



Assumption of Risk, Waiver of Liability, and Indemnification Agreement

Timberline Mountain Operations, LLC. (hereafter referred to as TM) is a recreational snow sports facility that provides recreational opportunities that include, but are not limited to skiing and snowboarding. We want you to understand that our sports, like other recreational activities, include inherent risks that can never be eliminated regardless of how much emphasis we place on reducing risk.

Definitions: MINOR PARTICIPANT - a child over whom the adult signing this document 1) has guardianship (including a parent) or 2) has assumed responsibility. RESPONSIBLE ADULT – an adult who has responsibility for one or more MINOR PARTICIPANTS.

Inherent Risks: TM feels it is important that any person on premises and all participants (ADULT PARTICIPANTS or MINOR PARTICIPANTS and/or RESPONSIBLE ADULTS) understand the nature of our sports and are aware of, understand, and appreciate the inherent risks involved.

- Skiing and snowboarding risks include, but are not limited to, collisions (with stationary objects such as trees, rocks, stumps, forest growth & debris, lift towers, fences, snowmaking equipment, snow vehicles, signs, and other manmade or natural obstacles; with other skiers/snowboarders); falls; landing awkwardly; over-exertion; failure to successfully complete a movement; loss of control (due to snow/ice conditions such as bare spots, black ice, moguls, terrain features; variations in surface and/or terrain conditions; slope design or modifications; and other hazards, whether manmade or natural, marked or unmarked); use of ski lifts, rope tows, and/or surface conveyor lifts; exposure to sometimes frigid conditions; and, exposure to infectious diseases.
- Other inherent risks of skiing and snowboarding include, but are not limited to, erratic or negligent behavior of the participant or of other participants; sudden changes in weather, weather-related occurrences, and acts of nature; failure of equipment (including rental equipment); and negligence of or judgment errors by staff (including error in judging the ability of participants, failure to anticipate developing problem situations, and failure to anticipate sudden changes in weather conditions).
- Risks of observing and being on the premises for all persons include, but are not limited to, being struck by skis, poles, boards, or other equipment; being struck by out-of-control skiers, or snowboarders; slipping and falling (on slick, wet, icy, or uneven spots, both outdoors and indoors including restrooms and other indoor areas); slippery or uneven sidewalks, steps, and outdoor surfaces; and various parking lot hazards such as vehicle traffic and unsure footing, negligence of TM or by TM staff, and exposure to infectious diseases

It is important that any person on premises and all participants understand insofar as possible that injuries can occur as the result of these inherent risks, which include, but are not limited to muscle strains and sprains, bruises, contusions, abrasions, sunburn, muscle soreness, broken bones, ligament and joint injuries, back and neck injuries, concussions, internal injuries, eye injuries, brain injury; spinal cord and back injuries, heart attack, stroke, infection, illness and even death. ADULT PARTICIPANTS therefore agree to ask questions if they do not understand any of these risks, and RESPONSIBLE ADULTS agree to educate MINOR PARTICIPANTS about these risks.

ASSUMPTION OF INHERENT RISKS: I, the ADULT PARTICIPANT have read the above paragraphs (or had the risks explained to me) and understand that TM ski, and snowboarding activities contain inherent risks which vary with the activity. I understand the demands of those activities relative to my physical condition and skill level, and I understand the types of injuries that may occur as a result of TM activities and their potential impact on my well-being, lifestyle, and both current and potential future careers. **I hereby assert that my participation is voluntary and that I knowingly assume all inherent risks.** I, the RESPONSIBLE ADULT, have educated MINOR PARTICIPANT (if applicable) about the risks.

WAIVER OF LIABILITY FOR NEGLIGENCE AND GROSS NEGLIGENCE: In consideration of permission for myself to use the TM property, facilities, and services, I, the ADULT PARTICIPANT, on behalf of myself, my spouse, my heirs, personal representatives, assigns, or others making a claim on behalf of myself [hereafter referred to as *Releasing Parties*] **do hereby release, waive, discharge, and covenant not to sue TM**, its owners, directors, officers, employees, members, lessors, lessees, volunteers, independent contractors, equipment providers, and agents, [hereafter referred to as *Protected Parties*] from liability **from any and all claims arising from 1) the NEGLIGENCE AND GROSS NEGLIGENCE/RECKLESS CONDUCT** of TM or other *protected parties* (except that, this Agreement does not purport to relieve TM from its responsibilities under The West Virginia Skiing Responsibility Act); and/or **2) the selection, installation, maintenance, adjustment, rental, or use of rental equipment;** and/or **3) the presence of myself on the premises of TM.** It is my intent that this waiver apply even to the gross negligence/reckless conduct of the protected parties. I also release the Protected Parties from liability for, and waive my right to sue Protected Parties for, any damages suffered by me resulting from the injury or death of MINOR PARTICIPANT (if applicable), including, but not limited to, damages in the form of payment(s) of the medical expenses or future medical expenses of MINOR PARTICIPANT.

This Assumption of Risk, Waiver of Liability, and Indemnification Agreement applies, but is not limited to, any and all of the following:

- Illnesses, personal injury (including death), and/or economic loss to the ADULT PARTICIPANT and/or RESPONSIBLE ADULT arising from participation in TM activities (including, but not limited to instructional classes; private instruction; independent skiing and snowboarding; use of rental equipment; use of ski lifts, rope tows, and surface conveyor lifts; competitive events; terrain parks; observation; individual use of facilities or equipment; locker room area; cafeteria area; ski rental area; retail shop; administrative area; restrooms; and all premises including the equipment/maintenance areas, sidewalks, steps, roadways and parking lots)
- Any and all claims resulting from the damage to, loss of, or theft of property.
- The release of TM from any claims and rights that I 1) now have against TM and/or 2) may have in the future against TM based upon events occurring on or before the date that this Agreement is entered into.

