

## **Membership Agreement: SRAC Gym**

### **1. General**

This is a membership agreement between you (the undersigned) and Sydney Region Aboriginal Corporation (“we”, “us”, “SRAC”) under which you agree to become a member of Sydney Region Aboriginal Corporation Gym (SRAC Gym).

Please note that your membership is personal to you and cannot be assigned or transferred. This agreement shall be legally binding when signed by you.

This agreement sets out your rights to use our facilities and services provided within the Gym, and the obligations you must comply with as a member. Your responsibilities under this agreement, including payment of membership fees, do not depend on how often you use the facilities and services. You promise to tell us if at any time you believe that you may not be able to comply with your obligations under this agreement including the payment of fees, so we can discuss your options with you.

What is set out in this agreement overrides any statements made by you or us before you signed the agreement. Your membership starts on the date on which you sign this agreement (Start Date).

Your membership is ongoing, it is a periodic agreement that will continue after the Minimum Term until either you or we terminate it in the way described in this agreement. If an automatic direct debit arrangement is in place, membership fees will continue to be debited from your credit card or account until you or SRAC cancel the arrangement by notifying your bank or credit provider. If you terminate this agreement or stop the automatic debit arrangement in a manner not described in the agreement, then you may be liable for damages for breach of contract.

### **2. Direct Debit**

Direct debit Services are supplied by Ezidebit (Direct Debit Provider). If you elect to pay your membership fees fortnightly via direct debit, you must agree to Ezidebit's terms and conditions which are part of the membership application form.

Direct Debit Warning: Please ensure that you cancel any direct debit authorisation for payments under this agreement when your membership ends.

### **3. Cooling Off Period**

This agreement is subject to a Cooling off Period which ends 48 hours after the Start Date.

If you change your mind shortly after signing this agreement, you may have an opportunity to cancel. You will need to let us know in writing within the time specified above for it to be effective. We will charge the joining fee and fair amounts for fitness services we have already provided but will otherwise refund you any other amounts you have paid to us within 7 days. If you wish to end your membership otherwise, different terms apply as set out in this agreement.

### **4. Membership Benefits**

From the Start Date your membership entitles you to the use of the services and facilities offered within the SRAC Gym site including all exercise areas, change rooms and equipment including

weights, benches, machines, mats, and any programs, products, classes and services (note that some services may incur an additional cost) during its usual opening hours. This is subject to prior facility bookings. We encourage you to check the availability of any specific facility prior to arrival by telephoning us.

You must present your membership card for admittance to the SRAC Gym. Please note that an administration fee of \$10.00 will be charged to replace lost, stolen, or damaged membership cards.

## 5. Health & Safety

The health and safety of our members and staff is important to us. This clause sets out some of the things we require of you to help keep everyone safe.

### (a) Your physical condition

A safe and effective exercise program is dependent upon accurate health and fitness profiling. You must tell us all relevant personal health and fitness information in writing both before (through our pre-exercise questionnaire or otherwise) and during any exercise program or other activity.

You must declare that information you disclose to us is true and accurate and not misleading in any way. You must not attend and use the facilities and services whilst you are suffering from any illness, disease, injury, or other condition that could present a risk to the health or safety of other members and guests or yourself.

### (b) Proper use of equipment

You agree to take care when using the facilities and services and make sure that you use the facilities and services including equipment appropriately and safely. If you don't know how to operate any equipment properly, please ask a staff member before you use it. Our staff will be happy to show you the correct use.

### (c) Rules of good behaviour

We display rules that apply to everyone using the facilities and services to promote health and safety and the protection of property (our Rules). Our Rules are displayed on our website and on signage. Please make sure that you read our Rules carefully and ask us if there is anything you are not sure about.

We may occasionally update our Rules to further promote health and safety or to make other improvements. You must keep familiar with the current version of our Rules by reading our website and signage on a regular basis. If you break our Rules, we will take reasonable action, and act fairly by giving you a warning if we consider the failure is less serious. The health and safety of all users and protection of property is our highest priority. If we reasonably consider the failure to follow our Rules is serious or persistent, we may suspend or even cancel your membership with immediate effect.

### (d) We have the right to refuse you entry

We can refuse you entry to the facilities and services or cancel your membership immediately if you behave in a way that causes seriously risk or is inappropriate such as if you threaten or harass others, deliberately or recklessly damage equipment or facilities or if you use or distribute illegal or performance enhancing drugs.

(e) Follow directions of staff

You agree to follow any reasonable direction of a member of our staff relating to health and safety or any other matter.

