

## TERMS AND CONDITIONS

These Terms and Conditions, together with any Pilates Service Form, Screening Tool and/or Liability Waiver set, set out the agreement (this **Agreement**) under the terms of which you or, where applicable, the person for whom you are the parent or guardian, (the **User, you, your**) will obtain services, including the Activities, from **Pilates Principles Pty Ltd** ABN 89 672 547 296 (**Company, we, us, our**).

We may change these Terms and Conditions at any time by updating the Terms and Conditions page on our website or the Mindbody Application (together, **Mindbody**), and your ordering of the Activities or using the Studio following such an update will represent an agreement by you to be bound by the Terms and Conditions as amended. However, we will only increase your Fees in accordance with clause 6.3 below.

### 1 PILATES SERVICE FORM, THIS AGREEMENT

- (a) These Terms and Conditions will apply to all the User's dealings with Company, including being incorporated in all agreements or quotations under which Company is to provide services to the User (each a **Pilates Service Form**) together with any additional terms included in such a Pilates Service Form (provided such additional terms are recorded in writing).
- (b) The User will be taken to have accepted this Agreement if the User accepts an Pilates Service Form whether in person or via Mindbody, or if the User orders, accepts or pays for any Activities provided by Company after receiving or becoming aware of this Agreement or these Terms and Conditions.

### 2 TERM

- (a) This Agreement commences on the Commencement Date and continues:
  - (i) for the duration of the Minimum Term specified in the Pilates Service Form for Upfront Membership Plans; and
  - (ii) for the duration of the Minimum Term, and then automatically as a 'Month to Month' Membership Plan until terminated in accordance with clause 12 for Membership Plans.
- (b) Where the Agreement automatically renews in accordance with the above clause 2(a)(ii), the Company will provide you with at least 5 business days' notice prior to each renewal.

### 3 COOLING OFF PERIOD

You can cancel this Agreement without incurring any cancellation Fees, if you notify us of your intent to cancel in writing within 7 days of signing this Agreement (**Cooling Off Period**).

### 4 OBLIGATIONS

#### 4.1 CAPACITY AND AGE

- (a) The User warrants that they:
  - (i) have the legal capacity and are of sufficient age to enter into an agreement with us; and/or;
  - (ii) are the parent or guardian of the User who consents to this Agreement on behalf of the User, where the User is under the age of 18.
- (b) The User acknowledges and agrees that:
  - (i) they must be at least 16 years of age to participate in any Activities; and
  - (ii) where the User is pregnant, they may only attend Pre-natal Pregnancy Activities and must present a letter from a duly qualified General Practitioner

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or other relevant Medical Professional stating that they are fit to practice such Activities.

## 4.2 PRE-ACTIVITY OBLIGATIONS

The User warrants that, on or prior to the Commencement Date, they:

- (a) have read and signed any Waiver provided by the Company;
- (b) accept any Third Party Terms required for the use of Mindbody.
- (c) Inform the Company if they are pregnant, injured or have any condition that may affect their ability to exercise safely (see clause 4.5).

## 4.3 GENERAL

- (a) The User must provide the Company with all documentation, information and assistance reasonably required for the Company to provide the Activities;
- (b) The User must participate in any briefings and/or introductions as notified by the Company prior to engaging in any Activities; and
- (c) If you are the User's parent or guardian and the User is under the age of 18, you must ensure that the User complies with these terms, and agree to the terms of this Agreement in respect of the User.

## 4.4 INSTRUCTIONS AND SAFETY

The User warrants that they:

- (a) will undertake an instructional consultation with an Instructor prior to using the Studio or engaging in the Activities, if required;
- (b) comply with any safety guidelines, instructions and/or rules that an Instructor provides to them;
- (c) stop participating in any Activities, and alert Company or its Instructor, if the User has any concerns about their health or safety or if they start feeling dizzy, faint, unwell or feel any unusual pain during the Activities; and
- (d) be responsible for their own safety and that of any person under the age of 18 years for whom they have signed responsibility.

