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*Attorneys for Defendant Boris Berian*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

NIKE USA, INC., an Oregon corporation,

Case No. 3:16-cv-00743-SB

Plaintiff,

v.

BORIS BERIAN, an individual California resident,

Defendant.

**SECOND DECLARATION OF  
MERHAWI KEFLEZIGHI**

**In Support Of Defendant Boris Berian's  
Opposition To Plaintiff's Motion For  
Order To Show Cause Why A Preliminary  
Injunction Should Not Issue**

I, Merhawi Keflezighi, hereby declare as follows:

1. I am the Founder and Director of HAWI Management. I submit this declaration in further support of Defendant Boris Berian's Opposition To Plaintiff's Motion For Order To Show Cause Why A Preliminary Injunction Should Not Issue. The information herein is based on my personal knowledge, and if called and sworn as a witness I could and would testify competently thereto.

2. I have been Boris Berian's agent since October 2015.

3. By early October 2015, Nike was aware that I was working with Boris, yet made no effort to set up a time to discuss Boris.

4. On October 20, 2015, I wrote to Ben Cesar at Nike and asked if we could meet the following week in New York City. (I was traveling to New York for the marathon, and expected Mr. Cesar would be there as well.) I received no response. I saw Mr. Cesar while in New York and asked again for a meeting, but that meeting never took place.

5. In November 2015, I began conversations with New Balance about a potential endorsement agreement for Boris for 2016 and beyond.

6. One reason I approached New Balance is that Boris is more comfortable running in New Balance shoes than Nike shoes; Boris feels the New Balance shoes give him more of a bounce.

7. I also approached New Balance because Boris had concerns about his relationship with Nike. Boris was only under contract with Nike for seven months in 2015, yet for three months Nike did not respond to Boris's inquiries regarding posters, outstanding invoices, and other issues. At one point, Boris's coach even wondered if he had the right email address for Mr. Cesar. Nike had been unresponsive to my meeting requests as well. So when I found a

meaningful partnership opportunity for Boris with New Balance, I pursued that aggressively, recognizing that Nike would have the right to match.

8. I explored with New Balance a number of possible terms and conditions for Boris's contract, including terms that Nike might be unwilling to match. I suggested, for example, no reductions, non-exclusivity for New Balance with respect to certain wearables (*e.g.*, watches), and allowing Mr. Berian to race in Big Bear Track Club gear.

9. During this same time period, I also discussed with New Balance the possibility of sponsoring Big Bear Track Club. Boris was a member of Big Bear before he signed with Nike and credits this club with helping him perform the way he is performing today. Before joining Big Bear Track Club in 2014, Boris worked at McDonalds and trained alone.

10. By mid-January or very soon thereafter, New Balance had agreed to sponsor Big Bear Track Club. That sponsorship is product only; there is no cash compensation to the athletes or coach. If Nike had been more responsive to my meeting requests, they could have had this sponsorship opportunity. But Nike was not responsive.

11. Negotiations with New Balance produced a set of terms that Mr. Berian found generally agreeable (the "New Balance Offer"), and I sent those terms to Nike by email dated January 19, 2016. I advised Nike at that time (and numerous times thereafter) that the New Balance Offer did not include reductions.

12. Nike responded to my email of January 19, 2016 by asking me to resend the offer on official New Balance letterhead, which I did on January 20, 2016.

13. On January 22, 2016, I received by email a copy of the letter (including attachments) submitted as Exhibit 4 to the Declaration of Ben Cesar (Doc. 8). The letter was addressed to me from Nike's John Capriotti. It appeared that Nike wanted to match the New

Balance Offer, but had not done so. I understood Mr. Capriotti's letter to be asserting that the New Balance Offer included reductions, and that Nike expected Mr. Berian to enter a contract with Nike that also included reductions. Mr. Capriotti's letter also invited us to submit a "revised offer from New Balance." My understanding was that, if we did make any further submission, Nike would evaluate at that time whether to offer a contract without reductions.

14. On January 27, 2016, I spoke with Ben Cesar by telephone. On that call, I advised again that the New Balance Offer included no reductions. I also pointed out that there was no contract at this point because, plainly, the parties had not reached agreement on all material terms. To illustrate, I asked Mr. Cesar whether there were reductions in the offer. He said that he did not know.

15. On that same January 27 call, I advised Mr. Cesar that Mr. Berian was not interested in resuming a relationship with Nike, and further reserved the right, in the event Nike declined to respect that preference, to submit the "revised offer" from New Balance that Mr. Capriotti had requested in his January 22 letter.

16. On that same January 27 call, I advised Mr. Cesar that New Balance had decided to sponsor the Big Bear Track Club (which Mr. Cesar said he already knew), that this was permissible under the terms of the Affiliation provision in the Nike Offer, and that it meant that Mr. Berian would be wearing a uniform and shoes with the Club and New Balance logos in all domestic competitions.

17. On January 29, 2016, and again on February 14, 2016, Mr. Berian competed in Big Bear Track Club gear that had the insignia of both the Club and New Balance.

18. On February 15, 2016, Mr. Cesar sent to me by email a long-form contract for Boris. A true and correct copy of that long-form contract is attached hereto as Exhibit 1. (I

understand that Boris's counsel will file this Exhibit in redacted form, and may tender the unredacted version to the Court for review in camera.)

19. That long-form contract included a ten-page set of additional terms and conditions, titled "Nike Standard Terms & Conditions." These terms were not part of the New Balance Offer, and many of them were unacceptable. Indeed, several squarely contradicted the New Balance Offer. For example, Nike had included reductions (¶ 10, pp. 7-9).

20. Nike had also included a set of items that "ATHLETE represents, warrants and covenants," including that Boris would not compete for or be associated in any way with any non-Nike sponsored club, and that Boris could only wear Nike gear with the Big Bear Track Club logo attached thereto (¶ 13(a)(vi)-(vii), p.10). I viewed both of these terms as contradicting the Affiliation provision in the New Balance Offer, and effectively requiring Mr. Berian to disassociate from the Big Bear Track Club, which was, as Nike knew, already sponsored by New Balance. Nike also already knew or should have known that the "official uniform and footwear of the Big Bear Track Club," which the Affiliation provision allowed Boris to wear, was New Balance-sponsored.

21. If Nike had sent a long-form contract that matched the New Balance Offer, I still would have wanted to negotiate with Nike, on Boris's behalf, over a number of other provisions, including: California as governing law; mandatory non-binding arbitration; a provision addressing attorney's fees and costs in the event of any dispute; no confidentiality of any terms of the agreement; a coaching stipend of \$5,000 per month; a right of first refusal provision limited to 60 days or none at all; and no option years. I also would have retained a lawyer to review the contract and would likely have followed his or her guidance in negotiating the onerous new clauses that Nike added in its so-called "Standard" terms & conditions insert.

22. On February 2, 2016, prior to Nike sending the Long-Form Contract, Boris and I had a conference call with Ben Cesar and John Capriotti to discuss why Boris wanted to move in a different direction. At the end of the call, they asked us to discuss the situation internally and to let them know Boris's position about resuming a relationship with Nike.

23. My immediate response to Mr. Cesar's February 15, 2016 email is attached to the Cesar Declaration (Doc. 8) as Exhibit 5. I advised that Boris still did not wish to resume a relationship with Nike, and that if Nike did not wish to respect Boris's personal preference, I would provide the additional information about the New Balance Offer (as requested by Mr. Capriotti's January 22 letter) within a week.

