

2008 /2009 TYROLIA INDEMNITY AGREEMENT

This Agreement is between the HEAD/TYROLIA authorized retailer or TYROLIA service center named below (both referred to herein as "Authorized Retailer") and HEAD/TYROLIA, which refers to HEAD TYROLIA WINTERSPORTS INC., USA in the United States and to HEAD-TYROLIA CANADA in Canada. HEAD/TYROLIA is the exclusive distributor of Tyrolia ski bindings, parts and accessories in these territories. This Agreement extends to each Authorized Location stated in a current HEAD/TYROLIA Authorized Retailer Agreement and, for service centers not party to such an agreement, to each Authorized Location listed in this Agreement.

Authorized Retailer / Service Center: _____

dba: _____

Address: _____ City: _____

State/Province: _____ Zip: _____

Telephone: () _____ Fax: () _____

Manager: _____ E-mail: _____

For Service Centers Only: If additional locations are listed on The Additional Location Addendum, check here:

1) **DEFENSE AND INDEMNITY** - Subject to Authorized Retailer's strict compliance with all terms and conditions stated in this Agreement, and subject to the exclusions and limitations stated in this Agreement, HEAD/TYROLIA offers to indemnify, and shall have the right but not the duty to defend, Authorized Retailer relative to claims or liability imposed by law for bodily injury sustained by any customer of Authorized Retailer as a direct result of the customer's use of Tyrolia ski bindings sold, rented or serviced by Authorized Retailer, which were originally distributed by HEAD/TYROLIA or purchased abroad by the customer for personal use, and which are on HEAD/TYROLIA's most current list of indemnified bindings, as stated in the most current Tyrolia Technical Manual and in any later updates from HEAD/TYROLIA. Customer, as used in this Agreement, shall mean the retail purchaser, renter or service customer of Authorized Retailer regarding Tyrolia bindings covered by this Agreement and excludes any other person.

2) **CONDITIONS PRECEDENT** - AUTHORIZED RETAILER'S FAILURE TO EXECUTE THIS AGREEMENT AND TO COMPLY STRICTLY WITH ALL TERMS AND CONDITIONS PRECEDENT STATED IN THIS AGREEMENT WILL CONSTITUTE A COMPLETE WAIVER AND RELEASE OF ANY RIGHT TO CONTRIBUTION, DEFENSE, INDEMNITY OR OTHER REMEDIES FROM HEAD/TYROLIA, FROM THE MANUFACTURER OF TYROLIA BINDINGS, OR FROM ANY RELATED ENTITY WHICH RELATE IN WHOLE OR PART TO SKI BINDINGS OR THEIR COMPONENT PARTS, ANY ASSOCIATED TRAINING OR INSTRUCTIONS, OR ANY ALLEGED DEFECT OR ISSUE INVOLVING THE CONDITION OR PERFORMANCE OF A SKI-BOOT-BINDING SYSTEM.

- a. As a condition precedent, Authorized Retailer shall comply at all times with all terms of the applicable HEAD/TYROLIA Authorized Retailer Agreement and of this Tyrolia Indemnity Agreement.
- b. As a condition precedent, at least one of Authorized Retailer's personnel at each location shall have completed all HEAD/TYROLIA specified training and certification requirements and be a Fully Certified Tyrolia mechanic at the time of the transaction at issue.
- c. As a condition precedent, Authorized Retailer shall have followed all HEAD/TYROLIA instructions regarding sales, service, warranties, rebates, product upgrades, recalls, consumer information, document retention and related matters, including but not limited to all procedures for mounting, adjusting, testing and/or servicing of Tyrolia equipment as set forth in the 2008/2009 Tyrolia Technical Manual and subsequent updates, and

Authorized Retailer shall have provided the claimant with all written materials and information provided by HEAD/TYROLIA for use with the merchandise, including labels, warnings, instructions, recalls, product upgrades and safety information.