## 4.5 HEALTH AND STATE OF THE PARTICIPANT

The User warrants that they:

- (a) are not pregnant (unless otherwise accounted for under the above clause 4.1(b)(ii)) and do not have a health condition which might have the effect of making it more likely that they will be involved in an accident or injury while participating in the Activities (**Condition**);
- (b) will notify Company immediately if they develop a Condition;
- (c) are aware and agree that if they have a Condition, Company might refuse them participation in some and/or all Activities;
- (d) are aware that the Activities, even when no accident occurs, may involve risk to health;
- (e) will not participate in the Activities under the influence of drugs, alcohol or illicit substances;
- (f) will not participate in the Activities, if ill, injured or feeling unwell; and
- (g) will participate in any warm-up recommended by an Instructor before or during the Activities.

## 4.6 STUDIO USE

The User must:

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- (a) wipe down each piece of equipment after use;
- (b) not use abusive, offensive or threatening language or behaviour while at the Studio;
- (c) not enter the Studio under the influence of drugs or alcohol;
- (d) not smoke, consume alcohol, drugs or foods at the Studio; and
- (e) not use the equipment and/or facilities without seeking instructions from an Instructor if the User is not familiar with the equipment and/or facilities.

## 4.7 POSSESSIONS

- (a) The User is responsible for their possessions (and those of any person under the age of 18 years for whom they have signed responsibility) while at the Studio. The Company will not be liable if any of the User's possessions are lost and/or stolen at the Studio.
- (b) Where the User uses pigeonholes or otherwise stores their possessions at the Studio, the Company will not be liable if the User's possessions are lost and/or stolen. The User uses the pigeonholes and stores their possessions at the Studio at their own risk.

## 4.8 STUDIO ACCESS

- (a) Users acknowledge and agree that they will not be able to access the Studio outside of the relevant time frame for a Class they are registered for.
- (b) Where the User has registered for a Class, the Company will provide access to the Studio for a suitable time before, during and after the Class.

## 5 CLASSES AND AVAILABILITY

### 5.1 CLASSES

The User acknowledges and agrees that:

- (a) unless directed otherwise, they are required to book their Classes in advance via Mindbody; and
- (b) any missed Classes will be forfeited by the User and the Company will not be required to reschedule such Classes.

### 5.2 LATE CANCELLATION FEE

The User acknowledges and agrees that:

- (a) where they have booked their Class in advance via Mindbody, any cancellation within five hours of the start time of the class will incur a Cancellation Fee; and
- (b) where they have booked their Class in advance via Mindbody and do not attend the class, a No-Show Fee will be incurred.

### 5.3 AVAILABILITY

- (a) While the Company will endeavour to ensure that Classes and equipment are available during the advertised opening hours, on occasion, Classes or equipment may be full, unavailable or no longer offered and the Company will not be liable to the User in such circumstances.
- (b) The Company reserves the right to change the Classes and times offered at its absolute discretion without notice to the User.
- (c) The Company reserves the right to change the instructor of the class without notice, if the instructor is unable to attend the class.
- (d) The Company reserves the right to cancel classes should there be less than 3 people. Clients will be notified 2 hours prior to the scheduled start time. The Company will refund the class.

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- (e) The User acknowledges that during public holidays and over the Christmas and New Year breaks, the Company classes are reduced in frequency and/or unavailable. This circumstance has been reflected in our Fees and the User is not entitled to any fee discounts on this account.

## 5.4 WAITLIST

- (a) Where a Class no longer has capacity, the User may opt to join a waiting list for the Class via Mindbody (**Waiting List**). The User may then be automatically registered for the Class where additional capacity becomes available and will be notified of such registration via Mindbody.
- (b) The above clauses 5.2(a) and 5.2(b) will apply to any Users who opt to join a Waiting List and are then automatically registered for the class according to the above clause 5.4(a), regardless of whether such notification outlined in the above clause 5.4(a) has been received by the User.

## 6 PAYMENT

### 6.1 FEES

The User must pay the Fees to Company, in the amounts and at the times set out in the Pilates Service Form or as otherwise agreed in writing.

### 6.2 DIRECT DEBIT

If the User's Membership Plan includes multiple classes on a per week basis or is for unlimited classes per week, the User:

- (a) agrees to enter into DDR Service Agreement via the Mindbody application or via the Company website;
- (b) authorises the Company or Mindbody as the case may be to charge the User's bank account in advance in line with the Pilates Service Form and DDR Service Agreement;
- (c) acknowledges and agrees that each direct debit payment may incur an additional direct debit fee (no direct debit fee will apply without the Users prior notification);
- (d) must ensure that there are sufficient funds available in their account to allow the Company or Mindbody (as the case may be) to debit the Fees payable;
- (e) must give Company a notice of at least 48 hours if:
  - (i) the User is transferring or closing the account specified in their DDR;
  - (ii) there are any changes to the User's credit card specified in their DDR; and
- (f) acknowledges and agrees that if a debit is returned by the User's financial institution as 'unpaid':
  - (i) Company will charge the User a \$7 dishonour fee in addition to any fees charged under the DDR Service Agreement by Mindbody; and
  - (ii) Company will suspend the User's Studio access until the amounts payable are received by Company.

