

# ADULT PARTICIPATION LIABILITY WAIVER

Enrolment as a participant in the Upstate Studios Pilates Certification Course (**Course**) operated by Upstate Balaclava Pty Ltd (ACN 627 778 590) (**Upstate**) is entirely voluntary, but to enrol you must read, understand and agree to this form.

**RISK WARNING:** I acknowledge and agree that there are risks participating in the Course which may result in death or personal injury to myself. I understand as part of the Course, at times, physical exertion is required including, but not limited to, muscle strength and endurance training, cardiovascular conditioning and training and other various fitness activities and there are significant elements of risk in any sports or exercise associated with the indoor or outdoor use of equipment incidental thereto. The risks extend to physical or mental injury (including aggravation, acceleration or recurrence of any physical or mental injury), illness, contraction of disease or death, as a result of, but not limited to:

- slipping or falls from exercise equipment and props, such as a reformer Pilates machine and weights;
- slipping or tripping on floor surfaces;
- falls;
- dehydration;
- over exertion;
- vocal strain;
- the acts and/or omissions (including negligent ones) of other participants enrolled in the Course;
- failure to follow instructions in relation to participation in the Course; and
- all other such risks being known and appreciated by me.

I understand the description of these risks is not complete and that unknown or unanticipated risks may result in injury, illness, or death.

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**DECLARATION, WAIVER AND RELEASE:** In consideration of, and as a condition of acceptance of my enrolment in any Course, I declare and agree that:

1. I am physically able to participate in the Course I choose to participate in. I am not aware of any medical condition or any other reason why I should not participate in the Course I choose to participate in and that I have not been advised by a qualified medical practitioner not to participate in the Course. If I become aware of any medical condition during participation, which is of risk to my health, I will withdraw from or discontinue my participation in the Course;
2. my participation in the Course is at my own risk and I acknowledge the above Risk Warning together with the Warning Under the Australian Consumer Law and Fair Trading Act 2012 below;
3. to the fullest extent permitted by law, I release all those entities and persons associated with the operation and provision of the Course, including Upstate, together with its respective employees, agents, contractors, representatives and officers (**Suppliers**), from and against any claims of any kind (whether at tort, contract or statute) including personal injury, death or property damage, however caused (including negligence) arising out of or in connection with my participation in any Course;
4. I indemnify Upstate and its Suppliers, from and against any claims made against them arising from personal injury, death or property damage caused to another person by me in the course of my participation in any Course;
5. I understand that as part of in-person practical Course activities which I attend, Upstate instructors may seek my consent to physically touch me while I am engaged in an exercise as part of the Course activities and I hereby agree, to the extent permitted by law, that I will release Upstate and its Suppliers who make physical contact from any injury or damage that may occur to me during the Course;
6. I consent to photographs being taken of me during my participation in any Course, and acknowledge that any images are the property of Upstate and that Upstate may use such images for the purpose of promoting Upstate, any Course or other reasonable purposes without further consent being necessary;
7. I consent to receiving medical treatment if I am unable to provide consent at the time such treatment is deemed to be required;

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8. I will act in a safe and responsible manner, and engage in the Course in a safe and responsible manner; and
9. to the fullest extent permitted by law, I hereby release, waive liability, discharge, hold harmless, indemnify, and covenant not to sue Upstate together with its respective employees, agents, contractors, representatives and officers due to any and all loss, damage or liability incurred in connection with my enrolment in any Course.

**WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012:** If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** are excluded, restricted or modified in the way set out in this form, if you are killed or injured because the services provided were not in accordance with the statutory guarantees outlined below.

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you-

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

In accordance with section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the exclusion of these statutory guarantees is brought to your attention by this form.

**NOTE:** The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2022 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

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In addition to the foregoing, this form does not seek to exclude or limit any liability that cannot by law be excluded or limited, including the consumer guarantees provided under the Australian Consumer Law contained in the *Competition and Consumer Act 2010 (Cth)*.

**I have completely read this document and fully understand its contents. I acknowledge that I have given up substantial rights by accepting this document and that I do so voluntarily.**

First Name:

Last Name:

Email:

Signature:

Date:

In case of emergency contact:

Phone