

Personal Coaching Services Agreement, Release and Indemnity

This Personal Coaching Services Agreement, Release and Indemnity ("Agreement") is entered into as of this _____ day of _____, _____ between, _____, ("**Member**") and Durance Cycleworks, Inc., an Idaho corporation ("**Durance**") of 131 Second Street, Ketchum, Idaho, 83340-6569.

In consideration of the athletic training, coaching, performance strategy services and equipment recommendations (hereinafter "**Services**") to be rendered by Durance, **Member**, and **Durance** agree as follows:

1. Term and Compensation

a. Term. This Agreement commences upon the date **Durance** receives a copy of this Agreement executed by **Member** and shall remain in effect for the six (6) months from said date unless earlier termination in accordance with this Agreement. This Agreement shall automatically be renewed for an additional six (6) month period, unless otherwise terminated in accordance with this Agreement.

Member has read and understands this section _____ initials

b. Coaching Service Fees. **Member** agrees to pay for the Services offered in the _____ Program ("**Program**") for a minimum of six (6) months ("**Initial Services Period**") beginning on ____/____/____ (Month/Day/Year) and ending on ____/____/____ (Month/Day/Year). The monthly fee is \$ _____ per month.

An initial non-refundable payment ("**Initial Payment**") for Services for a period of two (2) months or \$ _____ is due and payable upon execution of this Agreement. Each monthly fee after this Initial Payment shall be due on or before the 7th day of each month, with the first monthly payment due on the 1st day of the third month. If the **Member** fails to pay **Durance** within the designated time period, a late charge of one and five-tenths percent (1.5%) monthly interest will be added to any outstanding payment during such billing time period with the same such interest accruing during each subsequent time period until paid. Any additional fees for "non-monthly coaching services" shall be negotiated, in writing, in advance of performing the service and mutually agreed upon between the **Member** and **Durance**.

Member has read and understands this section _____ initials

c. Coaching Services. **Member** may change the Program selected after a period of two (2) months. During the term of this agreement, **Member**, at the **Member's** expense, shall initiate any telephone consultations and e-mail correspondence concerning and questions or comments about the Program. **Durance's** coaching staff will respond as soon as possible and in the order received.

Member has read and understands this section _____ initials

d. Referrals. In the event **Member** refers an individual to **Durance** and such referral results in the execution of a Personal Coaching Services Agreement, Release and Indemnity Agreement and **Member** is identified as the "Referring Party" in the "Initial Interview" document submitted by the individual to **Durance**, **Member** shall be entitled to a one-time referral fee in the amount of \$75 to be applied to future training. If the Member is no longer part of the Program, then **Durance** shall pay **Member** the one-time referral fee of \$75 to **Member** within thirty (30) days of the receipt of the executed Agreement and payment of the Initial Payment.

Member has read and understands this section _____ initials

2. Termination. At any time after the commencement of the Services, **Durance** may terminate this Agreement upon ten (10) days written notice to the **Member**. **Member** acknowledges and agrees that **Member** may not terminate this Agreement during the Initial Services Period, unless the **Member** has suffered a personal illness, injury or a personal or family incident that precludes the **Member** from participating in the Services. After the Initial Services Period, **Member** may terminate this Agreement for any reason with or without cause upon thirty (30) days prior written notice to **Durance**. Upon notice of termination by the **Member**, the **Member** will be responsible to pay the one month Services fee applicable to the thirty (30) day notice period.

Member has read and understands this section _____ initials

3 Confidentiality. **Member** agrees the Services provided under this Agreement are strictly confidential and may not be disclosed to any third party in any manner whatsoever without the express prior written consent of **Durance**. "Services" includes, but is not limited to, the materials provided to the **Member** from **Durance**, the techniques and methodologies utilized by **Durance** and its staff in rendering Services under this Agreement and the substance of any communications between **Durance** and the **Member**. The **Member** agrees that he or she shall not reproduce any materials provided to **Member** by **Durance** and, further, that **Member** will not remove any proprietary markings from materials provided to **Member** by **Durance**, including any confidentiality notices and/or copyright notices. It is expressly understood and agreed that **Durance** is the sole and exclusive owner of all concepts, programs, ideas, materials, copyrights, trademarks and other intellectual property rights associated with the Services. The parties further agree that neither party shall make any disparaging remarks about the other party in the event this Agreement is terminated.

Member has read and understands this section _____ initials

4. Promotional Rights. As part this Agreement and for the consideration recited herein, Durance may use the Member's name, image, likeness, and video training, for promotional purposes.

Member has read and understands this section _____ initials

5. Member's Responsibilities Concerning Performance Enhancing Drugs. All IOC, USOC, UCI, and USA Cycling Associations' policies, restrictions and regulations relating to the nonuse of performance enhancing drugs, including banned substances, currently in force and as they may be amended from time to time, are hereby made a part hereof and are incorporated herein by reference as if related in full. Member hereby agrees to abide by all such policies, restrictions and regulations.

Member has read and understands this section _____ initials

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, estates, personal representatives, administrative successors and assigns of the parties hereto.