24. On February 19, 2016, however, I received by email two letters from Nike's outside counsel, one addressed to Boris, the other addressed to the General Counsel of New Balance. The February 19 letter to Mr. Berian is attached to the Cesar Declaration (Doc. 8) as Exhibit 6. Both letters threatened legal action.

25. Nike's counsel sent additional threatening letters in March and April, but Mr. Berian's position never changed: the New Balance Offer did not include reductions; the Nike Offer did.

26. The communications discussed above, including Nike's long-form contract, as well as other communications that I and/or Boris had with Nike during this time period, confirmed that Nike was not matching the New Balance Offer—and that Nike's proposed contract was not one that Boris was interested in entering, particularly given his greater comfort with New Balance shoes.

27. Through the entire 2016 track and field season to date, including at competitions since and including January 29, 2016, Boris has trained and competed in New Balance shoes.

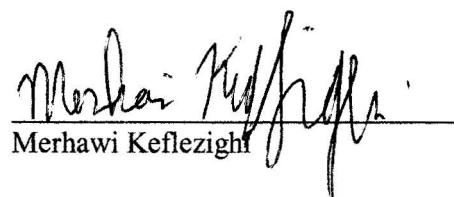
He has also referred to New Balance favorably on social media, consistent with his favorable view of that company and its products.

28. In an abundance of caution, Boris competed in 2016 in the Big Bear Track Club uniform and shoes, believing that, even if Nike proves to have a contract, he is abiding by the Affiliation provision and is thus not in breach. The exception to this is the 2016 World Championships in March 2016, when Boris was required to wear a Nike Team USA uniform (the same as he would wear during the Olympic Games, if he makes the team). A Google image search for “Boris Berian 2016” returns predominantly pictures of Boris in that Nike uniform.

*See generally* <http://tinyurl.com/hs84sht> (redirect link to Google image search results).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 17, 2016.



Merhawi Keflezighi

## TRACK & FIELD CONTRACT

THIS IS A CONTRACT made and entered into by and between **BORIS BERIAN** ("ATHLETE") and **NIKE USA, Inc.** ("NIKE") and with regard to the use by NIKE of ATHLETE's personal services and expertise in the sport of track & field and ATHLETE's endorsement of the NIKE brand and use of NIKE products. In consideration of the mutual promises, terms and conditions set forth on this "Contract Terms Sheet" and in the attached NIKE Standard Terms and Conditions (the "Standard Terms") the parties agree as follows:

- A. **CONTRACT PERIOD:** The Contract term shall be from January 1, 2016 to December 31, 2018, unless extended in accordance with Paragraph 9(a), 10(a), or 10(b) of the Standard Terms (the "Contract Period").
- B. **GRANT OF ENDORSEMENT RIGHTS:** Subject to the Standard Terms, ATHLETE grants to NIKE during the Contract Period and throughout the world: (1) the exclusive right and license to the unlimited use in any media now known or hereafter created (including, without limitation, the Internet and mobile technologies) of the "ATHLETE Endorsement" and "Activity Based Information" on, within and/or in connection with the design, production, advertisement, marketing, promotion and/or sale of "Products", "Dynamic Athletic Rating" and "Dynamic Athletic Training" (as each is defined in the Standard Terms) and/or NIKE brands, and (2) the non-exclusive right and license to use the ATHLETE Endorsement and Activity Based Information on, within and/or in connection with the design, production, advertisement, marketing, promotion and/or sale of "Digital Features" (as defined in the Standard Terms), in any media now known or hereafter created (including, without limitation, the Internet and mobile technologies). During the Contract Period, except as otherwise permitted under this Contract, ATHLETE shall not enter into or maintain any endorsement, promotional, consulting or similar agreement: (i) with any person or entity that licenses, manufactures, brands or sells Products (whether through retail locations, exclusively on-line, by direct mail, television shopping networks or otherwise) other than NIKE, or (ii) that would prohibit or otherwise restrict NIKE's use of the ATHLETE Endorsement (or subject such use to a third party's approval) consistent with the rights granted under this Contract.
- C. **PERSONAL SERVICES & USE OF NIKE PRODUCTS:** ATHLETE shall wear and/or use exclusively "NIKE Products" (as defined in the Standard Terms) in accordance with Paragraph 2 of the Standard Terms, serve as a spokesperson for NIKE, and render consulting and other personal services in accordance with Paragraphs 3, 4 and 5 of the Standard Terms.
- D. **ANNUAL APPEARANCES:** Each "Contract Year" (as defined in the Standard Terms), ATHLETE shall work with NIKE in good faith to determine an agreed upon number of Personal Appearances (as defined in the Standard Terms), On-line Appearances (as defined in the Standard Terms), press conferences and other appearances at which ATHLETE shall participate.
- E. **BASE COMPENSATION:** NIKE shall pay ATHLETE annual "Base Compensation" (as defined in the Standard Terms) in the amount set opposite the indicated Contract Year in SCHEDULE A (subject to subsection E(2), Paragraphs 10 and 11 of the Standard Terms, and any withholding obligations required by law) in semi-annual installments due on January 31 and June 30 of each Contract Year, except that any payments scheduled to fall due before this Contract was fully executed shall be paid within thirty (30) days of full execution of this Contract.
- F. **PERFORMANCE BONUSES:** NIKE shall pay ATHLETE performance bonuses, if any, as set forth on the attached Schedule A.
- G. **NIKE PRODUCTS FOR ATHLETE'S USE:** During the Contract Period, NIKE shall supply to ATHLETE, at no expense, such reasonable quantities of commercially available NIKE Products as ATHLETE may reasonably request for ATHLETE's personal and professional use in order to fulfill ATHLETE's obligations under this Contract.
- H. **ANNUAL MERCHANDISE CREDIT:** Each Contract Year, for personal and family use, ATHLETE shall have the right to shop on-line through [nikeelite.com](http://nikeelite.com) (subject to registration on such website and otherwise in accordance with Paragraph 6 of the Standard Terms) and order NIKE merchandise up to the Merchandise Credit (retail value) set out in Schedule A.

I. **ANNUAL TRAVEL CREDIT:** Each Contract Year, NIKE shall provide ATHLETE with a travel allowance as set out in Schedule A. ATHLETE shall be responsible for submitting receipts for such travel expenses each Contract Year in accordance with this Contract and NIKE's policies and procedures. Payment shall be due within sixty (60) days of submission to NIKE of such receipts. If in any Contract Year ATHLETE does not exhaust such allowance for such year, such unused portion will be deemed forfeited.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the date indicated below.

