



TEAM USA ATHLETES'  
COMMISSION

# TEAM USA ATHLETE ENDORSEMENT CHECKLIST

## HOW TO USE THIS CHECKLIST:

As with any contract, it is crucial to understand what each party is trying to achieve from an endorsement relationship. It is important to remember that, in each instance, the relationship between the parties goes two ways: sponsors will usually make a financial commitment (sometimes alongside other non-financial obligations); and in return, athletes will grant various rights, which may be extensive and coupled with other benefits.

This checklist may be used by athletes as a resource before they sign any endorsement deal to make sure all key provisions are reviewed thoroughly and that the athlete fully understands the rights they are granting sponsors when they sign a deal. This checklist, to the extent possible, is designed to apply across a range of endorsement opportunities, although in each case careful consideration should be given to the nature of the deal as some of the points on this list may not apply.

**\*\*Disclaimer:** This checklist is for educational purposes only. Nothing in this checklist constitutes legal advice\*\*

If you have any questions please reach out to the Team USA Athlete Commission: [teamusa.ac@teamusa-ac.org](mailto:teamusa.ac@teamusa-ac.org)

## DEFINITIONS & EXAMPLES:

**Affiliates** are organizations or entities (including people) that control, or are controlled by, another company or entity. Affiliates often share management or ownership and use common facilities, employees, and equipment.

**Assignment** allows one party to transfer the rights and benefits of a contract to another party. Audit is a formal inspection of an individual or organization's accounts or financial situation.

**Copyright** is a type of intellectual property that protects original works of authorship including literary, dramatic, musical, and artistic works.

**Copyright License** is an instrument that allows an owner of a copyright to authorize the use of the copyright to another party.



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**Copyright Licensee** is the party receiving the permission to use another party's copyright.

**Copyright Licensor** is the party granting permission to another party to use its copyright.

**Deliverable** is a term describing the quantifiable goods or services that must be provided upon completion of a project.

**Distribution Channel** is a path that a product or service can take on its way from a manufacturer or service provider to a consumer. This includes wholesalers, retailers, distributors, and the Internet.

**Endorsement** is the act of expressing support or approval of something (such as a product or service) or someone.

**Exclusivity** limits a party's ability to engage in particular conduct with anyone other than the other party to the contract. For example, an exclusivity clause in an endorsement contract with a clothing company may restrict an athlete from endorsing any other clothing company.

**Indemnification** means one party's agreement to pay the other party for losses that the other party has incurred or will incur as related to a specified incident (usually a lawsuit or other claim).

**Name, Image, and Likeness** are the three components of an individual's "publicity rights". These are independent or collectively identifiable aspects of a person that make them unique, including but not limited to, their name, image, likeness, nickname, signature, social media account, any symbol, name, or design that readily identifies them or any combination thereof.

**Patent** is a type of intellectual property that protects technical inventions.

**Representations and Warranties** provide, within a contract, facts and assurances (representations), as well as security against loss (warranties) if the statements made are not true.

**Royalty** refers to a contractual payment made to an individual or company for the ongoing use of their assets, including copyrighted works, trademarks, and name, image, and likeness.

**Subsidiary** is a company that belongs to another company (which is usually referred to as the parent company or holding company).

**Term** is a fixed or limited period of time for which a contract lasts or is intended to last.

**Trademark** is a type of intellectual property that protects words, phrases, symbols, or designs used to identify and promote products or services. Examples include, among other things, brand names and logos.

**Whitelisting** is the process of influencers and creators (including athlete endorsers) granting advertising permissions to brands or partners to use their social media handles, content, and audience targeting to unlock a new media and acquisition channel.



