



## BOAT HIRE AGREEMENT

This Boat Hire Agreement (**Agreement**) is between:

**Four Points Boat Club Pty Ltd as Trustee for Four Points Boat Club Trust ACN 645 442 539 (We / Us / Our)**

and

**Member Name:** \_\_\_\_\_ (You / Your)

(each a **Party**)

### DETAILS OF HIRE:

**Vessel Name:** \_\_\_\_\_

**Vessel Registration Number:** \_\_\_\_\_

**Date of Hire:** \_\_\_\_\_

**Hire Period:** \_\_\_\_\_ am to \_\_\_\_\_ pm on the Date of Hire

**Member inspected Vessel prior to commencement of Hire Period (please tick)** \_\_\_\_\_ **Initialed by Member**

**Details of any pre-existing damage identified by You prior to the commencement of the Hire Period:** \_\_\_\_\_

### Recitals

- A. We operate the Four Points Boat Club (**FPBC**) which offers boat hire services to Members.
- B. You are a Member and wish to hire a Vessel from Us in accordance with the terms of this Agreement.

#### 1. Term

This Agreement commences on the Date of Hire and continues for the Hire Period.

#### 2. Definitions and interpretation

- (a) In this Agreement, the following words and expressions shall, unless the context provides otherwise, have the following meanings:

**Boat Hire Service** means the hire of the Vessel by You from Us on the Date of Hire for the Hire Period.

**Date of Hire** means the date of hire detailed in the 'DETAILS OF HIRE' section above

**FPBC** means the Four Points Boat Club.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hire Period** means the hire period on the Date of Hire detailed in the 'DETAILS OF HIRE' section above but for the avoidance of doubt, on any given Date of Hire, will be no more than the length of time between the hours of 9.00am and

5.00pm (during NSW Eastern Standard Time) or 9.00am and 7.00pm (during NSW Eastern Daylight Time).

**Loss** means all claims, actions, loss, damage, damages, causes of action or liabilities, legal fees, third party claim, personal injury, direct loss and any indirect or consequential loss, including but not limited to, lost profits or loss of opportunity.

**Member** a member of the FPBC, as governed by the Membership Agreement between You and Us, and includes You, the person described as such in the party details at the beginning of this Agreement.

**Membership Agreement** means the Membership Agreement You have entered into with Us to become a Member.

**NSW General Boat Licence** is a general boat licence issued by the Roads and Maritime department of Transport for NSW (or any succeeding body).

**Personal Information** has the meaning given to it in the Privacy Act.

**Privacy Laws** means all laws relating to privacy, data protection or data security, including the *Privacy Act 1988* (Cth).

**Privacy Act** means the *Privacy Act 1988* (Cth).



**Vessel** means the vessel with the name and registration number described in the 'DETAILS OF HIRE' section above.

- (b) In this Agreement, except where the context otherwise requires:
- (i) all references to currency are a reference to Australian dollars;
  - (ii) a word importing the singular includes the plural and vice versa;
  - (iii) the word "including" or any other form of that word is not a word of limitation;
  - (iv) 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;
  - (v) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
  - (vi) this Agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

### 3. Agreement

You acknowledge that:

- (a) this Agreement is a legally binding contract between You and Us;
- (b) You agree to be bound by the terms contained in this Agreement and adhere to the terms of Your Membership Agreement; and
- (c) by entering this Agreement, You are acquiring the Boat Hire Service from Us.

### 4. Provision of Services

We will provide You with the Boat Hire Service.

### 5. Payment

#### Fuel Charges

- (a) You agree to pay fuel usage on the Date of Hire at the end of the Hire Period, which will be calculated at current bowser rate as at the Date of Hire, which will be charged directly to the credit card details which You are required to provide to Us at the start of the Hire Period.

#### Delay and damage

- (b) You also agree to pay the following charges (where applicable):
  - (i) in circumstances where the Vessel is not returned by the end of the Hire Period, You will pay \$550.00 per hour for each hour (rounded up) You delay in returning the Vessel. This fee will be charged directly to the credit card

details which You are required to provide to Us at the start of the Hire Period;

- (ii) in circumstances where the Vessel is not returned in the same state of repair and condition that it was in at the start of the Hire Period, We will obtain a quote for repairs by Our chosen repairer and the cost of such repairs will be payable by You;
- (iii) in circumstances where You do not remove all personal belongings and rubbish from the Vessel at the end of each Hire Period, You will incur a cleaning fee of \$550.00;
- (iv) in circumstances where smoking stains or odours are evident at the end of a Hire Period, You will incur a cleaning fee of \$550.00;
- (v) where We are required to make a claim for insurance as a result of a claim made with Our insurer arising from a breach of this Agreement by You, You will be required to reimburse Us for any excess payable by Us to Our insurer.