**ATHLETE**

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(signature)

Address: \_\_\_\_\_

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Phone No.: \_\_\_\_\_

**NIKE USA, Inc.**

One Bowerman Drive  
Beaverton, OR 97005

By: \_\_\_\_\_

Jonathan Banks  
Vice President, North America Sports Marketing

By: \_\_\_\_\_

Gary D. Way  
Vice President & Global Counsel, Sports Marketing

Dated: \_\_\_\_\_

## NIKE STANDARD TERMS & CONDITIONS

1. **ADDITIONAL DEFINITIONS.** The terms set forth below in this Paragraph shall be defined for all purposes under this Contract as follows:
  - (a) "Base Compensation" means the amounts payable to ATHLETE under Section E of the Contract Terms Sheet and including Rollover Increases, if any.
  - (b) "Activity Based Information" means performance and/or activity information/data digitally collected from ATHLETE during competition, training or other activities, including, but not limited to, speed, distance, vertical leap height, maximum time aloft, heart rate, running route, etc.
  - (c) "IAAF" means the International Association of Athletics Federations.
  - (d) "IOC" means the International Olympic Committee.
  - (e) "NGB" means the national governing body of track & field for the country for which ATHLETE holds citizenship and represents in international competition.
  - (f) "NOC" means the National Olympic Committee of the country for which ATHLETE holds citizenship and represents in international competition.
  - (g) "Code" means the World Anti-Doping Code promulgated by the World Anti-Doping Agency, as the same may be amended or modified during the Contract Period.
  - (h) "ATHLETE Endorsement" means ATHLETE's name, nickname, initials, uniform/bib number(s), autograph, facsimile signature, voice, video or film portrayals, photograph, likeness and image or facsimile image, and any other means of endorsement or identification of or by ATHLETE, and statements, interviews, and statistical, biographical or other information or data related to ATHLETE (and is other than Activity Based Information).
  - (i) "ADO" means a signatory to or adopter of the Code and having responsibility for implementing or enforcing anti-doping rules within its authority (including, without limitation, the IOC, IAAF, NOC, NGB, Major Event Organizations or National Anti-Doping Organizations).
  - (j) "Contract Year" means a 12-month period from January 1 until December 31.
  - (k) "Digital Features" means digital content or applications whether or not used in conjunction with a NIKE Product (e.g., an add-on Nike+ or a mobile device application), designed to improve, encourage, support or inspire performance, fitness and/or activity.
  - (l) "Dynamic Athletic Rating" means any rating, testing, system, or other method or compilation (including without limitation digital content and applications) of measuring, assessing or comparing athletic performance, athletic ability or athleticism (including athletic sensory performance such as vision, etc.).
  - (m) "Dynamic Athletic Training" means training programs, exercises and systems or other training methods designed to develop or improve an individual's athletic ability, performance or athleticism (including athletic sensory performance such as vision, etc.).
  - (n) "IAAF" means the International Association of Athletics Federations.
  - (o) "National Team" means the track & field team designated by the relevant NGB or NOC to represent that country in the Olympic Games, World Championships or other international competition.
  - (p) "NIKE Group" means NIKE USA, Inc., NIKE Retail Services, Inc. (d/b/a NikeTown), their parent company NIKE, Inc., their licensees, distributors, subsidiaries, affiliates and any successor companies to any of the foregoing.
  - (q) "On-line Appearance" means a NIKE requested appearance under Paragraph 5 made by ATHLETE for the purpose of participating in real-time or digitally recorded featured interviews, extended question and answer sessions (e.g., chat sessions), generating e-mail, bulletin board posting or other extended interactive communication intended for digital or internet transmission.

- (r) "Personal Appearance" means an appearance by ATHLETE made at the request, and on behalf, of NIKE and involving in-person contact with the public, the trade, media or invited guests including, but not limited to, in-store appearances, participation in or at athletic camps or clinics, exhibition games and skill competitions, celebrity events, trade shows, NIKE employee gatherings, sales or account meetings.
  - (s) "Products" means all: (1) athletic and athletically-inspired or derived footwear (including without limitation athleisure footwear, training shoes, and sports sandals) (collectively, "Footwear"); (2) clothing articles of an athletic, athleisure, activewear, streetwear, sportswear or casual nature, including but not limited to competition uniforms, singlets, speedsuits, shorts, T-shirts, tank tops, polo shirts, pants, socks, sweaters, vests, jackets, fleece, windbreakers, raingear and other outerwear, headwear, undergarments, underlayer, and compression wear (padded and unpadded); (3) accessories of an athletic or sports-related nature, including but not limited to bags, headbands and wristbands; (4) sunglasses, protective eyewear and eyewear with performance attributes; (5) body-worn (or handheld) activity tracking/monitoring devices and/or performance or fitness improvement and/or activity enhancing electronic or digital devices including, but not limited to, watches (GPS and non-GPS enabled), race timers, stopwatches, heart-rate monitors, pedometers, calorimeters and performance tracking monitors (collectively, "Fitness Devices"); (6) sports equipment NIKE currently produces (e.g., inflatables, weight training and fitness accessories, and Dynamic Athletic Training equipment such as parachutes, power bands, agility webs, speed ladders, power and quick react balls, etc.); and (7) any other sports equipment which NIKE may add to its Products lines (e.g., racquets, etc.) at any time during the Contract Period; provided, however, that NIKE shall have first given specific written notice to ATHLETE designating any such item of merchandise as included in this sports equipment category of Products, and that as of ATHLETE's receipt of such notice ATHLETE has not already entered into a third-party product endorsement agreement with respect to such item of sports equipment.
  - (t) "NIKE Products" means all Products in connection with which, or upon which, the NIKE name, the Swoosh Design, the NIKE AIR Design, the Basketball Player Silhouette ("Jumpman") Design or any other trademarks or brands (e.g., Converse, Brand Jordan, SPARQ) now or hereafter owned and/or controlled by NIKE appear (collectively, the "NIKE Marks"), singly or in any combination.
  - (u) "Signature Property" means any logos, designs, trademarks, service marks, characters, personas, copyrights, or other forms of intellectual property created by NIKE or ATHLETE (or their respective agents) in connection with this Contract that utilize the ATHLETE Endorsement and are specifically and exclusively identified with ATHLETE.
  - (v) "Legitimate Excuse" shall mean (1) a bona fide pre-existing professional or family commitment, or a bona fide pre-existing important personal commitment, which would conflict directly with an appearance requested under this Contract, and the particulars of which ATHLETE must fully disclose to NIKE if and when ATHLETE declines to make such appearance, or (2) an unanticipated bona fide personal or family emergency or crisis (e.g., child birth, serious illness, injury or death).
  - (w) "USATF" means USA Track & Field.
  - (x) "USOC" means the United States Olympic Committee.
2. **USE OF NIKE PRODUCTS.** ATHLETE shall wear and/or use exclusively NIKE Products while participating in all athletic or athletic-related activities, including but not limited to all track & field/road racing competitions and/or meets and related press conferences; training, practices, exhibition games and skill competitions; sports-related camps or clinics, meetings, interviews, autograph sessions and promotional appearances, whether or not on behalf of NIKE; celebrity or charity athletic events; and all other occasions during which ATHLETE wears Products, poses for athletic photographs, discusses ATHLETE's participation in or in connection with track & field or otherwise engages in athletic or athletic-related activities. ATHLETE shall also make best efforts, whenever possible, to wear and/or use NIKE Products when promoting products and services of other sponsors. In addition, ATHLETE shall wear and use NIKE Products that have been designated by NIKE Sports

Marketing for ATHLETE's use, and if no such designation has been made, shall select and wear NIKE Products on which the NIKE Swoosh logo color contrasts with the remainder of the Product. NIKE shall not be liable to ATHLETE for any injury or damage suffered by ATHLETE as a result of wearing and/or using NIKE Products, except any such injury or damage resulting from the adjudicated negligence of NIKE. ***ATHLETE specifically waives, only as against NIKE, all express warranties and implied warranties of merchantability and fitness for a particular purpose.***