### 6.3 UPFRONT PAYMENT

If the User's Membership Plan is for a set number of classes or a limited timeframe requiring a set Fee, the User must pay for all goods and services upfront at the time of booking using the payment method specified in the Pilates Service Form (**Upfront Membership Plan**).

### 6.4 FEE INCREASES

We reserve the right to increase the Fees at any time after the period of your initial Membership Plan has ended, or at any time if your Membership Plan is 'Month to Month', by giving you a 31-day notice of such increase.

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## 6.5 INVOICES

If Company issues an invoice to the User, payment must be made by the time(s) specified in such invoice.

## 6.6 GST

Unless otherwise indicated, amounts stated in a Pilates Service Form and on the Pilates Principles website include GST.

## 6.7 MINDBODY

The Company uses Mindbody to collect Fee payments. The processing of payments by Mindbody will be, in addition to this Agreement, subject to your DDR Service Agreement with Mindbody (if any) and privacy policy of Mindbody. We are not liable for the security or performance of Mindbody. We reserve the right to correct, or to instruct Mindbody to correct, any errors or mistakes in collecting your payment.

## 7 SUSPENSION OF MEMBERSHIP

- (a) You may suspend your Membership Plan for a minimum of 2 weeks at a time so long as the total time suspended within a 12 month period does not exceed 6 fortnights.
- (b) To suspend your Membership Plan you must not have any outstanding Fees to pay to Company.
- (c) Suspensions must commence and end on the date when your direct debit payment is due.
- (d) Any time spent on suspension will be added onto the Minimum Term of the Agreement so that the amount payable shall still be payable regardless of any suspension or suspension charges made.

## 8 TRANSFER OF MEMBERSHIP

You can transfer your Membership Plan to another person (**Transferee**), within the term of your Membership Plan provided that:

- (a) the Transferee is not a current User;
- (b) the Transferee agrees to enter into a Membership Agreement with Company under the same Membership Plan; and
- (c) the Transferee is not a person who previously failed to pay Membership fees to Company.

## 9 LIABILITY AND INDEMNITIES

### 9.1 NO RELIANCE

You acknowledge that in paying for the Activities and entering this Agreement you did not rely on advice or coercion from the Company and that you are satisfied with the condition and suitability of the Studio and Activities and their fitness for your intended purpose.

### 9.2 LIABILITY

To the maximum extent permitted under applicable law, and without limiting any rights under the *Competition and Consumer Act 2010* (Cth) the Company's liability for all claims (whether they are for breach of this agreement, negligence or otherwise, and whether they are for economic loss, for personal injury or other damage) arising under or in connection with this Agreement:

- (a) is excluded where it is liability for:
  - (i) any indirect, special and consequential damages;
  - (ii) damages (whether direct or indirect) reflecting loss of revenue;

- (iii) loss of profits or loss of goodwill; and
- (b) is limited, where it is other liability, to the total money paid to the Company under this Agreement on the date of the event resulting in the relevant liability (or, where there are multiple events, the date of the first such event).

## 9.3 RISK

- (a) Participating in the Activities involves the potential for injury and the User is participating in any Activities at their own risk with knowledge of the dangers involved, including but not limited to, physical injury, muscle and ligament strains, illness, bruising, falls, injury through equipment failure, and death.
- (b) The User acknowledges that there will be times where the User will be unsupervised by any Instructor and agrees to accept any risks of loss, injury, damage or death arising out of the User's unsupervised use of the Studio, unless there is reckless disregard or gross negligence on Company's behalf.
- (c) The User acknowledges that while Company uses its best endeavours to ensure that the Studio and any facilities and/or equipment are free of faults and safety issues, there may be instances of equipment failure, and/or equipment and other objects may be left in incorrect positions by other Studio users. The User agrees that the Company will not be liable for any loss or damage arising out of such circumstances unless there is reckless disregard or gross negligence on Company's behalf.
- (d) The User will bear all risk of loss or destruction of, or damage to, any equipment and/or other property and/or people arising out or contributed to by their participation in the Activities.
- (e) The User acknowledges and agrees that the Company may give advice, recommendations, information or assistance in relation to the Activities. Any information and advice given is general in nature and is not intended to constitute or substitute for medical advice as the Company and its Instructors are not medical practitioners. Unless required by law, the Company does not accept any liability or responsibility (including liability for negligence) for any loss suffered because of your or any other person's reliance on any such information or advice.