Member has read and understands this section _____ initials

7. Disclaimer, Waiver, Indemnity, Release and Limitation of Liability. Member hereby specifically and knowingly acknowledges and understands that:

- a. DURANCE MAKES NO WARRANTIES AND DOES NOT GUARANTEE INDIVIDUAL RESULTS.
- b. MEMBER, NOT DURANCE, IS PERSONALLY RESPONSIBLE FOR THE ACHIEVEMENT OF INDIVIDUAL PERFORMANCE GOALS.
- c. ATHLETIC TRAINING IS INHERENTLY DANGEROUS AND CARRIES WITH IT THE POTENTIAL FOR DEATH, SERIOUS INJURY AND PROPERTY LOSS AND THAT THE EXACT NATURE OF SUCH RISKS IS IMPOSSIBLE TO FULLY STATE HEREIN.
- d. MEMBER HEREBY ASSUMES THE RISK OF PARTICIPATING IN THE TRAINING AND ACTIVITIES RECOMMENDED BY DURANCE, ITS AGENTS AND REPRESENTATIVES.
- e. MEMBER IS PHYSICALLY FIT AND SUFFICIENTLY TRAINED FOR PARTICIPATION IN THE PROGRAM AND SERVICES AND MEMBER HAS NOT BEEN ADVISED AGAINST PARTICIPATION IN THE PROGRAM OR SERVICES BY ANYONE, INCLUDING SPECIFICALLY ANY QUALIFIED HEALTH PROFESSIONAL.
- f. IN CONSIDERATION OF THIS AGREEMENT, MEMBER HEREBY INDEMNIFIES, RELEASES, HOLDS HARMLESS AND FOREVER DISCHARGES DURANCE, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, COSTS, OR EXPENSES (INCLUDING, WITHOUT LIMITATIONS, ANY ATTORNEY FEES AND COSTS WHETHER OR NOT LITIGATION IS INITIATED AND ANY SUCH FEES AND COSTS ON APPEAL OF ANY LITIGATION) KNOWN OR UNKNOWN, DIRECTLY OR INDERECTLY, ARISING OUT OF OR RELATING TO, MEMBER'S PARTICIPATION IN THE SERVICES OR THE PROGRAM, INCLUDING, WITHOUT LIMITATIONS, CLAIMS OR DAMAGES RESULTING FROM DEATH, PERSONAL INJURY, PARTIAL OR PERMANENT DISABILITY OR PROPERTY DAMAGE, OR ANY OTHER COMPENSATORY, PUNATIVE, MEDICAL OR OTHER ECONOMIC LOSSES OF ANY KIND.
- g. MEMBER CURRENTLY SUFFERS FROM NO PHYSICAL OR MENTAL CONDITION WHICH WOULD IMPAIR HIS OR HER ABILITY TO FULLY PARTICIPATE IN THE SERVICES OR THE PROGRAM, EXCEPT THE FOLLOWING: _____.
- h. MEMBER IS EIGHTEEN (18) YEARS OF AGE OR OLDER (OR IF MEMBER IS UNDER THE AGE OF EIGHTEEN (18), THE EXPRESS WRITTEN PERMISSION IN THE FORM OF A SIGNATURE TO THIS AGREEMENT BY MEMBER'S PARENT OR LEGAL GUARDIAN IS REQUIRED PRIOR TO THE MEMBER PARTICIPATING IN THESE SERVICES OR THE PROGRAM)
- i. DURANCE EXPRESSLY DISCLAIMS ANY WARRANTIES WITH RESPECT TO ANY PRODUCTS OR PROMOTIONAL MATERIALS OFFERED BY THIRD PARTIES AND PROVIDED TO MEMBER BY

DURANCE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND INFRINGEMENT.

j. DURANCES'S LIABILITY HEREUNDER IS LIMITED TO AMOUNTS PAID TO DURANCE HEREUNDER.

Member has read and understands this section _____ initials

8. General Provisions.

a. **Governing Law.** This Agreement shall be construed under the laws of the State of Idaho. Member hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Idaho and of the United States of America located in the State of Idaho for any actions, suits or proceedings arising out of or relating to this Agreement and the Sevices and Program and further agrees that service of any process, summons, notice or documents by U.S. certified mail to Member's address set forth below shall be effective service of process for any action, suit or proceeding arising out of this Agreement. Member irrevocably and unconditionally waives any objection to the venue of any action suit or proceeding arising out of this Agreement being in the court's of the State of Idaho or of the United States of America located in the State of Idaho and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action has been brought in an inconvenient forum.

b. **Attorney's Fees.** In the event Durance retains an attorney to enforce Durance's rights hereunder, Durance shall be entitled to the payment by Member of its reasonable attorney's fees and costs, whether or not litigation is commenced. This provision shall extend to attorney's fees and costs incurred on appeal or in enforcement of or execution on any judgement or order entered by any court adjudicating rights or remedies created by or arising out of this contractual relationship; to the extent necessary, this provision shall not be merged into but shall survive entry of judgement in any action upon this Agreement.

c. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force or effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

d. **Severance and Validity.** In the event any provision of this Agreement or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby, it being agreed that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void or unenforceable provision or part thereof.

e. **Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute the executed agreement between the parties.

f. **Amendment; Assignment.** The terms and conditions of this Agreement may not be amended or modified without the express written consent of Durance and any attempt to do so shall be null and void. Member may not assign his/her rights or delegate his/her duties under this Agreement without the prior written consent of Durance.

Member has read and understands this section _____ initials

MEMBER HAS CAREFULLY READ THIS AGREEMENT, HAS HAD FULL OPPORTUNITY TO HAVE IT REVIEWED AND EXPLAINED TO HIM OR HER BY THE LEGAL COUNSEL OF HIS OR HER CHOICE, AND FULLY UNDERSTANDS ITS CONTENTS. MEMBER IS AWARE THAT BY SIGNING THIS DOCUMENT HE OR SHE MAY BE RELEASING CERTAIN LEGAL RIGHTS HE OR SHE OTHERWISE MAY HAVE. MEMBER SIGNS THIS RELEASE AND INDEMNITY VOLUNTARILY AND WITHOUT COERCION.

Member (if under 18: Parent/Legal Guardian)

Date:

Address: _____

Phone: _____

DURANCE CYCLEWORKS, INC.

By: _____
Richard Feldman, President

PO BOX 6569
Ketchum, Idaho 83340-6569
208-726-7693

