractual remedies if the other party breaches a contract. A breach does not always result in a lawsuit or mean the end of a contract.  One party may be willing to waive or ignore the breach.  A waiver can be made by words or by conduct.  Accepting a late payment on a note would be an example of a waiver by conduct.  It is possible to make a waiver by silence.  For example, failure to object to the manner of performance in a timely manner would be a waiver by silence.

**If either party at any time during the Contract Period shall: (i) fail to make any payment or any sum of money specified in this Agreement to be made; or (ii) fails to observe or perform any of the covenants, agreements or obligations under this Agreement (other than the payment of money), the non-defaulting party may terminate this Agreement as follows: as to clause (i) above, if such payment is not made within *(number)* days after the defaulting party shall have received written notice of such failure to make payment; or as to clause (ii) above, if such default is not cured within *(number)* days after the defaulting party shall have received written notice specifying in reasonable detail the nature of such default. In order to be a sufficient notice, any such written notice shall specify in detail each item of default and shall specify the provision of this Agreement which applies to each item of default, and shall specify in detail the action the defaulting party is required to take in order to cure each item of default. The termination rights set forth in this section shall not constitute the exclusive remedy of the non-defaulting party under this Agreement, however, and if default is made by either party under this Agreement, the other party may resort to such other remedies as such party would have been entitled to if this Section had been omitted from this Agreement, subject to the terms of this Agreement. Termination under the provision of this Section shall be without prejudice to any rights or claims which the terminating party may otherwise have against the defaulting party, and if *AEM* is the defaulting party, *AEM* shall be responsible for any and all payments due under the terms of this Agreement in addition to other liabilities set forth above.**

**The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.**

**Termination for Cause:** This clause protects the Athlete in case of breach.

***Athlete* may terminate this Agreement for cause as follows:**

***(Name of Professional Sports League or Organization)’s* Prohibition. If during the term of this Agreement, *(Name of Professional Sports League or Organization)* or any other authorized group of *(Name of Professional Sports League or Organization)* mandates against *Athlete* from fulfilling his responsibilities pursuant to this Agreement, *Athlete* will be permitted to terminate this Agreement for cause and have no monetary obligations to *AEM* going forward.**

**Conduct Unbecoming. To the extent *AEM* engages in any conduct or activity that sheds a negative or disparaging light on *AEM* or *Athlete*, then *Athlete* may terminate this Agreement for cause.**

**Good Standing: If a corporation is not in good standing with the Secretary of State, the contract may not be enforceable.**

***AEM* represents and warrants that its business is in good standing and not currently in violation of any federal, state, or local laws, regulations, rules or ordinances.**

**Confidentiality: A confidentiality clause is often considered valuable to both the athlete and the Company.**

***AEM* agrees that compensation paid to *Athlete* is private, confidential, and a trade secret. *AEM* also agrees that violation of such confidentiality is hard to determine and *AEM* also agrees to $\_\_\_\_\_\_\_\_\_\_\_ as liquidated damages should *AEM* violate *Athlete*‘s confidentiality.**

**Termination for Breach: If one party does not live up to its end of the bargain, he or she may be released from the agreement. Topics covered in many termination clauses include:**

* **One party’s refusal to keep the terms of the agreement confidential,**
* **Cases in which the athlete is found guilty of a crime or is found to have been a part of unethical or immoral conduct (sometimes called a *morals clause*).**

**Use of Athlete’s Identification After Termination:**

**From and after the termination of the Contract Period, all of the rights of *AEM* to the use of the *Athlete’s* *Identification* shall cease absolutely and *AEM* shall not subsequently use or refer to the *Athlete’s Identification* in advertising or promotion in any manner whatsoever. It is further agreed that following termination of the Contract Period, *AEM* shall not advertise, promote, distribute or sell any item whatsoever in connection with the use of any name, figure, design, logo, trademark or trade name similar to or suggestive of the *Athlete’s* *Identification.***

 **Non-assignment:** It is important to establish that such an agreement is a personal services contract and therefore is non-assignable.

**The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.**

**Trademarks:** A “trademark” is a word, design or combination used by an individual or a business to identify its goods or services. In some cases a trademark can also be a sensory mark–a sound, a color or a smell. While marks identifying services rather than goods are technically referred to a “service marks” **we will use the term trademarks to include service marks.** Trademarks protect names used to identify goods (or services) and their source of origin.

