

## Business Law Chapter 4

### Contract Assignment

You and/or your partner are to create a contract using the following information. The contract should be typed (12 – Times New Roman) or hand written in blue/black ink. The following is a checklist of matters to be used in drafting a contract for the employment of an athlete or entertainer:

- Names of parties.
- Addresses of parties.
- Statement of hiring.
- Term of contract.
- Duties and obligations of athlete/entertainer.
- Attendance at training camp/rehearsals.
- Amount of compensation.
- Times at which compensation payable.
- Payment of bonus.
- Effect of taking bonus or bet on outcome of game.
- Board, lodging, and traveling expenses while traveling.
- Compliance with rules of the athletic association and/or club.
- Covenant not to play for others during term of contract.
- Covenant not to engage in related activities.
- Effect of not being in physical condition.
- Effect of injuries.
- Effect of temporary retirement from active sports or entertainment.
- Payment of fines imposed by athletic association or club.
- Right of employer to assign the contract.
- Right of employer to seek injunction to prevent playing for others.
- Use of pictures for publicity purposes.
- Arbitration or other method of settling disputes between parties.
- Option to renew.
- Termination of contract.
- Grounds for termination.
- Procedure for termination.
- Incorporation of applicable rules and regulations of athletic association or club into Contract.
- State's law to govern interpretation of contract.
- Effective date of contract.
- Date of execution of contract.

### **Drafting Suggestions for a Sports/Entertainment Contract**

The following clauses are pretty standard.

#### **Title**

It is always important to name the agreement. Keep the description to a minimum, but the title identifies the type of contractual agreement. Phrases can be used such as Sponsorship Agreement, Sports Contract, Agreement for Athletic Services, or Representation Agreement.

## **Describe the Parties**

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

**Employment Agreement made (*date*), between (*Name of Employer*), 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*), the holder of a professional (*Name of Sport/Club*) franchise of the (*Name of league/club*) (*Employer*), and (*Name of Employee*), of (*street address, city, county, state, zip code*), (*Employee*).**

## **Term**

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

**Subject to the provisions of the renewal options on the part of either party to this Agreement, as set forth below, the term of this Agreement shall begin on the effective date set forth above, and shall terminate on (*date*).**

## **Option of Team or Club to Renew Contract**

**On or before (*date*) following the last playing season covered by this Agreement, Club may tender to Player an Agreement for the next succeeding season by mailing such Agreement to Player at his address as shown in this Agreement. If player does not sign and return such Agreement to Club so that Club receives it on or before (*date*) of that year, then this Agreement shall be deemed renewed and extended for a period of (*e.g., one year*), upon the same terms and conditions in all respects as are provided in this Agreement, except that the compensation payable to Player/entertainer shall be the sum provided in the Agreement tendered to Player pursuant to the provisions of this section, which compensation shall in no event be less than \_\_\_\_\_% of the compensation payable to Player/Entertainer for the last playing/performing season covered by this Agreement.**

## **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.

**Player/Entertainer's employment shall include attendance at training camp/rehearsal, playing the games/concerts scheduled for the team during the scheduled season, playing all exhibition games/concerts scheduled by the team/club during and prior to the scheduled season, and playing the play-off or championship series games for which Player is to receive such additional compensation as provided in this Agreement.**

## **Exhibition games or concerts**

**Exhibition games/concerts shall not be played on the (*number*) day prior to the opening of a team/entertainer's regular season schedule or on a day prior to a regularly scheduled game/concert. Exhibition games/concerts during the regular season shall not exceed (*number*). For the purpose of this section, invitational games/concerts shall not be considered as exhibition games.**

## Compensation

This is often referred to as *legal consideration*. An addendum attached to the contract is often helpful when using standard league contracts. The addendum could state increased salary, bonuses, and other incentives.

## Board, lodging, and travel expenses

**Club shall pay the reasonable board and lodging expenses of player incurred while playing in games/concerts for club in other than the home city of club. Club shall also pay all proper and necessary traveling expenses of player and his meals en-route to and from games.**

## Exclusivity

**Due to the personal and unique nature of the sports/entertainment contract, most employers and sponsors require an exclusive arrangement. It is common for a sponsor in this paragraph to require the athlete to use the products or services exclusively at all times, especially in public, or the endorser may have the right to terminate the agreement as a breach of contract or failure to use “best efforts.”**

## Participation in other sports

**Player and Club recognize that Player’s participation in other sports/activities may impair or destroy his ability and skill as a (*indicate sport*) player. Accordingly, player agrees, from and after the execution of this Agreement, and for the duration of this agreement, not to engage or participate in any other sport or activity involving a substantial risk of personal injury, including, but not limited to, automobile or motorcycle racing, fencing, parachuting or skydiving, boxing, wrestling, karate, judo, skiing, or ice hockey.**

## Confidentiality

A confidentiality clause is often considered valuable to both the team and the athlete/entertainer. Players/entertainment unions have somewhat undermined such a clause with respect to athletes/entertainers under contract while represented by a players/entertainment union by making salaries public. In nonunion contracts, confidentiality is an important consideration for the sponsor and the athlete/entertainer to prevent similarly situated athletes/entertainers from comparing their agreements. This will undoubtedly create concern for a party to the contract if the terms are revealed.

## Termination

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,
- The athlete’s voluntary discontinuation of participation in the sport,
- 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*).
- Participating in dangerous activities (e.g., skydiving, motocross racing).

## **Grounds for Termination by Player/Entertainer**

- If club defaults in the payments to player/entertainer provided for in this agreement or fails to perform any other material obligation agreed to be performed by club under this agreement, player shall notify club in writing of the facts constituting such default or failure.
- If club shall not cause such default or failure to be remedied within (number) days after receipt of such written notice, player shall have the right, by a further written notice to club to terminate this agreement.
- On termination of this agreement by player/entertainer, all obligations of both parties under this agreement shall cease on the date of termination, except the obligation of club to pay player/entertainer's compensation to such date of termination.

## **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.**

## **Alternative Dispute Resolution (ADR)**

The traditional method of resolving a breach of contract issue is through litigation. Alternative dispute resolution may be more effective in 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.

It is not uncommon to find arbitration provisions in business contracts. An example of such a provision is as follows:

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

### **Governing Law**

Since many sports/entertainment 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 receding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.**

### **Signature Line**

Since many parties require possession of an original copy of the contract, signing in blue ink can avoid issues as to which contract is the original. Sometimes it is best to have the parties initial each page at the bottom to avoid later substitution of pages.