- d. As a condition precedent, Authorized Retailer shall have sold the binding new, rented the bindings to and/or selected, mounted, adjusted, serviced or tested the bindings for the customer at an Authorized Location and shall have properly instructed the customer on the use and maintenance of the system as required by HEAD/TYROLIA in the current Technical Manual, as updated.
- e. As a condition precedent, the claim must allege that the customer's injury was caused by defects in the manufacture or design of the Tyrolia bindings or negligence in selection, mounting, adjusting, servicing or testing of the bindings.
- f. As a condition precedent, Authorized Retailer shall keep proper records of all shop work for five (5) years or for the statute of limitations in the state of the Authorized Location, whichever is longer. Proper shop retail/rental records must contain the following:
 - i. Name and address of the shop and the Tyrolia mechanic who performed work on the bindings.
 - ii. Name and address of customer for whom work was performed.
 - iii. Date of transaction or work performed.
 - iv. Identification of all products included in the ski-binding-boot system, including but not limited to the binding manufacturer and model number, the boot sole length, manufacturer and model number, and the ski length, manufacturer, model and serial number.
 - v. Pertinent data on the customer who will be using the system, including height, weight, skier type, age and boot sole length.
 - vi. Record of each binding setting, left and right, toe and heel.
 - vii. Signature of person who mounted, adjusted, serviced or checked bindings. A Fully Certified Tyrolia mechanic must sign the shop record for all retail and service transactions; a Rental Certified or Fully Certified Tyrolia mechanic must sign the shop record for all rental transactions.
 - viii. Signature of user of equipment to verify that he/she has verified the visual indicator settings and has been instructed in the use and maintenance of the system, and has received the in-box instructions (new bindings only).
 - ix. Signature of user of equipment to verify that he she has read and agreed to the terms of the release, assumption of risk and warning language in the shop record or rental agreement, which language must be substantially similar to that contained in the retail and rental forms shown in the most current Tyrolia Technical Manual, and which must provide for the broadest possible release of liability and assumption of risk in favor of Authorized Retailer, HEAD/TYROLIA and all manufacturers and distributors of the subject bindings, boots, skis and other equipment.
- g. As a condition precedent, Authorized Retailer shall provide HEAD/TYROLIA with written notice of any claim or suit within ten (10) days of receipt and shall cooperate fully with HEAD/TYROLIA, its insurers, attorneys and their agents in connection with the management, investigation, litigation and settlement of any claim or suit. HEAD/TYROLIA shall have sole authority to control all aspects any indemnified claim or suit, including settlement, trial and selection of counsel. Time is of the essence under this Agreement, and it shall be presumed that late notice of a claim or suit has caused actual prejudice to HEAD/TYROLIA.

3) EXCLUSIONS AND LIMITATIONS OF HEAD/TYROLIA'S OBLIGATIONS:

- a. HEAD/TYROLIA shall have no obligation as to any claims relating to products which were used for a purpose other than one normally foreseeable and intended by HEAD/TYROLIA.

Ski bindings are intended solely for use in the sport of snow skiing after proper installation, adjustment and inspection on a pair of skis.

- b. HEAD/TYROLIA shall have no obligation as to any warranties or representations made by Authorized Retailer beyond those that are expressed in writing by HEAD/TYROLIA.
- c. HEAD/TYROLIA shall have no obligation as to any claims of a penal character, including punitive and exemplary damages.
- d. HEAD/TYROLIA shall have no obligation as to any claims arising from Authorized Retailer's own negligence or from allegedly negligent or wrongful acts of Authorized Retailer that were not expressly authorized in writing by HEAD/TYROLIA.
- e. HEAD/TYROLIA shall have no obligation as to any claims relating to merchandise that was not purchased by Authorized Retailer directly from HEAD/TYROLIA, or from a distributor authorized by HEAD/TYROLIA to distribute merchandise to the Authorized Retailer.
- f. These exclusions and limits relate to any obligation imposed by law or equity to defend, indemnify, hold harmless or contribute, in whole or in part. HEAD/TYROLIA's obligation under this Agreement, if any, shall not exceed the limits of any products liability or other insurance covering such obligations as may be maintained by HEAD/TYROLIA.