3. **CONSULTATION.** Throughout the Contract Period, ATHLETE shall, upon NIKE's request, render independent consulting and other personal services for the purposes of assisting NIKE in the design, development, advertisement, marketing and/or sale of NIKE Products and the promotion of track & field/road racing. ATHLETE shall also report to NIKE, either orally or in writing if so requested, on the NIKE Products supplied to ATHLETE through NIKE's product development testing program. Such written or oral reports shall address the fit, design, wear characteristics, function, materials and construction techniques of NIKE Products ATHLETE wears or uses. NIKE shall determine in its sole discretion which, if any, of the insights, suggestions, or other input of ATHLETE NIKE wishes to take into account or exploit in any way. If NIKE requests ATHLETE to travel in order to render product development testing services, NIKE shall pay all reasonable and necessary travel and out-of-pocket expenses of ATHLETE in connection therewith.
4. **PRODUCTION COOPERATION.** Throughout the Contract Period, ATHLETE shall, upon NIKE's request with reasonable prior notice and subject to ATHLETE's previously scheduled track & field commitments, make himself reasonably available in connection with the creation and/or production of advertisement, marketing or promotional materials, content or commercials (e.g., attending photo shoots for print advertisements, posters, brochures or other promotional materials, making himself available briefly by phone or computer to provide content, attending videotaping, audio recording and/or filming sessions related to commercials or other advertising or promotional efforts). ATHLETE acknowledges that, except as provided below, he shall receive no additional compensation for such services (or appearances under Paragraph 5 below), it being understood that the consideration for such services is encompassed by the Base Compensation. NIKE agrees to pay all reasonable and necessary out-of-pocket expenses incurred by ATHLETE in connection with any such services or appearance.

#### 5. APPEARANCES.

- (a) In connection with the promotion of NIKE Products and/or NIKE brands, each Contract Year, upon reasonable prior notice and subject to ATHLETE's previously scheduled track & field commitments ATHLETE shall make the appearances set forth in Section D of the Contract Terms Sheet. ATHLETE acknowledges that, except as provided below and except for any performance bonuses ATHLETE may achieve while competing in any of the events specified in subsection D(2) of the Contract Terms Sheet, ATHLETE shall receive no additional compensation for any appearances under Section D of the Contract Terms Sheet.
- (b) ATHLETE acknowledges that the agreement to provide the appearances set forth in subparagraph (a) above (and production sessions as set forth in Paragraph 4 above) is a material term of this Contract. Therefore, when NIKE requests an appearance or attendance at a production session, ATHLETE shall agree to the appearance or production session within five (5) business days unless ATHLETE has a Legitimate Excuse. The determination of the legitimacy of ATHLETE's reason for declining to make the appearance or production session shall be made solely by NIKE, acting in good faith. Should ATHLETE not respond to the appearance or production session request within five (5) business days, ATHLETE shall be deemed to have declined the request without a Legitimate Excuse. If during any Contract Year ATHLETE fails to show for a specifically confirmed appearance or production session, or declines two (2) or more of NIKE's requests without a Legitimate Excuse (in each case, a "Missed Appearance"), then NIKE shall have the right, but not the obligation, to reduce ATHLETE's Base Compensation as provided in the reduction provisions of Paragraph 10.

6. **MERCHANDISE ORDERS & NIKE STORE VISITS.** In accordance with Section H of the Contract Terms Sheet, ATHLETE shall be entitled to order NIKE Products through "NIKE Elite" (at [nikeelite.com](http://nikeelite.com)) subject to procedures established by NIKE for such purpose. In addition, ATHLETE

shall be entitled to access NIKE Products at select NIKE retail locations subject to the attached NIKE Retail policy. If in any Contract Year ATHLETE does not exhaust ATHLETE's annual merchandise credit for such year, such unordered portion shall be deemed to have been forfeited. Overlimit orders, if any, may be charged against ATHLETE's cash or other compensation. ATHLETE acknowledges that certain NIKE Products (e.g., certain sports equipment) requested by ATHLETE for ATHLETE's use as required under this Contract may, at the time of such request, not be commercially available and that NIKE's inability to provide such requested NIKE Products on such occasions shall not be deemed a violation or breach of this Contract.

7. **USE OF ATHLETE ENDORSEMENT.** Prior to any NIKE (or agency) generated commercial use of ATHLETE Endorsement in any advertising or on any Product, NIKE shall submit a sample or concept of such intended use to ATHLETE for approval, such approval not to be unreasonably withheld. Approval of such use shall be presumed unless, within seven (7) days from receipt of the sample or concept submitted, ATHLETE notifies NIKE that approval is being withheld and provides a reasonable basis therefore. Notwithstanding the foregoing, the parties also acknowledge that the posting or use of the ATHLETE Endorsement by NIKE, ATHLETE or a third party on a NIKE controlled blog, website, social media or similar media shall not require the prior approval of the ATHLETE.
8. **OWNERSHIP OF NIKE MARKS, DESIGNS & CREATIVES.** ATHLETE (a) acknowledges that NIKE exclusively owns all rights, title and interest in and to the NIKE Marks and that NIKE shall exclusively own all rights, title and interest in and to any logos, trademarks, service marks, characters, personas, copyrights, shoe or other product designs, patents, trade secrets or other forms of intellectual property created by NIKE or ATHLETE (or their respective agents) in connection with this Contract including, without limitation, any Signature Property and/or any intellectual property created in the course of ATHLETE's consultation with NIKE pursuant to Paragraph 3; (b) shall completely cooperate with NIKE in its efforts to obtain and maintain protection for such right, title and interest, including by promptly executing any documents as may be required by NIKE in connection therewith; and (c) further acknowledges that after expiration or termination of this Contract, NIKE shall continue to have the unrestricted right to use (and without any ATHLETE approval) such intellectual property, including without limitation the right to re-issue a "signature" product previously associated with ATHLETE, provided that such post-contractual use shall not then include the ATHLETE Endorsement.
9. **OPTION YEAR(S) AND RIGHT OF FIRST DEALING & FIRST REFUSAL.**
  - (a) NIKE shall have the option to extend this Contract for two (2) additional Contract Years (i.e., January 1, 2019 to December 31, 2019 and January 1, 2020 to December 31, 2020) exercisable upon written notice of such election furnished to ATHLETE by no later than December 1, 2018 for the 2019 Contract Year and December 1, 2019 for the 2020 Contract Year.
  - (b) At NIKE's request, ATHLETE shall negotiate with NIKE in good faith with respect to the terms of a renewal of this Contract. The parties shall not be obligated to enter into an agreement if they cannot settle on mutually satisfactory terms. Until sixty (60) days prior to the expiration of this Contract (the "Exclusive Negotiating End Date"), ATHLETE shall not (nor shall ATHLETE permit ATHLETE's agents, attorneys, accountants, representatives or employees to) engage in discussions or negotiations with any third-party regarding ATHLETE's wearing, sponsoring, promoting, advertising or endorsing, or providing consulting or similar services with respect to, any Products ("Endorsements/Services") after the Contract Period.
  - (c) During the Contract Period and for a period of one hundred eighty (180) days thereafter, NIKE shall have the right of first refusal for Endorsements/Services, as follows. If ATHLETE receives any bona fide third-party offer at any time on or after the Exclusive Negotiating End Date with respect to any Endorsements/Services, ATHLETE shall submit to NIKE in writing the specific terms of such bona fide third-party offer in its entirety, in the form of a true and complete copy which shall be on the offeror's letterhead or other identifiable stationery or imprint readily authenticatable by NIKE as having originated with such third-party offeror. NIKE shall have twenty (20) business days from the date of its receipt of such third-party offer to notify ATHLETE in writing if it will enter into a new contract with ATHLETE on terms no less favorable to