## 9.4 INDEMNITY

The User indemnifies the Company from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) any breach of this Agreement by the User;
- (b) any negligent, fraudulent or criminal act or omission of the User; or
- (c) an event, where circumstances giving rise to a claim, were caused or contributed to by the User.

## 10 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this Agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the User may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

## 11 PRIVACY

You agree to be bound by our Privacy Policy, which is available at the footer of the Company website.

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## 12 CANCELLATION

### 12.1 BY THE COMPANY

Company may terminate this Agreement in whole or in part immediately by written notice to the User if the User is in breach of any term of this Agreement.

### 12.2 NOTICE – ALL USERS

Subject to clause 3, if you wish to cancel this Agreement, you must provide at least 10 business days written notice to Company (**Notice**).

### 12.3 MONTH BY MONTH MEMBERSHIP PLAN

If you are on a month by month Membership Plan we will refund any pro-rata direct debit that covers a period of time past the Notice period.

### 12.4 UPFRONT USERS – NO REFUND

If you are on an Upfront Membership Plan we will not refund you for any unused period of your Membership Plan Minimum Term.

### 12.5 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

## 13 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

## 14 NOTICES

- (a) A notice or other communication to a party under this Agreement must be:
  - (i) in writing and in English; and
  - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
  - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or

- (ii) when replied to by the other party,  
whichever is earlier.

## 15 GENERAL

### 15.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Western Australia, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### 15.2 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

### 15.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### 15.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

### 15.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

### 15.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

### 15.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

### 15.8 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

### 15.9 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;



- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.

**16 DEFINITIONS**

In addition to capitalised terms defined in the Agreement Details above, capitalised terms used in this agreement will have the following meanings:

<b>Term</b>	<b>Meaning</b>
<b>Activities</b>	means the Activities listed in the Pilates Service Form to be provided to the User by Company.
<b>Direct Debit Fee</b>	means any additional fee charged in relation to the Fees under this Agreement where the Fees are paid via direct debit.
<b>Direct Debit Request, DDR</b>	means the Direct Debit Request located in the Pilates Service Form authorising Mindbody to debit your nominated account or credit card for Fees payable to Company in accordance with the DDR Service Agreement.
<b>DDR Service Agreement</b>	means the DDR Service Agreement between you and Mindbody relating to the Fees payable under the Pilates Service Form provided by Mindbody.
<b>Cancellation Fee</b>	means an additional fee of an amount outlined in the relevant Pilates Service Form incurred by the User where that user cancels their registration for a class within the timeframe outlined in this Agreement.
<b>Commencement Date</b>	has the meaning set out in the Pilates Service Form.
<b>Fees</b>	has the meaning set out in the Pilates Service Form.
<b>Studio</b>	means the venue specified in the Pilates Service Form.
<b>Laws</b>	mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Activities are performed or received and includes any industry codes of conduct.
<b>User, you, your</b>	has the meaning set out in the Pilates Service Form and includes the parent or guardian of the User if the User is under 18 years of age.
<b>Pilates Service Form</b>	has the meaning set out in clause 1(a) of these Terms and Conditions.
<b>Membership Plan</b>	has the meaning set out in the Pilates Service Form and relates to the contract length and payment terms a User has selected.

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<b>No-Show Fee</b>	means an additional fee of an amount outlined in the relevant Pilates Service Form incurred by the User where that user does not appear for or participate in a class that they have registered for.
<b>Instructor</b>	means, in respect of the Company, its officers, employees, contractors (including subcontractors) and agents.
<b>Pre-Natal Pregnancy Activities</b>	means activities explicitly described as being suitable for pregnant Users by the Company.

**17 INTERPRETATION**

In this Agreement, the following rules of interpretation apply:

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(currency)** a reference to **"\$"** or **"dollar"** is to Australian currency;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word **"includes"** and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.