2014/2015 ELAN SKI BINDINGS INDEMNITY AGREEMENT

This Agreement is between the ELAN authorized retailer or ELAN service center named below (both referred to herein as "Authorized Retailer") and ELAN, which refers to Alpina Sports Corp., USA in the United States and to Elan Sports, Inc. in Canada. ELAN is the exclusive importer and distributor of ELAN skis, ski bindings, parts and accessories in these territories. This Agreement extends to each Authorized Location stated in a current ELAN 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/Postal Code:		
Telephone: ()	Fax: ()	Website(s):			
Manager:	E-1	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, including the right to withdraw indemnification in certain circumstances, ELAN will defend and indemnify Authorized Retailer relative to claims or liability imposed by law for bodily injury sustained by a customer of Authorized Retailer as a direct result of the customer's use of ELAN ski bindings sold, rented or serviced by Authorized Retailer, which were originally distributed by ELAN or purchased abroad by the customer for personal use, and which are on ELAN's most current list of indemnified bindings ("Indemnified Bindings"), as stated in the most current ELAN Technical Manual and in any later updates from ELAN (collectively referred to as the "ELAN Technical Manual"). As used in this paragraph, "customer" shall mean the retail purchaser, renter or service customer of Authorized Retailer regarding Indemnified Bindings and excludes any other person. The terms "indemnify", "indemnify" and "indemnification" as used in this Agreement refer to defense and indemnity as offered by this Agreement.
- 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 ELAN, FROM THE MANUFACTURER OF ELAN BINDINGS, OR FROM ANY RELATED ENTITY OR THEIR INSURER THAT 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 ELAN Authorized Retailer Agreement and of this Elan Indemnity Agreement.
 - b. As a condition precedent, at least one of Authorized Retailer's personnel at each location shall have completed all ELAN specified training and certification requirements and be a Fully Certified Elan mechanic at the time of the transaction at issue.
 - c. As a condition precedent, Authorized Retailer shall have followed all ELAN 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 Elan equipment as set forth in the ELAN Technical Manual, and Authorized Retailer shall have provided the claimant with all written materials and information provided by ELAN 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 ELAN in the ELAN Technical Manual.
 - e. As a condition precedent, the claim must allege that the customer's injury was caused by defects in the manufacture or design of Indemnified Bindings or negligence in selection, mounting, adjusting, servicing or testing of such 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 Elan 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 Elan mechanic must sign the shop record for all retail and service transactions; a Rental Certified or Fully Certified Elan 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. If bindings are provided to the Customer on a rental, demo or similar basis, Authorized Retailer must be recognized by ELAN as a rental/demo account, and Authorized Retailer must maintain records of testing and inspection of the components, as called for in the ELAN Technical Manual;
- x. 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 ELAN Technical Manual, and which must provide for the broadest possible release of liability and assumption of risk in favor of Authorized Retailer, ELAN and all manufacturers and distributors of the subject bindings, boots, skis and other equipment.
- g. As a condition precedent, Authorized Retailer shall tender any claim to ELAN in writing within ten (10) days of receipt. Time is of the essence under this Agreement, and it shall be presumed that late notice of a claim has caused actual prejudice to ELAN.
- h. As a condition precedent, Authorized Retailer shall cooperate fully with ELAN, its insurers, attorneys and their agents in connection with all aspects of management, investigation, discovery, litigation, settlement and trial of any claim; this cooperation is for joint defense purposes and shall not serve to waive any privileges as to third parties.
- i. ELAN, its agents and insurers shall be entitled, at their sole discretion, to control all aspects any indemnified claim, including but not limited to investigation, discovery, litigation, settlement, trial and selection of counsel; ELAN shall be entitled to use legal counsel who will jointly represent multiple parties (including but not limited to ELAN and Authorized Retailer); Authorized Retailer understands and agrees that in order to benefit from the expertise of defense counsel and enable ELAN to offer indemnity at reasonable cost, Authorized Retailer waives any actual or potential conflicts of interest relative to counsel's prior representation of ELAN and/or Authorized Retailer, any joint representation of ELAN and Authorized Retailer or others, and any subsequent representation of ELAN which is adverse to Authorized Retailer (Authorized Retailer may be required to sign additional waivers in this regard upon retention of counsel). Any utilization of counsel, experts, investigators or others selected by Authorized Retailer shall be at the sole cost and expense of Authorized Retailer.
- 3. **EXCLUSIONS AND LIMITATIONS OF ELAN'S OBLIGATIONS.** The following exclusions and limits relate to any obligation of ELAN imposed by law or equity to defend, indemnify, hold harmless or contribute, or provide any related benefits to or for the benefit of Authorized Retailer, whether established by this Agreement or otherwise.
 - a. ELAN shall have no obligation as to any claims relating to products which were used for a purpose other than one intended by ELAN. Ski bindings are intended solely for use in the sport of snow skiing after proper installation, adjustment and inspection on a pair of Alpine skis in accordance with the ELAN Technical Manual
 - b. ELAN shall have no obligation as to any investigation, defense, legal or other costs or obligations incurred without the express written authority of ELAN.
 - c. ELAN shall have no obligation as to any warranties or representations made by Authorized Retailer beyond or inconsistent with those that are expressed in writing by ELAN.
 - d. ELAN shall have no obligation as to any claims of a penal character, including punitive and exemplary damages, or for claims alleging fraud, false arrest, false advertising, unfair competition, restitution, civil penalties, breach of privacy, violations of law relating to credit card or other financial transactions, violations of law relating to telecommunications or Internet activities, or any sort of similar allegations; if Authorized Retailer desires separate counsel to defend against such claims, it shall be at the sole cost and expense of Authorized Retailer;
 - e. ELAN shall have no obligation as to any claims arising from Authorized Retailer's own negligence or from acts of Authorized Retailer that were not expressly authorized in writing by ELAN, including but not limited to any failure

