



# UNDERSTANDING ATHLETE ENDORSEMENT CONTRACTS

Endorsement contracts set out the terms under which an athlete – and the athlete’s name and likeness – are associated with a company’s products and services. Endorsement contracts tend to use a lot of legal terminology. It is therefore important that athletes understand the meaning of these terms and the obligations they create.

## What is Due Diligence?

‘Due Diligence’ as noted in the Legal Protection of Athlete Marketing Value resources, endorsement contracts must be reviewed to ensure they do not conflict with existing endorsement contracts or contravene the rules and regulations of the sport’s governing body.

## What is an Endorsement Contract?

Endorsement contracts define the products and services which the athlete will be endorsing. Although a company may produce or provide a broad range of products or services, the company’s right to use the athlete’s name and likeness will be limited to those products and services which are set out in the endorsement contract.

## What is an example?

Notwithstanding this limitation on sponsor use, companies will endeavour to define the products and services caught by the endorsement contract as broadly as possible in order to increase the athlete’s endorsement as well as to exclude any other companies which may be regarded as a competitor.

For example, a soft drink company may seek to include coffee and tea in the contractual definition of “products”. Although the soft drink company may not produce coffee or tea as its primary product, the broad definition limits the athlete’s ability to endorse competing beverages, including well known coffee shops or tea producers. This distinction could be relevant.

Several summers ago, a tea producer ran advertisements suggesting that iced tea was a new “radical” drink. Although the athlete’s personality and performance might fit the product’s image, he or she would be precluded from promoting the product based on the definition of “products” under the soft drink endorsement contract.



## What should athletes watch for?

Other ways in which companies endeavour to expand the scope of an athlete's endorsement is through "flow through" rights. For example, endorsement contracts with charge cards often allow the charge card's affiliates and members to use the athlete's name and likeness. These can include other financial institutions as well as other companies which advertise the acceptance of the charge card. This could create significant problems for athletes with other product or service endorsement contracts. It is therefore important to read and understand these terms as they could have significant legal and financial implications.

## What does 'Territory' mean?

Endorsement contracts will define the territory within which the company may promote the athlete's endorsement of the company's products and services. This can include a city, region, country or the entire world. Again, companies will want broad rights; however, if the company's sales are limited to Canada and the United States, the territory should be similarly restricted thereby allowing the sale of similar rights in Europe, Asia or South America.

## How does 'Compensation' work?

An athlete can be compensated in a variety of ways. However they boil down to essentially two types: a fee, "in-kind" products or services, or a combination of both.

**Fees:** the fee paid an athlete may comprise the following:

- a fee for entering into an endorsement contract with the company
- a base fee which may or may not increase over the term of the endorsement contract
- a bonus based on number of competitions entered, finishing position at competitions and overall ranking within the sport
- a bonus based on the athlete's selection to any Provincial team or National team (as well as a bonus based on the athlete's finishing position at that event)
- a bonus based on the athlete's receipt of any award or title offered by the sport governing body or any sports publication or government (such as BC Athlete of the Year, Canadian Athlete of the Year etc.)
- a fee for each photo shoot or commercial filmed (based on a specified number of uses)
- a fee for each personal public appearance including those promoting the company's product or service or at non-product or service events (such as award dinners).



## How does 'Compensation' work?

**Products:** An athlete may receive products or services in the form of “in-kind” compensation; however, the value of the in-kind consideration should not always be deducted from any fee payable as it may be argued that the athlete’s use of the product or service further exposes and promotes the company’s products or services.

Additionally, if the product is one which the athlete will use in the performance of his or her sport, there should be a trial period to ensure that the product does not derogate from the athlete’s performance.

## What involved in the 'Term' of a contract?

From the athlete’s perspective, the desired length of an endorsement contract will depend on, among other things, the stage of the athlete’s career. If the athlete is young and has not peaked, a long term endorsement contract may not be advantageous unless there is specific provision for an increase in compensation in accordance with any increase in the athlete’s market value.

Endorsement contracts may also include a renewal option which grants the sponsor a “right of first refusal” to renew the contract. In this case, the basis on which the endorsement contract may be renewed should be clearly stated in order to ensure that the athlete is not precluded from opting for other more lucrative sponsorships.