INDEMNIFICATION AGREEMENT: I, the ADULT PARTICIPANT and/or RESPONSIBLE ADULT, **agree to hold harmless, defend, and indemnify TM and Protected Parties** (that is, defend and pay any judgment and costs, including investigation costs, attorney's fees and related expenses)

- from any and all claims by or on behalf of MINOR PARTICIPANT arising from an injury or loss suffered by MINOR PARTICIPANT due to MINOR PARTICIPANT'S participation or presence at TM (including claims arising from the **inherent risks** of TM activities; the **NEGLIGENCE OR GROSS NEGLIGENCE** of TM or *Protected Parties*; and/or the use of rental equipment).
- from any claims for loss by third parties where such claims purport to be based in whole or in part on the conduct of myself or MINOR PARTICIPANT in the course of our presence at TM

Clarifying Clauses:

- I, the ADULT PARTICIPANT and/or the RESPONSIBLE ADULT, understand that this agreement between myself and TM cannot be modified or changed in any way by representations or statements by any agent or employee of TM.
- I also understand that if legal action is brought, the Circuit Court of Tucker County, West Virginia or The United States District Court for the Northern District of West Virginia has the sole and exclusive jurisdiction and that only the substantive **laws of the State of West Virginia** shall apply.
- I further expressly agree that the foregoing Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be as broad and inclusive as is permitted by **the laws of the State of West Virginia** and that **if any portion thereof is held invalid**, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I, the ADULT PARTICIPANT and/or the RESPONSIBLE ADULT **certify the following:**

- I and (if applicable) MINOR PARTICIPANT possesses a sufficient level of skill and physical fitness for participation in TM activities.
- I and (if applicable) MINOR PARTICIPANT have no health problems that would increase risk of injury during participation in TM activities.
- I acknowledge that TM encourages each participant to get medical clearance prior to participation.
- I acknowledge that I and (if applicable) MINOR PARTICIPANT have a duty to cease activity immediately and inform staff if we feel any unusual discomfort or become injured during participation.
- I will obey all rules (including the 'Your Responsibility Code' and/or the terrain park 'Smart Style' program when skiing and/or snowboarding) and will do my utmost to ensure that MINOR PARTICIPANT does the same. I will alert the staff to any rules violations or dangerous behavior of co-participants.
- I will attempt only activities that I feel capable of performing without increased risk of injury. I will do my utmost to ensure that MINOR PARTICIPANT does the same.
- I will obey all posted signs and stay out of prohibited areas. I will do my utmost to ensure that MINOR PARTICIPANT does the same.
- I acknowledge that TM has authority to end my participation or the participation of MINOR PARTICIPANT if it presents a danger to myself and/or others.
- I authorize TM to secure and/or administer emergency first aid, CPR, and use an AED when deemed necessary.
- I authorize TM to secure emergency medical care or transportation when deemed necessary, and I agree to assume all costs of emergency medical care and transportation.
- I agree to inform TM of any injury (even minor injuries) prior to leaving the TM facility.
- I give permission to TM to use any photographs, images, or likenesses taken of myself, and/or the MINOR PARTICIPANT(S) in its marketing brochures, ads, videos, or other media.

ACKNOWLEDGEMENT OF UNDERSTANDING: I, the ADULT PARTICIPANT and/or RESPONSIBLE ADULT, have read this Assumption of Risk, Waiver of Liability, and Indemnification Agreement and fully understand its terms. If applicable, I have explained the risks to MINOR PARTICIPANT. **I understand that I am giving up substantial rights that might belong to me** including:

1) my right as an ADULT PARTICIPANT to recover damages for any loss I may suffer resulting from my illness, injury or death resulting from participation at TM;

2) my right as a RESPONSIBLE ADULT to recover damages for any loss I may suffer resulting from injury to or death of one or more MINOR PARTICIPANTS.

I further acknowledge that I am signing the agreement freely and voluntarily, and intend my signature to be a **complete and unconditional release of all liability for myself**, due to 1) **negligence or gross negligence** by TM and the other *Protected Parties* or to 2) the **inherent risks** of TM activities, to the greatest extent allowed by law in the State of West Virginia.

Further, I, the RESPONSIBLE ADULT, assert that 1) I have explained the risks of the activity to the MINOR PARTICIPANT(S), and that to the best of my understanding, the MINOR PARTICIPANTS understand and are willing to encounter those risks.

FOR ADULT PARTICIPANTS:

 Name of Adult Participant #1 (Please Print) Signature of Adult Participant #1 Date Birthdate

 Name of Adult Participant #2 (Please Print) Signature of Adult Participant #2 Date Birthdate

FOR MINOR PARTICIPANTS:

I certify that I am the parent, legal guardian, and/or an adult responsible for said MINOR PARTICIPANT(S) listed below, and by my signature agree to be bound by the terms of this agreement:

_____ Name of RESPONSIBLE ADULT (Please Print)			_____ Signature of RESPONSIBLE ADULT			_____ Date		
_____ Name of Minor Participant #1	_____ Date of Birth	_____ Age		_____ Name of Minor Participant #2	_____ Date of Birth	_____ Age		
_____ Name of Minor Participant #3	_____ Date of Birth	_____ Age		_____ Name of Minor Participant #4	_____ Date of Birth	_____ Age		