to maintain equipment in salable or rentable condition due to improper storage or maintenance, excessive wear, overuse, damage or otherwise.

- f. ELAN shall have no obligation as to any products that were not purchased by an Authorized Retailer directly from ELAN, or from a distributor authorized by ELAN to distribute merchandise to the Authorized Retailer.
- g. ELAN'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 ELAN.
- h. Withdrawal of Indemnification: If Authorized Retailer does not cooperate in the defense of indemnified claims, if Authorized Retailer otherwise breaches this Agreement, or if evidence is discovered which reasonably demonstrates to ELAN that Authorized Retailer could be held liable by virtue of acts or omissions of or attributable to Authorized Retailer which are independent of any alleged defect in the Indemnified Bindings, a breach of warranty by ELAN, or acts or omissions of ELAN, ELAN may, at ELAN's option, be relieved of any obligations to Authorized Retailer relative to the claim. In such case, ELAN shall provide notice to Authorized Retailer, and defense counsel assigned by ELAN shall, upon ELAN's instructions, withdraw from representing Authorized Retailer and any related parties in the claim.

THIS AGREEMENT DOES NOT CONSTITUTE INSURANCE, IT IS NOT A SUBSTITUTE FOR INSURANCE, AND IT IS NOT AN OFFER TO PROVIDE OR PROCURE INSURANCE. AUTHORIZED RETAILER WILL NOT BE NAMED IN OR ADDED TO ANY OF ELAN'S INSURANCE POLICIES. NEITHER ELAN 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 ELAN and will remain in force until October 1, 2015. In the event this Agreement terminates and is not replaced by a new agreement with ELAN or its designee, this Agreement shall apply to all sale, service, rental and other transactions taking place during its term, 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 other 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 ELAN 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 ELAN 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 ELAN 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 ELAN, 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 ELAN'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. <u>No Obligation to Renew</u>. 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. <u>Indemnity by Authorized Retailer</u>. Authorized Retailer shall defend, indemnify and hold harmless ELAN, its employees, officers, agents and any affiliated companies, from any and all claims, liabilities and obligations, including attorney's fees, resulting from Authorized Retailer's negligence, misrepresentation or breach of any obligations or conditions of this Agreement.