## What does 'Athlete Services' cover?

The sponsor’s expectations of the athlete should be clearly set out in the endorsement contract and may include the following:

- personal appearances at hospitality events
- motivational speeches at corporate seminars
- public appearances, including autograph signings
- media events (often prior to a competition)
- print, radio and television media interviews
- attribution of athlete’s name to sponsor print or web publications
- availability for radio advertising and for photo and filming sessions for advertising and promotional purposes
- wearing sponsor logo or clothing
- using sponsor products or services (which should be acceptable to the athlete or allow the athlete a test period)
- phrases denoting the relationship between the athlete and sponsor



## What is "Logistics of Athlete Services"?

In addition to requiring athletes to provide specified services, the endorsement contract should set out how those services will be provided by the athlete, in particular:

- the number of sessions the athlete is required to attend
- advance notice which must be provided by the sponsor
- options for the athlete to defer sessions based on training requirements or competitions (which usually require the athlete to provide the sponsor with specified notice)
- compensation payable for each session
- reimbursement of athlete expenses for attending the session
  - for example, travel, accommodation and meal costs (including class of travel and accommodation)
- penalties for athlete's failure to comply with stated requirements (usually failure to provide the sponsor with the required notice)

## How can sponsors use "Name & Likeness"?

In order for sponsors to capitalize on an athlete's association with the sponsor's products and services, endorsement contracts permit the sponsor to use the athlete's name and likeness. As noted in Section 3, Legal Protection of Athlete Marketing Value, an athlete's name and likeness have market value and should be legally protected at law (where possible) as well as under the terms of the endorsement contract through the controlled use of the athlete's name and likeness. The key aspects of what are sometimes termed "usage rights" are the sponsor's right to use the athlete's name, photograph, film footage, signature, likeness and biographical information for the term of the endorsement contract:

- in all forms of advertising and promotion
- on premium items for the sponsor's distribution

Sponsors often seek to extend the former beyond the term of the endorsement contract to allow for "archival" use. However, the difficulty with archival use is that it could conflict with future sponsorships. Further, no additional fees are generally payable, and so, where possible, this should be avoided.

Premium products can also present problems for athletes as it is often difficult for athletes to control their distribution. For example, sponsors might distribute premium products in conjunction with products or services which are not covered by the endorsement contract or may permit affiliated companies or merchants to distribute them even though they have no rights of association with the athlete. This, too, should be carefully reviewed. Finally, where applicable and practical, athletes should approve all uses of their name and likeness in order to ensure that they are being used appropriately.



## What is meant by Legal 'Boilerplate'?

Legal contracts contain a number of standard provisions which are often termed “boilerplate”. However, the fact that they are “boilerplate” does not mean that they are not important terms of the endorsement contract or that athletes need not review or understand them. In fact, with the rare exception, they tend to be one-sided if not onerous. Three key terms which require review are the following:

### Representations and Warranties:

Representations and warrants constitute the athlete’s promise to do or not to do specified things. These commonly include the athlete’s stipulation that:

- the athlete hasn’t entered into a conflicting sponsorship agreement
- the athlete has not and will not make disparaging comments about the sponsor or its products and services
- the athlete has not used and will not use banned substances

Other representations and warrants may be included and should be reviewed as well, particularly where the terms tend to be vague. The athlete’s breach of these conditions commonly provides the sponsor with the right to terminate the endorsement contract.

### Indemnities:

An indemnity constitutes one party’s agreement to pay any costs which the other party may incur as a result of that party’s acts or omissions. For example, where “B” is sued by “C” as a result of the acts or omissions of “A”, “A” is required to compensate “B” for any costs payable by “B” to “C”. Endorsement contracts invariably contain an indemnity provision and, while some require sponsors to indemnify athletes (and not just athletes to indemnify sponsors), they are nonetheless onerous. Athletes generally do not have the financial ability to indemnify sponsors and therefore it is a term athletes may not be able to fulfill. The sponsor’s remedy should therefore be limited to termination of the endorsement contract. Athletes, on the other hand, may wish to require an indemnification from sponsors particularly where the athlete endorses a product or service which may cause harm or damage and therefore may give rise to liability. In these cases, athletes should also consider being added as an insured party to the sponsor’s liability insurance policy.

### Termination:

Endorsement contracts may be terminated on a number of grounds, including:

- where the endorsement contract expires and is not renewed
- where the athlete breaches one of the representations or warranties
- where the athlete becomes insolvent
- where the athlete concludes his or her athletic career, is disabled or is otherwise unable to

Compete In the latter case, there should be a pro rating of any fees which may be due and payable to the athlete.



## What about post contractual considerations?

Following execution of an endorsement contract, it is important to monitor the relationship. This will involve ensuring that the company complies with the terms of the contract and, in particular, monitoring use of the athlete's image and compensation.

Conversely, it is imperative to ensure that the athlete's relationship with the company remains good. This will assist both parties in developing additional opportunities, greater market exposure and greater value for the company and the athlete. Finally, prior to the expiry of the endorsement contract, it will be necessary to determine if it is in the best interests of the athlete to remain with the company.

## Where does Independent Legal Advice fit?

Most endorsement contracts contain a provision requiring athletes represent and warrant that they have obtained independent legal advice – that is, that they have discussed the endorsement contract with legal counsel and that they understand and accept its terms.

This section is intended to provide athletes an understanding of some of the key provisions of endorsement contracts, but it is not a substitute for legal advice. Athletes may, however, be eligible for legal advice at no cost through BC Athlete Voice.

Need more information? Contact BC Athlete Voice at [info@bcathletevoice.ca](mailto:info@bcathletevoice.ca) or on 604-333-3660.