ATHLETE than the material, measurable and matchable terms of such third-party offer. If NIKE so notifies ATHLETE within such 20 business day period, ATHLETE shall enter into a contract with NIKE on the terms of NIKE's offer. If NIKE fails or declines to match or better the material, measurable and matchable terms of such third-party offer within such 20 business day period, ATHLETE may thereafter consummate an agreement with such third party on the terms of the offer made to ATHLETE. Prior to the Exclusive Negotiating End Date, ATHLETE shall not (nor shall ATHLETE permit ATHLETE's agents, attorneys, accountants, representatives or employees to) solicit, consider or present to NIKE, and NIKE shall not be obligated to respond to, any third-party offer for any Endorsements/Services.

#### **10. RIGHT TO EXTEND, REDUCE AND PRORATE BASE COMPENSATION.**

- (a) If for any reason, other than as set forth in subparagraph 10(b) below, ATHLETE fails to compete in IAAF- or USATF-sanctioned competition for a period of one hundred twenty (120) days or more (the "Suspension Period"), then NIKE shall have the right, in its sole discretion, to withhold payment(s) of all or any portion of Base Compensation to be paid during the Suspension Period and/or require reimbursement of all or any portion of Base Compensation paid during the Suspension Period (such reimbursement to be made to NIKE within thirty (30) days of notice to ATHLETE). In addition, NIKE may elect, upon written notice to ATHLETE at least sixty (60) days prior to the expiration of the Contract Period, to extend the Contract Period by an amount of time equal to the Suspension Period (the "Extension Term"). If NIKE so elects, then during the Extension Term, NIKE shall pay ATHLETE the Base Compensation, if any, that was withheld and/or reimbursed with respect to the Suspension Period (subject to any reductions applicable during such Suspension Period). Further, without prejudice to any other right NIKE may have hereunder, if for any reason ATHLETE fails to compete in IAAF- or USATF-sanctioned competition for one hundred eighty (180) days or more, then NIKE shall have the option to terminate this Contract pursuant to Paragraph 11.
- (b) If during any Contract Year ATHLETE receives notice from a relevant ADO sent in accordance with Article 7 of the Code, or the notice provision of such ADO's code that is the equivalent thereof (a "Review Notice"), NIKE shall have the right, in its sole discretion, to withhold all or any portion of Base Compensation and/or other remuneration (e.g., performance bonuses, travel or other reimbursements), to be paid pending the conclusion of the period of "Review" and/or require reimbursement of all or any portion of Base Compensation and/or other remuneration paid to ATHLETE during the pendency of any Review (such reimbursement to be made to NIKE within thirty (30) days of notice to ATHLETE). Throughout the Contract Period, ATHLETE shall notify NIKE immediately in writing of receipt of any Review Notice. In addition, NIKE may elect, upon written notice to ATHLETE at least sixty (60) days prior to the expiration of the Contract Period, to extend the Contract Period by an amount of time equal to the aggregate period of the Review (the "Review Extension Period"). If NIKE so elects, then during the Review Extension Period, (1) NIKE shall pay ATHLETE the Base Compensation and/or other remuneration, if any, that was withheld and/or reimbursed as a result of the Review (subject to any reductions applicable during the period of such Review). Further, without prejudice to any other right NIKE may have hereunder, if such period of Review continues for one hundred eighty (180) days or more, then NIKE shall have the option to terminate this Contract upon written notice to ATHLETE. For purposes of this paragraph, the Review period shall begin upon ATHLETE's receipt of a Review Notice from an ADO and shall conclude upon the rendering of the written decision by the ADO.
- (c) If ATHLETE does not, for any reason, compete in at least ten (10) IAAF- and/or USATF-sanctioned competitions during a Contract Year, NIKE may, in its sole discretion, reduce Base Compensation as follows:

Number of IAAF- and/or USATF-sanctioned competitions ATHLETE competed in:	Amount of Reduction
less than 6	50%
6 or 7	35%

8 or 9	25%
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If the IAAF or USATF or official thereof issues an express directive to ATHLETE to remove or to cover NIKE Marks in order to compete, ATHLETE's failure to compete for refusal to comply with such directive shall not be counted against ATHLETE for purposes of calculating reductions in accordance with this subparagraph 10(c).

- (d) NIKE may, in its sole discretion, reduce Base Compensation in accordance with any one or more of the following:
  - (i) If, in any Contract Year, ATHLETE for any reason is not ranked in the top ten (10) in the world for the 800m event, as such rankings are published annually in *Track & Field News* or if *Track & Field News* ceases publication, its recognized successor, NIKE shall have the right, in its sole discretion, to reduce annual Base Compensation by twenty percent (20%).
  - (ii) If, in any Contract Year, ATHLETE for any reason does not compete at a major outdoor championship (e.g., IAAF World Outdoor Championship or Olympic Games), NIKE shall have the right, in its sole discretion, to reduce annual Base Compensation by twenty-five percent (25%). NIKE may exercise any reductions under this subparagraph (ii) at the earliest possible opportunity including, without limitation, upon ATHLETE's failure for any reason to qualify for such major outdoor championship.
- (e) If during any Contract Year any national or international governing body (including but not limited to the IOC, USOC, IAAF or any assignee thereof including any broadcast partner or agent of the foregoing) or any other third party enforces or threatens to enforce any regulation, restriction, prohibition or practice that deprives NIKE of the promotional benefits and/or product/brand exposure contemplated by NIKE's use of the ATHLETE Endorsement in any advertising or promotion, then for such Contract Year NIKE shall have the right, in its sole discretion, to withhold the payment of any performance bonuses and reduce annual Base Compensation by twenty-five percent (25%).
- (f) NIKE may, in its sole discretion, reduce Base Compensation in accordance with any one or more of the following:
  - (i) If, in any Contract Year, ATHLETE for any reason does not compete on behalf of NIKE in, or attend a press conference at, either one or both of the Prefontaine Classic or the Penn Relays (or, at NIKE's discretion, alternate NIKE-sponsored competitions), Base Compensation shall be reduced by twenty percent (20%) per missed meet or press conference; and,
  - (ii) If at any time during the Contract Period ATHLETE "spats" or otherwise partially or wholly covers or obscures, removes or defaces (including, without limitation, through the placement of any numbered or other bib) any NIKE Marks on any NIKE Products worn or used by ATHLETE (or causes or permits any third party to "spat" or otherwise partially or wholly cover, obscure, remove or deface such NIKE Marks), or wears any tattoos as contemplated in Paragraph 13(a)(vii)(3) below, ATHLETE's annual Base Compensation shall be reduced by twenty-five percent (25%) per occurrence.
  - (iii) If ATHLETE fails, for any reason, to wear/use NIKE Products in accordance with Paragraph 2, ATHLETE's annual Base Compensation shall be reduced by twenty-five percent (25%).
  - (iv) In the event of a Missed Appearance (other than for an appearance pursuant to Section D of the Contract Terms Sheet), ATHLETE's annual Base Compensation shall be reduced by twenty-five percent (25%) for each Missed Appearance (after the first in each Contract Year).
- (g) ATHLETE expressly acknowledges and agrees that the reductions described in Paragraphs 10(c), (d), (e), and (f) are not a penalty and are reasonable in light of the anticipated harm caused by a breach and the difficulty of proving the amount of loss and otherwise providing an