***AEM* agrees that it shall not file, during or after the Contract Period, any application for trademark registration or otherwise obtain or attempt to obtain ownership of any trademark or trade name within the Contract Territory or in any other country of the world which consists of the *Athlete’s* *Identification* or any mark, design or logo intended to make reference to *Athlete*. If, prior to commencement of the Contract Period, *AEM* has filed one or more applications for registration of any such trademark, or otherwise has obtained any rights to such trademark, *AEM* agrees to cause such applications and trademarks to be assigned and transferred to *Athlete* as soon as possible.**

**Arbitration:** The traditional method of resolving a breach of contract issue is through litigation. Alternative dispute resolution may be more effective in to resolving disputes by mediation or arbitration. Most collective bargaining agreements address issues related to arbitration and/or mediation. Arbitration is a process in which the disputing parties choose a neutral third person, or arbitrator, who hears both sides of the dispute and then renders a decision. Mediation is a process by which parties in a dispute negotiate a settlement of their claims against each other through the assistance of a trained, neutral mediator. It is a non-adversarial process. Mediation is entirely voluntary and non-binding. The mediator has no power to neither render a decision nor force the parties to accept a settlement. The mediator generally does not give an opinion or render an award, and typically does not even have any knowledge of the case prior to mediation.

 The big difference between mediation and arbitration is that a mediator helps the parties to fashion their own settlement, while an arbitrator decides the issue. An arbitrator is more like a judge than a mediator. The parties go into arbitration knowing that they will be bound by the decision. The parties go into mediation knowing that nothing will be decided unless and until they agree to it. Arbitration, however, is unlike litigation in that the parties choose the arbitrator, the proceedings are conducted in a private manner, and the rules of evidence and procedure are informal. Also, in arbitration, the arbitrators tend to be experts in the issues they are called on to decide. Arbitration has been the widest used ADR process in the business world, and would be especially desirable where the parties do not want to litigate an issue, but do want a binding decision. They can go into arbitration knowing that they can get a quick, and relatively inexpensive decision, which they agree they will be bound by. Mediation offers no guarantee of a decision.

Most arbitration is binding. However, it can be non-binding if that is what the parties desire. That kind of defeats the purpose of arbitration though. In any event, in both binding and non-binding arbitration, the arbitrator renders a decision much like a judge.

**Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto.  If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third.  The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.**

**Reservation of Rights**

**All rights not specifically granted to *AEM* in this Agreement shall remain the property of *Athlete* to be used in any manner *Athlete* deems appropriate. *AEM* understands that *Athlete* has reserved the right to authorize others to use the *Athlete’s* *Identification* within the Contract Territory and during the Contract Period in connection with all tangible and intangible items and services other than the Services specified in this Agreement.**

**Indemnification**

***AEM* and *Athlete* mutually agree to protect, indemnify and hold harmless the other party, and its authorized agent, or any of them, from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorney’s fees, arising out of, or in any way connected with, actions or omissions of the indemnifying party, any advertising material furnished by, or on behalf of, such party, or any claim or action for personal injury, death or other cause of action involving alleged defects in such party’s services or products. *AEM* agrees to provide and maintain, at its own expense, general commercial and errors and omissions insurance with limits no less than $\_\_\_\_\_\_\_\_\_\_ and naming *Athlete* as an additional named insured. Within *(number)* days from the date of this Agreement, *AEM* will submit to *Athlete* evidence of such policy, requiring that the insurer shall not terminate or materially modify such policy without written notice to *Athlete* at least *(number)* days in advance of such termination of modification.**

**Limited Liability**

**Notwithstanding anything to the contrary in this Agreement, if *AEM* incurs any expenses, damages or other liabilities (including, but not limited to, reasonable attorney’s fees) in connection with the performance or non-performance of any term or provision of this Agreement, *Athlete*‘s liability to *AEM* shall not exceed the remuneration, excluding reimbursement of expenses, actually paid to *Athlete* by *AEM*. In no event will *Athlete* be liable for any indirect, incidental, reliance, special or consequential damages arising out of the performance or non-performance of this Agreement, whether or not *Athlete* had been advised of the possibility of such damages.**

**No Joint Venture**

**This Agreement does not constitute and shall not be construed as constituting an association, partnership, joint venture or relationship of principal and agent or employer and employee between *Athlete* and *AEM*. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and except as expressly set forth in this Agreement; nothing contained in this Agreement shall give, or is intended to give, any rights of any kind to any third person.**

**Governing Law:** Since many sports contracts affect parties from different states, agreeing upon the controlling law ahead of time can save jurisdictional issues from becoming problematic.

**This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of *(Name of State).***

**Merger:** Merger is a legal term that essentially means that any other prior oral or written agreements or statements are null and void, and that this contract constitutes the final and complete agreement between the parties.

**This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.**

**Miscellaneous Clauses**

**Severability**

**The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.**

**No Waiver**

**Waiver:** A party who waives a breach gives up the right to damages or remedies regarding such breach, and cannot use the breach as an excuse to keep from performing the contract. A waiver may be express or implied.  An example of an implied waiver would be accepting a defective performance without objection.  A waiver only applies to the specific matter waived.  A party is entitled to require the other party to strictly perform all other contractual obligations set forth in the contract.

**The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.**

**Notices**

**Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.**

**Attorney’s Fees**

**In the event that any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party’s attorney fees.**

**Entire Agreement**

**This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.**

**Modification of Agreement**

**Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.**

**Signatures**