✓	<b>TERM</b>	<p><b>A fixed or limited period of time for which a contract lasts or is intended to last</b></p> <ul style="list-style-type: none"> <li>• Consider adding options to extend contract or review</li> <li>• Be aware of upcoming major dates/events (e.g. Olympics, league draft, etc.). Bargaining power may increase ahead of/during major events</li> <li>• Clarify whether extension of contract applies to usage (i.e., Company's use of Athlete's content) or whether additional services are required from Athlete</li> </ul>
✓	<b>TERRITORY</b>	<p><b>The geographical area that is covered by the contract</b></p> <ul style="list-style-type: none"> <li>• Define geographical area (e.g., exclusive use in the U.S., worldwide, etc.)</li> </ul>
✓	<b>DESCRIPTION OF SERVICES</b>	<p><b>The services that are required of Athlete under the Agreement</b></p> <ul style="list-style-type: none"> <li>• Clearly define services. Critical to know what is - and what is not - required of Athlete</li> <li>• Broaden or narrow depending on specifics</li> </ul>
✓	<b>SCHEDULING</b>	<p><b>Endorsement agreements regularly involve required appearances and in-person and/or virtual activities</b></p> <ul style="list-style-type: none"> <li>• Be aware of any existing or potential time restrictions</li> <li>• Weekdays v. weekends</li> <li>• Look for any other considerations that have to be met &amp; adhered to during the time frame</li> </ul>
✓	<b>DESCRIPTION OF DELIVERABLES</b>	<p><b>The specific tangible materials that Athlete will be required to produce or take part in</b></p> <ul style="list-style-type: none"> <li>• Specify how the materials will be produced/used (for example, social media posts, commercials, etc.)</li> <li>• Scope (i.e., elements of a project, assumptions, requirements, etc.)</li> </ul>
✓	<b>GRANT OF RIGHTS</b>	<p><b>Athlete's granting of permission to Company to use Athlete's name, image, likeness, and other intellectual property</b></p> <ul style="list-style-type: none"> <li>• Grants of rights should almost always be limited</li> <li>• Name, image, and likeness rights are being granted</li> <li>• Trademarks and copyrights may also be at issue</li> <li>• Clarify any reserved rights</li> </ul>
✓	<b>AUTHORIZED DISTRIBUTION</b>	<p><b>The right of Company to permit third parties to distribute products endorsed by Athlete</b></p> <ul style="list-style-type: none"> <li>• Exclusions (scope)</li> <li>• Exclusions (categories)</li> </ul>
✓	<b>SOCIAL MEDIA POSTS</b>	<p><b>Common deliverable in endorsement deal; Athlete agrees to post a certain number of times on Athlete's social media platform(s)</b></p> <ul style="list-style-type: none"> <li>• Understand and negotiate the scope and frequency of posts Company asks for</li> <li>• Whitelisting (granting brand advertising permissions to Athlete's social media account) and reposting authority</li> </ul>



- ✓ APPROVALS
- ✓ EXCLUSIVITY
- ✓ PAYMENT
- ✓ TRAVEL & EXPENSES
- ✓ PROMOTIONAL ACTIVITIES
- ✓ TERMINATION RIGHTS/ EFFECTS OF TERMINATION
- ✓ DEATH/ DISABILITY
- ✓ MORAL CLAUSE/ REVERSE MORAL
- ✓ REPRESENTATION & WARRANTIES

**Athlete's right to approve content before it is distributed**

- Request approval for all content that uses Athlete's name/likeness (prevents Company from distributing content that Athlete has not seen)
- Request approval for all uses of Athlete name(s)/likeness
- Specify distribution channels
- Consider personal use

**Company's right to be the only entity permitted to use Athlete's intellectual property in certain categories**

- Carve-outs (for example, for specific companies or industries that do not directly compete)
- Standard exclusions

**Fee(s) paid by Company to Athlete in exchange for services and grant of rights**

- Understand and negotiate payment schedule
- Clarify how expenses will be paid and by whom

**Travel and Expenses related to Athlete's performance of services**

- Understand and negotiate who pays for expenses such as travel (hotel level, flight level), makeup/wardrobe, security

**Activities to be performed by Athlete to promote endorsed good/service**

- Look for who has final sign off
- Make sure there is no other agreement in place that could conflict

**Right of either party to terminate the contract**

- Clarify Athlete's right to terminate agreement
- Clarify Company's right to terminate agreement
- What is the effect of either scenario (for example, do what money is owed to whom in the event of a termination)?

**What happens in the event Athlete dies or becomes disabled**

- Consider where the proceeds go (for example, to Athlete's estate)
- Indemnity (see below)

**Requirement of Athlete to adhere to certain behavioral standards**

- Understand Company's termination rights (broad/narrow) in the event that Athlete violates morals clause
- Consideration that would allow for terminations (i.e. acts contrary to public opinion)
- Reverse morals clause - what happens in the event that Company conducts itself in a manner such that its values no longer align with Athlete's?

**Statements in the contract asserting particular facts (such as Athlete's ownership of Athlete's own intellectual property)**

- Consider adding a clause regarding misrepresentation of material fact (i.e. if Company misrepresents a material fact)





## INDEMNIFICATION

**A party's agreement to pay the other party for losses that the other party has incurred (or will incur) as a result of a specified incident (usually a lawsuit or other claim)**

- Company should indemnify Athlete for any claims arising from any breach by Company, Company's negligence, misconduct, and products liability
- Limit Athlete's exposure



## INSURANCE

**Insurance policy or policies that Athlete or Company is required to purchase**

- Understand the level of insurance required
- Consider how much



## REMEDIES

**Money or other remedy available to one party if the other party breaches the contract**

- Damages- money paid to Athlete to restore Athlete's status to what it was prior to the violation
- Coercive remedies - requiring an Athlete to do or omit doing a specific act through injunctive relief or court order of specific performance
- Declaratory judgment - court determines Athlete's rights in a specific situation without awarding damages or ordering a particular action