adequate remedy to NIKE as a result of any of the actions described above. All reductions under such Paragraphs may be applied irrespective of other reductions already made, and shall be in addition to, and without limiting or prejudice to, NIKE's other rights and remedies under this Contract or at law or in equity. More specifically, the reductions authorized by such Paragraphs are not intended as a substitute for the recovery of actual damages NIKE may otherwise be entitled to recover for losses incurred as a result of NIKE's exercise of its termination rights under Paragraph 11(b).

- (h) In the event NIKE exercises any right of proration/reduction under this Paragraph 10: (i) such proration/reduction shall be effective as of the date of the next regularly scheduled payment, unless otherwise indicated; (ii) such proration/reduction shall remain in effect for the remainder of the Contract Period, unless otherwise indicated; and (iii) NIKE shall have the right to either withhold payment(s) of Base Compensation or require reimbursement of Base Compensation, if any, paid in excess of the amount to which ATHLETE would be entitled after such proration/reduction (such reimbursement to be made to NIKE within thirty (30) days of notice to ATHLETE). All rights of proration and reduction under this Paragraph 10 or elsewhere in this Contract shall be cumulative and may be applied irrespective of other reductions or prorations already made for that Contract Year. All percentages refer to the applicable Base Compensation amount specified in Section E of the Contract Terms Sheet and, in the event NIKE exercises more than one of its rights of proration or reduction, shall be added together with the applicable Base Compensation multiplied by the sum of such percentages. For example, if ATHLETE incurs a 25% reduction pursuant to Paragraph 10(c) and a 25% reduction pursuant to Paragraph 10(f)(ii), the total reduction shall be calculated by multiplying ATHLETE's Base Compensation by 50% (100% minus the sum of 25% and 25%).

## **11. RIGHTS OF TERMINATION.**

- (a) Without prejudice to any other right ATHLETE may have hereunder or otherwise, ATHLETE shall have the right to terminate this Contract immediately upon notice by letter (texts or emails shall be of no effect) to NIKE in the event of one or more of the following: (i) NIKE is adjudicated as insolvent or declares bankruptcy; (ii) NIKE fails to make payment to ATHLETE of any sums due under this Contract which default is not cured within thirty (30) days following receipt of written notice from ATHLETE of such default; or (iii) NIKE is in material breach of this Contract and fails to cure such breach within thirty (30) days following NIKE's receipt of written notice from ATHLETE of such breach.
- (b) Without prejudice to any other right NIKE may have hereunder or otherwise, NIKE shall have the right to terminate this Contract immediately upon written notice to ATHLETE in the event of one or more of the following: (i) the commercial value of the ATHLETE Endorsement is substantially impaired by ATHLETE's commission of any act which shocks or offends the community (including indictment or charging in a criminal information or equivalent process for any crime, failing an officially sanctioned drug test or admission to a substance abuse treatment program) or which manifests contempt or disregard for diversity, public morals or decency; (ii) ATHLETE takes any action inconsistent with ATHLETE's recommendation and endorsement of NIKE and/or its Products, or discourages use of NIKE Products in any manner whatsoever; (iii) ATHLETE dies, voluntarily retires or becomes permanently disabled; (iv) ATHLETE commits any anti-doping rule violation under the Code or such other applicable code or rules as may be adopted by an ADO having jurisdiction over ATHLETE or competition in which ATHLETE has competed; (v) during any Contract Year ATHLETE fails to compete for any reason in at least six (6) IAAF- or USATF-sanctioned events; (vi) ATHLETE "spats" or otherwise partially or wholly covers or obscures, removes or defaces (or causes or permits any third party to "spat" or otherwise partially or wholly cover, obscure, remove or deface) any NIKE Marks on any NIKE Products; (vii) ATHLETE breaches any of the terms of Paragraph 13; (viii) ATHLETE breaches any material term of this Contract; or (ix) if for any reason ATHLETE fails to compete in IAAF- or USATF-sanctioned competition for one hundred eighty (180) days or more.
- (c) Upon termination of this Contract, ATHLETE shall not be entitled to any further compensation under this Contract except any unpaid Performance Bonus(es) earned prior to the effective

date of termination and/or any unpaid annual Base Compensation to which ATHLETE was entitled for services actually completed as of the effective date of termination, prorated over the entire Contract Year and calculated to the effective date of termination. ATHLETE shall reimburse NIKE for Base Compensation, if any, paid prospectively in excess of the amount which ATHLETE would be entitled to receive if the annual Base Compensation were prorated over the entire Contract Year, calculated to the effective date of termination. Any such reimbursement shall be due within thirty (30) days of the effective date of termination.

**12. RIGHT TO USE OF ENDORSEMENT UPON EXPIRATION/TERMINATION.** Upon expiration or termination of this Contract for any reason, NIKE shall have the right to exhaust all advertising and promotional materials, and sell through any merchandise, bearing and/or including the ATHLETE Endorsement that were produced or ordered prior to the effective date of expiration or termination. Notwithstanding the foregoing, NIKE shall have the right in perpetuity and without restriction, to the in-house use of any materials which depict ATHLETE. ATHLETE understands NIKE is not obligated to delete or remove Activity Based Information from any database or storage device.

**13. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

(a) ATHLETE represents, warrants and covenants that:

- (i) ATHLETE shall not permit or approve the use of any photographs or footage of ATHLETE in which NIKE Marks that appear on Products worn and/or used by ATHLETE have been airbrushed, digitally altered or otherwise obscured;
- (ii) ATHLETE shall not permit or authorize the use of any NIKE Marks or condone any unauthorized use thereof;
- (iii) ATHLETE is not (and shall not during the Contract Period be) party to any oral or written agreement, contract or understanding which would prevent, limit or hinder the performance of any of ATHLETE's obligations under this Contract and ATHLETE is free to enter into this Contract and this Contract does not and will not violate the terms of any agreement, understanding or obligation to which ATHLETE is party or is bound;
- (iv) no third-party has or shall have any right of approval over NIKE's use of the ATHLETE Endorsement;
- (v) ATHLETE has reviewed the "Guides Concerning the Use of Endorsements and Testimonials in Advertising" (the "FTC Guides" currently available at <http://ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>) and shall comply therewith;
- (vi) ATHLETE shall not compete for or be associated in any way with any non-NIKE-sponsored track club; and
- (vii) during the Contract Period, ATHLETE shall not (1) sponsor or endorse Products, Dynamic Athletic Rating, Dynamic Athletic Training, or running or fitness social networks designed, licensed, manufactured, branded, sold, hosted or presented by or on behalf of any person or entity other than NIKE; (2) wear and/or use Products designed, licensed, manufactured, branded or sold by any person or entity other than NIKE (except as expressly permitted under Paragraph 2) nor wear and/or use any such Products which have been altered to resemble NIKE Products or permit the trademarks, tradename or other identifications of any third-party to appear on NIKE Products worn or used by ATHLETE (including, without limitation, patches or "badges"), except that ATHLETE may use the Big Bear Track Club logo on NIKE Products worn or used by ATHLETE in domestic competitions in accordance with Schedule A, Paragraph VII, subject to NIKE's prior approval of the application of the logo to the NIKE Product, which may be done by NIKE on ATHLETE's behalf; (3) have or display any permanent or temporary tattoos with any third-party trademarks, trade names or identifications; (4) enter into any endorsement, promotional, consulting or similar agreement with any person or entity that designs, licenses, manufactures, brands or sells Products or with any running or fitness social network other than NIKE, (5) wear or use products (other than Products) designed,