THIS AGREEMENT DOES NOT CONSTITUTE INSURANCE, IT IS NOT AN OFFER TO PROVIDE ANY KIND OF INSURANCE OR INSURANCE BENEFITS. NEITHER HEAD/TYROLIA NOR ANY OF ITS AFFILIATES ARE INSURERS. AUTHORIZED RETAILER IS SOLELY RESPONSIBLE FOR MAINTAINING ITS OWN INSURANCE WITH LIMITS AND COVERAGES THAT AUTHORIZED RETAILER BELIEVES TO BE NECESSARY OR APPROPRIATE.

- 4) **TERM AND TERMINATION** - This Agreement will begin on the date it is accepted by HEAD/TYROLIA and will remain in force until September 1, 2009. In the event this Agreement terminates and is not replaced by a new agreement with HEAD/TYROLIA, the terms of this Agreement shall apply to all transactions taking place before the termination date, and there shall be no indemnity, contribution or related remedy whatsoever, either at law, in equity, or under this Agreement, as to any sale, service, rental or transaction taking place after the termination date.

Prior to any scheduled termination, this Agreement may be terminated:

- a. by either party, without cause or explanation, by giving written notice to the other party not less than thirty (30) days prior to the effective date of termination specified in such notice;
- b. by HEAD/TYROLIA in the event of a breach by Authorized Retailer of any of Authorized Retailer's obligations under this Agreement, pursuant to a written notice of termination to Authorized Retailer effective upon the giving of such notice;
- c. by HEAD/TYROLIA effective immediately and without any requirement of notice, in the event that Authorized Retailer fails to pay its debts as such debts become due, becomes insolvent, files or has filed against it any form of petition for bankruptcy, reorganization,, recapitalization, proposes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, makes an assignment or trust mortgage for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed with respect to, or takes possession of any property or business of Authorized Retailer;
- d. by HEAD/TYROLIA effective immediately without any requirement of notice to Authorized Retailer, upon any actual or attempted transfer or assignment by Authorized Retailer of this Agreement or of any of Authorized Retailer's rights or obligations hereunder;
- e. by HEAD/TYROLIA, effective immediately and without any requirement of notice, in the event that Authorized Retailer makes or permits any material change of its management, ownership, or control, or upon HEAD/TYROLIA's request, fails to provide adequate assurances of continuing responsible discharge of all obligations hereunder or under the Authorized Retailer Agreement, including the posting of performance deposit equal to

Authorized Retailer's maximum monthly purchases during the preceding twelve (12) months.

