

## WAIVER AND RELEASE OF LIABILITY AND INDEMNITY AGREEMENT

for Downstate Athletic Center ("Facility")

Upon signing this Agreement, including digital means, and forever thereafter, you agree that if you participate in or attend any event or activity at the Facility, you do so at your own risk and assume the risk of any and all injury and/or damage you might sustain, regardless of whether you are a participant, a spectator, or otherwise. Your assumption of risk includes but is not limited to the actions of any employee or agent of the Facility and the use of any sports or other equipment at the Facility.

You further agree to assume the risk of your participation in or presence at any event or activity hosted, sponsored, or conducted by Facility. You agree that you are voluntarily participating in the aforementioned and assume all risk, known and unknown, associated with same. You agree on behalf of yourself, your spouse, all your children, personal representatives, heirs, executors, administrators, agents, and assigns to forever release and discharge the Facility, their owners, officers, directors, employees, agents, representatives, affiliates, successors, and assigns from any and all claims or causes of action (known or unknown) arising out of the actions and/or negligence, whether active or passive, or that of any of its affiliates, employees, agents, representatives, successors, and assigns. This waiver and release of liability includes, without limitation, injuries which may occur as a result of (a) your use of any equipment or facilities, (b) Facility's maintenance of any exercise equipment or facilities, (c) Facility's instruction or supervision, including personal training, strength training, refereeing and coaching, (d) your slipping or tripping and falling while on Facility premises, and (e) you sustaining personal injuries as a result of the condition of property on which you are present in relation to any Facility function, including Facility's negligent inspection or maintenance of such premises.

By executing this Agreement, you hereby agree to indemnify and hold harmless Facility from any loss, liability, damage, or cost Facility may incur due to your presence at any Facility Location. You further expressly agree that the foregoing release, waiver, and indemnity agreement is intended to be as broad and inclusive as permitted by the law of the State of New York, and that if any portion of this agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

This release is not intended as an attempted release of claims of gross negligence or intentional acts. You acknowledge that Facility provides a service to their members and guests and is not in the business of selling, leasing, or otherwise placing into the stream of commerce exercise or sports equipment, or other such products, and the use of any such items is incidental to the service provided by Facility.

The parties irrevocably agree that all actions or proceedings in any way, manner or respect arising out of or related to this agreement shall be litigated only in courts having situs in the State of New York, each party consents and submits to personal jurisdiction in the state of New York and waives any right such party may have to transfer venue of any such action or proceeding.

YOU ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ THIS WAIVER AND RELEASE AND FULLY UNDERSTAND THAT IT IS A RELEASE OF LIABILITY, AND EXPRESS ASSUMPTION OF RISK AND INDEMNITY AGREEMENT. YOU ARE AWARE AND AGREE THAT BY EXECUTING THIS WAIVER AND RELEASE, YOU ARE GIVING UP YOUR RIGHT TO BRING A LEGAL ACTION OR ASSERT A CLAIM AGAINST FACILITY FOR THEIR NEGLIGENCE, OR FOR ANY DEFECTIVE PRODUCT ON THEIR PREMISES. YOU HAVE READ AND VOLUNTARILY SIGNED THE WAIVER AND RELEASE AND FURTHER AGREE THAT NO ORAL REPRESENTATIONS, STATEMENTS, OR INDUCEMENT APART FROM THE FOREGOING WRITTEN AGREEMENT HAS BEEN MADE. YOU AGREE, FOR YOURSELF AND YOUR SPOUSE, CHILDREN, SUCCESSORS, HEIRS AND ASSIGNS, THAT THE ABOVE REPRESENTATIONS ARE CONTRACTUALLY BINDING, AND ARE NOT MERE RECITALS, AND THAT SHOULD YOU OR YOUR SUCCESSORS ASSERT ANY CLAIM IN CONTRAVENTION OF THIS AGREEMENT, THE ASSERTING PARTY SHALL BE LIABLE FOR THE EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES) INCURRED BY THE OTHER PARTY OR PARTIES IN DEFENDING AGAINST ANY SUCH ACTION.