- licensed, manufactured, branded or sold by any person or entity that designs, licenses, manufactures, brands or sells Products other than NIKE; (6) permit a direct link, or any other means of direct connection, between any ATHLETE maintained or licensed website to any website, other than a NIKE website, on which Products are sold or that is associated with any person or entity that designs, licenses, manufactures, brands or sells Products; (7) promote, sponsor or endorse tobacco, hard alcohol, gambling, pornography or any products or services that are inconsistent with a health and fitness brand; or (8) take any action inconsistent with the endorsement of NIKE Products or with ATHLETE's obligations under this Contract;
- (viii) ATHLETE has not violated any provisions of the anti-doping rules of the IAAF including Rules 55 to 61 of the IAAF Constitution, and ATHLETE is not in violation of any such anti-doping rules on the date of execution of this Contract; and
  - (ix) ATHLETE shall promptly notify NIKE in writing of any notice received by ATHLETE from a relevant ADO sent in accordance with Article 7 of the Code, or the notice provision of such ADO's code that is the equivalent thereof. In addition, ATHLETE shall allow NIKE to place NIKE Marks, NIKE advertising, hyperlinks to NIKE websites and other NIKE content on ATHLETE's web or social media sites. ATHLETE acknowledges that ATHLETE's direct or indirect acceptance of merchandise that is free (or offered at a discount beyond normal discounts or price reductions available to consumers or the trade) shall constitute an "agreement or understanding" for purposes of this Paragraph.
- (b) ATHLETE may enter into agreements with an entity that has an incidental business involving Fitness Devices (e.g., a mobile phone or consumer electronics company) provided any such agreement does not permit the use of the ATHLETE Endorsement in connection with the advertisement or promotion of any such Fitness Devices, any Dynamic Athletic Rating or Dynamic Athletic Training, or any third party or brand associated with footwear or apparel. ATHLETE may also engage any personal trainer or coach, use any training facility/fitness club or follow any training program or regimen of his choice, provided ATHLETE shall not approve or permit any use of the ATHLETE Endorsement by any personal trainer, coach or third-party in connection with any endorsement, sponsorship, promotional, advertising or similar arrangement such third party may have with any person or entity that designs, licenses, manufactures, brands or sells any Products. ATHLETE acknowledges and agrees that this subparagraph (b) shall not limit ATHLETE's obligations to comply with the terms of this Contract including, without limitation, use of NIKE Products pursuant to Paragraph 2 and the provisions of Paragraph 13(a).
14. **EQUITABLE REMEDIES.** In the event ATHLETE breaches any material term of this Contract, in addition to any and all other remedies available at law or in equity, NIKE shall be entitled to injunctive relief from further violation of this Contract, during any litigation as well as on final determination thereof, without prejudice to any other right of NIKE hereunder or otherwise.
15. **NOTICES.** Any notice of breach or default shall be in writing and deemed given if sent postage prepaid via registered or certified mail, by verifiable facsimile transmission or hand delivery, or by express courier service with confirmed delivery, to the breaching party at the addresses set forth above (unless written notice of a change of address has been provided) and shall be deemed to have been given at the time it is sent properly addressed and posted. Notices to NIKE shall be sent to the Legal Department, attention: Contracts Specialist (if faxed, to 503-646-6926).
16. **ATHLETE/NIKE RELATIONSHIP.** Nothing contained in this Contract shall be construed as establishing an employer/employee, partnership, agency or joint venture relationship between the parties. ATHLETE shall be solely responsible for the payment of all taxes on any consideration received under this Contract. ATHLETE further acknowledges that as a paid endorser of NIKE Products, ATHLETE has been advised by NIKE of the revised FTC Guides and the obligations thereunder to disclose ATHLETE's relationship with NIKE, and ATHLETE's obligation to comply with FTC Guides.

17. **ASSIGNMENT/DELEGATION.** This Contract and any rights or obligations of ATHLETE hereunder are personal to ATHLETE and shall not be assigned or delegated without the prior written consent of NIKE. This Contract and any rights or obligations of NIKE hereunder are personal to NIKE and shall not be assigned or delegated to any entity outside of the NIKE Group and/or digital product partner without ATHLETE's prior reasonable approval.
18. **WAIVER.** The failure at any time of either party to demand strict performance by the other party of any of the terms or conditions of this Contract shall not be construed as a continuing waiver or relinquishment thereof, and either party may, at any time, demand strict and complete performance by the other party.
19. **SET-OFF.** NIKE shall have the right to set-off any amounts owed by ATHLETE to NIKE, hereunder or otherwise, against any amounts owed by NIKE to ATHLETE.
20. **SEVERABILITY.** Every provision of this Contract is severable.
21. **DISCLAIMER.** ATHLETE agrees to hold NIKE, its directors, officers, employees and agents harmless from and against any and all expenses, damages, claims, suits, and actions, including any claim or action for bodily injury, death, personal injury, property damage or other injury, and also including judgments, costs and reasonable attorneys' fees which arise out of or relate to the coaching, training, or any other athletically-related services provided to ATHLETE by any coach, trainer, therapist or other athletics professional employed by or associated with NIKE during the Contract Period.
22. **GOVERNING LAW & JURISDICTION.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon and any suit or action arising hereunder shall be filed in a Court of competent jurisdiction within the State of Oregon. The parties hereby consent to personal jurisdiction within the State of Oregon and to service of process by registered or certified mail addressed to the respective party as set forth above.
23. **CONFIDENTIALITY.** ATHLETE shall not (nor shall ATHLETE permit or cause ATHLETE's agents, attorneys, accountants, representatives or employees to) disclose the financial or other material terms of this Contract, the marketing plans of NIKE, or material or information disclosed to ATHLETE (or by ATHLETE to NIKE) pursuant to Paragraph 3 above, to any third-party, with the exception only of ATHLETE's agents, attorneys, accountants, representatives or employees, except as may be required by law. This Paragraph shall survive the termination or expiration of this Contract.
24. **ENTIRE CONTRACT.** This Contract shall constitute the entire understanding between ATHLETE and NIKE and may not be altered or modified except by a written agreement, signed by both parties. Any previous agreements between the parties shall have no further force or effect.