- c. <u>No Assignment</u>. 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 ELAN. 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 ELAN's obligations under this Agreement their entirety, as well as any obligations that ELAN otherwise may owe at law or in equity.
- d. <u>Integrated Agreement, Sole Remedy</u>. This Agreement constitutes the sole and complete agreement of the parties on the subjects addressed herein, and it provides the sole and exclusive remedy available from ELAN and all related entities and product manufacturers (including all manufacturers and distributors of ELAN bindings, ski- bindings systems, and any component thereof) in the event of a claim against Authorized Retailer, all related entities, and their owners, agents, employees or insurers. 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, vendor guidelines and any other documents that pre-date or post-date this Agreement), as well as any contribution, defense, indemnity or related obligations that otherwise may be imposed by law or equity.
- e. <u>Severability, Modification and Interpretation</u>. 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. The titles or caption headings of each section of this Agreement are for convenience only and shall not be used for determining any of the rights or obligations of the parties. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. This Agreement may not be modified except in a writing signed by an authorized officer of ELAN. Sales and technical representatives are not authorized to modify or interpret this Agreement or to speak on behalf of ELAN regarding legal claims or indemnity issues.
- f. Binding Arbitration, Governing Law.
 - i Canadian Retailers and Service Centers. This Agreement and all disputes, controversies, claims, rights, obligations and remedies relating to this Agreement shall be arbitrated and finally resolved by binding arbitration to be administered by the ADR Institute of Canada, Inc. under its Simplified 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 ADR Institute of Canada, Inc. under its Simplified Arbitration Rules. Unless the parties agree otherwise, any arbitration proceeding shall be conducted in the English language in Toronto, Ontario. 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 Province of Ontario, 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 rises 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 Ontario, Canada. All objections to personal jurisdiction, venue and the convenience of such forum are hereby waived.
 - ii. <u>U.S. and All Others</u>. 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 rises 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, service of process, venue and the convenience of such forum are hereby waived.

g. <u>Authorized Retailer's Status and Authority</u>. Authorized Retailer and the person signing this Agreement on its behalf represent and warrant to ELAN 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. This Agreement may be executed over the Internet or by other electronic or digital means, by hand or otherwise in a single document or in counterparts, which collectively shall constitute a single agreement, but it shall not become effective until and unless accepted by an authorized representative of ELAN.

- h. <u>Locations</u>: Only one ELAN Indemnity Agreement may be submitted per company. To extend indemnification to additional company locations, each location must be accurately listed and kept updated and approved by ELAN as an Authorized Location, either as an addendum to this Agreement (for service centers only) or to a current ELAN Authorized Retailer Agreement (for Authorized Retailers only). All changes, additions or moves are subject to acceptance by ELAN.
- i. <u>Execution of Agreement</u>: This Agreement may be filled out, executed and transmitted over the Internet or by other electronic or digital means, by hand or otherwise in a single document or in counterparts (including through the use of ELAN's website). Any electronic or digital entry, click or signature shall be treated in all respects as having the same effect as an original hand entry or signature, but this Agreement shall not become effective until accepted by an authorized representative of ELAN.

AUTHORIZED RETAILER / SERVICE CENTER

Signature: X	Signature: X
Name & Title:	Name & Title:
Date:	Date:
	Account No.

ELAN

ADDITIONAL LOCATION ADDENDUM TO 2014/2015 ELAN SKI BINDINGS INDEMNITY AGREEMENT

<u>Note</u>: This additional location addendum is to be used <u>only</u> by ELAN Service Centers which have <u>not</u> signed a ELAN Authorized Retailer Agreement. ELAN Authorized Retailers must list their additional locations on the Additional Location Addendum to a current ELAN Authorized Retailer Agreement.

Name of Elan Service Center: _____ dba: _____

This Addendum to the 2014/2015 ELAN Ski Bindings Indemnity Agreement, signed by Service Center on _____2014/15, adds the following locations to the list of Authorized Locations, subject to all terms and conditions of the 2014/2015 ELAN Indemnity Agreement, which are incorporated herein by reference. Written notice of any changes, additions or moves must be given to ELAN within ten (10) days of the change, addition or move. All changes, additions or moves are subject to acceptance by ELAN.

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