## AUDIT/REPORTING /INSPECTION

**Athlete's right to receive financial information from Company related to Athlete's performance under the contract**

- Yearly
- Semi-annually
- Quarterly



## GOVERNING LAW

**The state whose laws govern a dispute between the parties to the contract. Preferred states include:**

- Delaware
- New York
- Texas
- California



## OTHER KEY PROVISIONS

**Athlete should also consider:**

- Confidentiality of any Athlete Information
- Consider free goods/cap on discounts, giveaways, etc.
- Restriction on the ability to use Olympic Marks
- Compliance with League rules, regulations, policies
- FTC Compliance
- No Assignment or Assignment subject to Athlete's approval)
- No hidden cameras



## LICENSE

- Consider what happens when a license is in place
  - Consider what is being licensed: This could be a trademark, a family of trademarks, artwork, a product, or a combination of these





## LICENSE (CONT.)

- If the license is for a trademark, is it registered: Look for the ® symbol which, if used properly, indicates that the mark is registered, but could be misleading
  - Still need to ensure the mark is registered for all categories of licensed products and in all applicable territories
    - Trademark registrations are specific to product and service categories
  - Ask if a search at the U.S. Patent and Trademark Office (<http://www.uspto.gov>), the World Intellectual Property Organization (<http://www.wipo.int/romarin>) or conduct your own search
- Registered Artwork:
  - The © symbol does not mean that the owner has a copyright registration
  - U.S. copyright registrations are not readily searchable and the U.S. Copyright Act does not require copyright registrations
  - However, there are presumptions and benefits to having a copyright registration
- Exclusivity: review if exclusive or nonexclusive rights
- Patented Product:
  - Searching the U.S. Patent and Trademark Office website may be helpful, but it's much easier if you have the patent registration number
  - Important for an attorney to read the patent registration to discern what portions of the product are protected
- Territory: consider the territory of the license
  - Consider if the license grants rights throughout the world, or specific identified countries
- Distribution: consider the channels of distribution
  - Consider if the channels fit with the Athlete's goals for the product
  - Look for stores or channels carved out
  - Are if there are promotional or closeout sales to discounts permitted
- Term: consider whether the length of the term is too short or too long
- Renewal: review if the license agreement be renewed
  - Consider who can renew it and under what circumstances
  - If it can be renewed, review how long is the renewal period
    - Often, the unilateral right of the licensee to renew the license agreement is based upon meeting certain minimum sales and not being in breach of the license agreement





## LICENSE (CONT.)

- Termination:
  - Consider if the license agreement can be terminated before the expiration
  - Review who has the right to terminate and under what circumstances
- Indemnification: athletes should be indemnified for all third-party claims due to Company's negligence and misconduct as well as infringement and fraud
- Expiration: consider what happens when the license agreement expires-
  - Will the licensee have a sell-off period to permit sales of the remaining inventory
  - Will the licensee be prohibited from dumping its remaining inventory
  - Will the licensor have a sufficient opportunity to replace the licensee and avoid a gap in the sales of licensed products
- Royalties:
  - Review the royalty rate, when the royalties will be paid, and if there are there minimum guaranteed royalties
  - Are royalties based on gross sales, net sales, or some other benchmark
  - Consider what, if any, deductions from the licensee's sales are permitted (such as returns and discounts) in determining what royalties are owed
  - Ask what reports the licensee should provide in showing royalty calculations
  - Will there be any advance payment?
  - Consider if the licensor can audit the licensee's books to confirm that the royalty payments are correct
- Advertising Fees: ask if the licensee required to pay an advertising fee to the licensor
  - Consider if there are any minimum advertising requirements
- Approval Process: What is the approval process for licensed products (and for packaging, advertising and marketing materials)
  - Typically, the licensed products must meet some minimum standards set by the Athlete and the licensee is responsible to ensure that the licensed products comply with all applicable law
- Representations/Warranties: Athletes need to ask if are there appropriate representations and warranties from the other side
  - It is important that brands represent that their products will not infringe on intellectual property rights as well, as that they have the authority to enter into the agreement
  - Also consider minimum sales goals







## LICENSE (CONT.)

- Other Important Considerations:
  - Exit strategy if the relationship falls apart
  - If an athlete ends up in a dispute with the license partner, what law applies?
    - Consider if an athlete would want to arbitrate disputes or litigate in court and where the arbitration or court proceedings would be held
  - Governing Law: Delaware or New York
  - Agreement should not be assignable