# # # # #

**SCHEDULE A**  
**BORIS BERIAN OFFER**  
**COMPENSATION AND BONUS SCHEDULE**

**I. BASE FEE (SUBJECT TO ADJUSTMENT BASED ON ROLLOVER):**

2016	\$125,000
2017	\$125,000
2018	\$125,000

**II. TRAVEL:**

2016	\$5,000
2017	\$5,000
2018	\$5,000

**III. MERCHANDISE ALLOTMENT**

Yearly	\$5,000
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**IV. PERFORMANCE BONUS:**

- A. To attain a performance bonus set forth below ATHLETE must (i) have competed exclusively in NIKE Products (including Footwear) during the entire Contract Year in which the performance bonus was earned; (ii) competed in NIKE Footwear and NIKE Product during the competition in which the performance bonus is earned; and (iii) the NIKE logo on ATHLETE's Footwear and uniform must be entirely visible (i.e. not covered in any manner by numbered bib) during the competition in which the bonus is earned.
- B. If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NIKE shall pay ATHLETE a performance bonus as set opposite such achievement set forth below.

With respect to all world and United States (American) records achieved, the following criteria shall apply to earn such bonuses: (i) all records/performances must be officially recognized by the USATF and/or IAAF, whichever is applicable; (ii) records must be broken; performances that equal a current record will not qualify for a bonus; and (iii) record bonuses are not cumulative and ATHLETE shall receive the single highest bonus achieved one time per Contract Year per distance.

With respect to ranking bonuses, the following criteria shall apply to earn such bonuses: (1) all rankings are determined by Track and Field News; (2) rankings are only applicable for Olympic events; and (3) ranking bonuses are not cumulative and ATHLETE shall receive the single highest ranking bonus achieved one time per Contract Year.

**(i) WORLD RECORDS:**

- Individual World Outdoor Record (Olympic events only): \$100,000
- Individual World Indoor Record (Olympic events only): \$25,000

**(ii) U.S. (AMERICAN) RECORDS:**

- Individual U.S. (American) Outdoor Record (Olympic events only): \$50,000
- Individual U.S. (American) Indoor Record (Olympic events only): \$10,000

## (iii) COMPETITIONS (INDIVIDUAL EVENTS ONLY):

<b>Event</b>	<b>First Place / Gold Medal</b>	<b>Second Place / Silver Medal</b>	<b>Third Place/ Bronze Medal</b>
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000
World Indoor Championships	\$10,000	\$7,500	\$5,000
U.S. Olympic Trials (Track)	\$7,500	\$5,000	\$3,000
U.S. Outdoor Championships	\$5,000	\$3,000	\$1,000
IAAF Diamond League (A races only)	\$5,000	\$3,000	\$1,000
U.S. Indoor Championships	\$2,000	\$1,000	\$500
IAAF Continental Cup	\$5,000	\$3,000	\$1,000
NB Grand Prix	\$3,000		

## (iv) OUTDOOR RANKINGS:

- World Rankings (as determined by Track and Field News, Olympic Events Only)

<b>Rank</b>	<b>Amount</b>
1	\$25,000
2	\$15,000
3	\$10,000
4	\$5,000
5	\$4,000
6 through 10	\$2,500

- United States Rankings (as determined by Track and Field News, Olympic Events Only)

<b>Rank</b>	<b>Amount</b>
1	\$10,000
2	\$5,000
3	\$2,500

**V. TRACK TIME BONUSES (must be electronically timed and non-wind aided)**

<b>Bonus</b>	<b>800m</b>
\$15,000	Sub 1:43.34
\$20,000	Sub 1:43.00

Time bonuses are non-cumulative and paid only one time per year per event to the highest bonus level achieved

**VI. ROLLOVER (Individual Events Only):**

If ATHLETE attains any of the performance achievements listed below and complies with the requirements set forth in this Agreement, NIKE shall increase ATHLETE's Base Fee by such amount listed opposite such competition or achievement, as applicable, for each subsequent Contract Year through the expiration of the Agreement Period. Rollover increases to the Base Fee are not cumulative, and ATHLETE shall receive only the single highest Rollover increase to Base Fee achieved one time per Contract Year.

Criteria	First Place / Gold Medal	Second Place / Silver Medal	Third Place/ Bronze Medal
Olympic Games	\$150,000	\$100,000	\$50,000
World Outdoor Championships	\$100,000	\$60,000	\$40,000

- World Outdoor Records (Individual Olympic Events Only): \$100,000
- U.S. (American) Outdoor Records (Individual Olympic Events Only): \$50,000
- World Indoor Record (Individual Olympic events only): \$25,000
- (vii) If ATHLETE Qualifies for the final at the 2016 Olympics or 2017 World Championships, base Compensation will increase by \$10,000 (One time per Contract Term)
- Value of Top 5 world ranking

**VII. AFFILIATION:**

NIKE shall permit ATHLETE to compete under the Big Bear Track Club affiliation, and ATHLETE may wear the official uniform and footwear of Big Bear Track Club in all domestic competitions, including the US Indoor Championships and US Olympic Trials, in 2016. ATHLETE shall compete for Team NIKE and wear the Team NIKE official uniform in all international events.

## **NIKE RETAIL STORE VISIT POLICY & PROCEDURES**

Dear Nike Athlete,

Here at Nike, your satisfaction is of utmost importance to us. We are dedicated to providing you with the ultimate in performance apparel, equipment and footwear that will help you perform at your very best. Accordingly, we want to ensure that your shopping experience at Nike Retail locations is as beneficial an experience as possible.

Please respect the following guidelines when planning your next visit to a Nike Retail location (Nike Women stores not included). Don't hesitate to contact us if you have any questions...or, of course, if you'd like to go shopping!

### **Beaverton and Memphis Employee Stores**

- Advance notification of 24 hours (1 business day) or more before visit is required.
- Please be prepared to present your picture ID at the Customer Service Desk upon arrival. *Contracted athlete must be present during the shopping visit.*
- Your first \$1000 (or contracted amount if less) of product is on your comp. Any additional purchases must be paid in full by cash, check or credit card. Please remember all Employee Store purchases will be rung at wholesale prices but your comp will be charged the full retail value.
- Returns: Items comped from the store may be returned back to the store or sent back via the NBM merchandise program return process for credit to your account. You must produce a copy of the receipt in both cases and please note: *all sales are final on "sale" items.*

### **NikeTown**

- 3 visits per contract year allowed.
- Advance notification of 24 hours (1 business day) or more before a weekday visit is required.
- Advance notification of 48 hours (2 business days) or more before a weekend visit is required.
- Please be prepared to present your picture ID at the Customer Service Desk upon arrival. *Contracted athlete must be present during the shopping visit.*
- Your first \$1000 (or contracted amount if less) of Nike apparel, equipment and footwear is on your comp. Any additional purchases must be paid in full by cash, check or credit card.
- Returns: Items comped from the store may be returned back to the store or sent back via the NBM merchandise program return process for credit to your account. You must produce a copy of the receipt in both cases and please note: *all sales are final on "sale" items.*

To schedule a visit to the Beaverton Employee Store or NikeTown, please call 503.671.4141 between 8:00 AM – 4:00 PM PST, Monday - Friday. And, as always, if there's anything further we can do to help you perform at your best, let us know!

### **NikeTown Locations:**

Beverly Hills, CA • San Francisco, CA • Denver, CO • South Miami, FL • Atlanta, GA • Honolulu, HI  
 Chicago, IL • Las Vegas, NV • Boston, MA • New York, NY • Seattle, WA