5) OTHER TERMS AND CONDITIONS

- a. No Obligation to Renew: Neither party shall be under any obligation to negotiate for or enter into any new agreement with the other party after termination, and neither party shall have any obligation or liability to the other by reason of any failure or refusal to renew or extend the operation of this Agreement or to enter into or negotiate for any new agreement with the other party.
- b. Indemnity by Authorized Retailer: Authorized Retailer agrees to indemnify and hold HEAD/TYROLIA and related entities harmless from and against any and all claims, damages and liabilities whatsoever, asserted by any person or entity, resulting directly or indirectly from any breach of this Agreement by the Authorized Retailer or any of its employees or agents. Such indemnification shall include, without limitation, the payment of all reasonable attorney's fees, judgments and other costs incurred by HEAD/TYROLIA in defending such claims.
- c. No Assignment: This Agreement shall be binding upon the parties hereto, their agents, employees, successors and assigns, but any and all rights or benefits conferred upon Authorized Retailer hereunder are personal and may not be assigned or transferred, in whole or in part, directly or indirectly or otherwise, without the prior written consent of an authorized officer of HEAD/TYROLIA. Any unauthorized transfer or attempt to transfer this Agreement or any right or benefit conferred upon Authorized Retailer under this Agreement shall automatically void any and all of HEAD/TYROLIA's obligations under this Agreement their entirety, as well as any obligations that HEAD/TYROLIA otherwise may owe at law or in equity.
- d. Integrated Agreement, Sole Remedy: This Agreement provides the sole and exclusive remedy against HEAD/TYROLIA and all related entities and product manufacturers (including all manufacturers and distributors of Tyrolia bindings and any component thereof) in the event of a claim or suit against Authorized Retailer, all related entities, and their owners, agents, employees or insurers, and it constitutes the sole and exclusive agreement on these subjects. This Agreement supersedes any other agreement or obligation regarding insurance, defense, contribution or indemnification (including those which may be stated or referenced in Authorized Retailer's purchase orders or other documents which pre-date or post-date this Agreement), as well as any contribution, defense or indemnity obligations that are imposed by law or equity.
- e. Severability, Modification and Interpretation: If any part of this Agreement is deemed invalid or unenforceable, the remainder shall be given full force and effect. Past practice and course of dealings between the parties shall not be used to amend the terms of this Agreement. Neither the failure of either party to require the performance of any terms of this Agreement nor the waiver by either party of any breach shall prevent a subsequent enforcement of such terms or be deemed a waiver of any subsequent breach. This Agreement may not be modified except in a writing signed by an authorized officer of HEAD/TYROLIA. Sales and technical representatives are not authorized to modify or interpret this Agreement.
- f. Binding Arbitration, Governing Law: This Agreement and all disputes, controversies, claims, rights, obligations and remedies relating to this Agreement shall be resolved by binding arbitration to be administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall be any single arbitrator upon whom the parties may agree, or if they cannot agree upon an arbitrator, an arbitrator shall be selected by the American Arbitration Association under its Commercial Arbitration Rules. Unless the parties agree otherwise, any arbitration proceeding shall be conducted in the English language in Fairfield County, Connecticut. The arbitrator shall make a reasoned award in writing that is consistent with the terms of this Agreement and which follows the

substantive law of the State of Connecticut, irrespective of any rules on conflicts of laws. The arbitrator will have the broadest possible authority as provided in this Agreement, but in no event may the arbitrator enter an award or order that is inconsistent with the terms of this Agreement, order a change to any term of this Agreement, or order that the parties remain in a business relationship against the wishes of either or both parties. Any action or proceeding to enforce, interpret or seek any remedy under or related to this Agreement shall be commenced no later than one year following actual or constructive notice of the breach, violation or other act which gives rise to the action or proceeding, and the arbitrator shall summarily reject any claim that is not based upon a timely-filed demand for arbitration in accordance with this provision. To the extent that any claim or dispute relating to or arising from this Agreement is deemed not to be arbitrable, it shall be adjudicated in a court of competent jurisdiction in the Stamford/Norwalk Judicial District of Fairfield County, Connecticut, or in the U.S. District Court for the District of Connecticut. All objections to personal jurisdiction, venue and the convenience of such forum are hereby waived.

- g. Authorized Retailer's Status and Authority: By checking the applicable box, Authorized Retailer and the person signing this Agreement on its behalf represent and warrant to HEAD/TYROLIA that Authorized Retailer is a:
- corporation; partnership; sole proprietorship; limited liability company.
- and that the Authorized Retailer's execution, delivery and performance of this Agreement have been duly authorized by all requisite action on the part of said entity.

Only one Tyrolia Indemnity Agreement, which extends to all Authorized Locations, may be submitted per company. To extend indemnification to additional company locations, each location must be accurately listed and kept updated, either as an addendum to this Agreement (for service centers only) or to a current HEAD/TYROLIA Authorized Retailer Agreement (for Authorized Retailers only).

HEAD TYROLIA WINTERSPORTS INC., USA

AUTHORIZED RETAILER / SERVICE CENTER

Signature: X _____

Signature: X _____

Name & Title: _____

Name & Title: _____

Date: _____

Date: _____

Account No. _____