6. Your right to privacy

(a) Our privacy policy

Your membership gives us access to personal information about you, such as information relating to your health and finances. We will protect this information and only use, disclose, or deal with this information in accordance with our Privacy Policy. The latest version of the Privacy Policy will be available on our website.

(b) Video monitoring

We may use video monitoring in our facilities for health, safety, and security reasons. If you have any queries in relation to the use of monitors operating in and around our facilities, please contact us.

(c) Your contact details

You promise to tell us promptly if you change your address, phone number, email, bank account, credit card information for payment or if there is a change to any other personal information relevant to your membership with us. This includes any matters that affect the health or safety of you or others

7. Membership Suspension/Hold

(a) You may suspend your membership up to once every six months if you are a paid-up member

(b) A suspension period must be a minimum of 7 day

(c) A suspension period can be no longer then 28 days

(d) You are not permitted to use the centre during a suspension period

(e) You must complete a suspension request form and submit it to us in advance for our approval

8. Ending your membership

Your Membership is ongoing, which means it will continue after the Minimum Term unless you tell us in writing at any time before the expiry of the Minimum Term that you do not wish your membership to continue.

If you have not told us that you wish your membership to end at the expiry of the Minimum Term, you can terminate any time after the end of the Minimum Term by giving us at least 14 days prior written notice. Any unused membership fees after the required notice period will be refunded.

We will accept written notification of cancellation by either email to [gym@srac.ngo](mailto:gym@srac.ngo) or by post to SRAC Gym, PO Box 838 Penrith NSW 2751.

Where neither you nor SRAC terminate this agreement, any unpaid fees will need to be paid by you and in addition to our other rights we may have, including taking action to recover the outstanding payments.

#### 9. Ending your membership under other circumstances

- (a) You can cancel your membership (no cancellation fee will apply) if:
- you become subject to medical incapacity
  - we make changes to this agreement that adversely affect you.

You can end your membership by telling us in writing if you cannot exercise for the remainder of Minimum Term due to an illness or a physical incapacity and you produce supporting documentation to our reasonable satisfaction. In that event, you will only be charged the joining fee, membership fees for the time you have been a member calculated on a pro rata basis and any outstanding fees for other services already supplied to you.

- (b) You can cancel your membership (a cancellation fee applies) if:
- you otherwise become entitled to do so under consumer legislation
  - you relocate or simply wish to cancel for any other reason

You can end your membership during the Minimum Term with immediate effect at any time by simply telling us in writing. We understand that circumstances change and so you do not need to give any reason. If your membership is cancelled in these circumstances, you will be liable for the joining fee, membership fees for the time you were a member calculated on a pro-rata basis, any outstanding fees for other services already supplied to you and the cancellation fee.

#### 10. SRAC right to terminate membership

In addition to our other rights under this agreement, we can terminate your membership by written notice to you if you fail to act in accordance with any obligation under this agreement and if capable of remedy you do not remedy the failure within a reasonable time of us giving you written notice requiring you do so. If we cancel this agreement in these circumstances, you will be liable for the joining fee, membership fees for the time you were a member, the cancellation fee, and any other fees payable for further fitness services already supplied.

#### 11. Membership Fees

The fees you must pay are specified in Schedule of Fees and Charges provided to you before you signed this agreement. This clause sets out some further rights and obligations that apply in relation to those fees.

If you fail to make any payment when due, we can suspend your membership and refuse you access to the facilities and services until all outstanding amounts have been paid in addition to our other rights under this agreement. Fees and charges continue to accrue during the suspension.

- (a) Joining fee

We charge you a joining fee to cover the set-up costs for a new membership. The joining fee is not refundable

(b) Membership fees

Your membership fees are deducted by direct debit in fortnightly instalments and must be paid fortnightly in advance until your membership ends

(c) Cancellation fee

The cancellation fee is based on a payout figure equal to the membership fees that you would have paid for the remainder of the Minimum Term as at the cancellation date less 50%

(d) Fee increases

We will not increase the membership fees during the Minimum Term. However, we may increase your membership fees or any other fees with effect any time after that. We will make reasonable effort to tell you at least 30 days before by writing to you at the last address you gave us (which may be an email address). Where we have done so, you authorise us to increase any debits from your nominated account in line with this increase. We will not use this right to vary the terms of any special offer which applies to you

(e) Refunds and the Credit Code

We are entitled to deduct all fees and charges that you must pay under this agreement from any refund we give you. The National Credit Code does not apply to this agreement

## 12. Direct debit payments

(a) Authorisation to deduct fees

By nominating a credit or debit account, you are authorising us to deduct from that account all fees and other charges for which you may be responsible under this agreement. Accordingly, it is essential that you keep your account details up to date.

(b) If your payment is late or rejected

You are responsible for making sure that there is enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments. Any bank fees charged to us because of a rejection when we attempt to collect payments from you may be charged directly to you by us (or by the Direct Debit Provider). If a payment remains outstanding, you agree that we (or the Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you.

## 13. Other services

There may be other services offered at SRAC Gym that do not form part of your membership but are available for you to purchase separately. These are not part of the services provided under your membership and you will be advised at the time if any additional terms apply to these services. Your membership does not entitle you to use the services of a personal trainer, or any other service provider not authorised by us to provide services within the SRAC Gym.

## 14. Changes to your membership agreement

We may need to make changes to this agreement including our Rules during your membership. However, we will always try to do this in a way that is fair by giving you an opportunity to cancel your membership if you do not agree to the change. We will tell you in writing of the proposed change in advance and tell you the date that it will come into effect. This effective date will be at least 30 days from the date of our notification unless it is impractical for us to do so. Your membership will be amended with effect from the effective date. If, however, you are adversely affected by the change, you may cancel your membership without payment of the cancellation fee by telling us in writing before that date. Please note you cannot cancel under this clause if we are required to make the change to comply with a law or any direction of a competent authority.

## 15. SRAC liability to you

### (a) Statutory guarantees

The Australian Consumer Law (ACL) contained in the Competition and Consumer Act 2010 (Cth) (CCA) provides certain guarantees in sections 60 to 62 (statutory guarantees) which generally require that services supplied to you 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 and are supplied within a reasonable time (when no time is set).

Permitted exclusion: The CCA permits a supplier of recreational services to ask you to accept some limitations on those statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, you acknowledge and agree that we exclude all liability to you for death or injury resulting from a failure by us to comply with any statutory guarantee.

In the previous sentence, "injury" means rendered with due care and skill, physical or mental injury (including the aggravation, acceleration, or recurrence of such an injury), the contraction, aggravation, or acceleration of a disease, aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or situation in relation to you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.

Reckless conduct: This exclusion of liability does not apply if you have suffered any significant personal injury that is caused by our reckless conduct (within the meaning given to those terms by the CCA).

### (b) General exclusions

Please note that nothing in this agreement excludes, restricts, or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted, or modified. Otherwise, and except as expressly included in this agreement, all implied terms, conditions, warranties, rights, or other additional obligations that can be lawfully excluded are excluded from this agreement. Particularly, subject to the preceding paragraph, we are not liable for: negligence; or breach of terms implied that services will be provided with reasonable care and skill, at common law that in either case results in your death or injury (as defined in paragraph (a) above) in connection

with or under this agreement, but to avoid doubt we do not exclude liability for our reckless conduct.

(c) Loss of property

You agree to not unnecessarily bring valuables into to the gym and that if lockers are available, you will use the lockers to store any valuable property that you bring with you. If we provide secure storage lockers, then this is part of our service to you. However, we are not responsible if someone breaks into your locker and takes your property, other than to the extent we have not complied with our obligations in respect of this service under a statutory guarantee.

Other than as described above, maintaining the security of unattended property in the gym is not part of the service we provide under this agreement. Accordingly, if you choose not to use a locker to securely store your property and leave it unattended in the gym, we will not be responsible for any loss or damage to your property that occurs.

16. Your responsibility for damage

You agree to pay for any damage to the gym caused by you or your guests through a wilful act or negligence.

17. Other legal matters

(a) Unexpected events

We are not liable if you cannot use your membership due to anything beyond our reasonable control. If that failure or delay continues for more than 30 days, then either you or we can cancel this agreement with immediate effect by telling the other in writing. We are entitled to make part or all the gym unavailable for up to two weeks during each calendar year to undertake maintenance, repairs, or improvements, in which case we will extend your membership by the time you are unable to use the facilities.

(b) Our logo and intellectual property

No rights in relation to our logo, trademarks or any other intellectual property rights associated with our business, techniques, exercise programs or classes are granted to you under this agreement, except that any exercise program created for you may be used while you are a member for the purpose of your exercise activities.

(c) Severability and waiver

If a court finds that any part of any term of this agreement is or becomes illegal, void, or unenforceable, this does not invalidate the rest of this agreement. If we do not enforce our rights under this agreement at any time, it does not mean that we may not do so on future occasions.

(d) Applicable law

The law of the State of New South Wales applies to this agreement.