### 6. Your Obligations

You agree:

- (a) to return the Vessel in the same state of repair and condition that it was in at the start of the Hire Period and without any damage;
- (b) to pay for any damage to the Vessel incurred during Your Hire Period in accordance with clause 5(b)(ii);
- (c) to remove all personal belongings and rubbish from the Vessel at the end of each Hire Period;
- (d) to comply with all applicable laws relevant to the Boat Hire Service during each Hire Period, including maritime laws, and comply with any direction provided by NSW Police Marine Area Command; including but not limited to the following:
  - (i) maintaining the legal navigational speed at all times;
  - (ii) reducing navigational speed where navigational hazards are present;
  - (iii) maintaining Your blood alcohol level below the prescribed legal limit at all times;
  - (iv) refraining from any use, or being under the influence, of illicit or banned substances at all times;



- (e) to return the Vessel to Us by the end of the Hire Period. No overnight hire is permitted without prior arrangement;
- (f) that the number of passengers for the relevant Vessel will not exceed 8 adult persons, with children under the age of 12 years to count as half an adult person;
- (g) that where children below 12 years of age are passengers, the number of adult persons above the age of 18 years must be no less than 2 adult persons;
- (h) that all children below the age of 12 years wear a personal floating device (life jacket) appropriate for their age, size and weight, at all times whilst on the Vessel;
- (i) You are not permitted to use the Vessel beyond Line Zulu between the North and South Heads of Sydney Harbour or West of the Iron Cove Bridge NSW, Australia
- (j) You are not permitted to pick up additional passengers from any public wharf or other ferry wharf;
- (k) You must safely anchor the Vessel at any location where You moor the Vessel and/or cut the engine;
- (l) You must keep safe and be able to produce the keys to the Vessel at all time;
- (m) You must not leave the Vessel unattended at any time during a Hire Period;
- (n) You must ensure You and any passengers are wearing appropriate footwear, namely, non-marking soled shoes or bare feet;
- (o) You are responsible for all personal effects brought onto the Vessel and We take no responsibility for any personal effects not taken with You at the end of a Hire Period;
- (p) that animals are not permitted on the Vessel;
- (q) that smoking is not permitted onboard the Vessel; and
- (r) that You are wholly responsible, and assume all liability, for the supervision of all passengers at all times during a Hire Period and must ensure that You and all passengers comply with all relevant laws and behave in a safe and responsible manner at all times during a Hire Period.

## **7. Condition of Vessel**

- (a) We warrant that as at the Date of Hire, the Vessel is in good repair and condition.

- (b) You agree and acknowledge that You inspected the Vessel prior to the commencement of the Hire Period and have noted any visible signs of pre-existing damage in the 'DETAILS OF HIRE' section above.

- (c) Where You identify any issue or damage to the Vessel during the Hire Period, You must notify Us as soon as practicable.

## **8. Indemnity**

- (a) You agree to defend, indemnify, and hold harmless Us and Our officers, directors, employees and agents from and against all Loss incurred by Us arising out of or resulting from any:
  - (i) breach of this Agreement by You; and
  - (ii) act or omission by You or by any passengers under Your supervision during a Hire Period or in connection with the performance of Your obligations under this Agreement.

## **9. Insurance**

- (a) Without limiting any clause in this Agreement, You shall be responsible for reimbursing Us for any insurance excess which becomes payable by Us as a result of a claim made with Our insurer arising from a breach of this Agreement by You, or by any negligent act or omission by You, or by any passengers under Your supervision, during a Hire Period.
- (b) In circumstances where Our insurance cover cannot be invoked by Us with Our insurer, You will remain liable for all Loss suffered by Us on a full indemnity basis in accordance with clause 8 above.

## **10. Liability**

- (a) We enter this Agreement only in our capacity as trustee of the Four Points Boat Club Trust and in no other capacity. Subject to clauses 10(d) and 10(e) below, a liability arising under or in connection with this Agreement can be enforced against Us only to the extent to which We are entitled to be and are in fact indemnified for that liability out of property of the Trust. This limitation of Our liability applies despite any other provision this Agreement and extends to all of Our liabilities and obligations in any way connected with any representation, warranty, conduct, act, omission or transaction related to this Agreement.
- (b) You may not sue the Us personally or seek the appointment of a liquidator, receiver or similar person to Us or prove in any liquidation, administration or arrangement of or affecting Us.



- (c) The provisions of clauses 10(a) and 10(b) shall not apply to any obligation or liability of Ours to the extent that it is not satisfied because there is a reduction in the extent of Our indemnification out of the assets of the Trust as a result of Our breach of trust, where We fail to act honestly in a matter concerning the Trust or intentionally or recklessly fail to exercise in relation to a matter affecting the Trust, the degree of care and diligence that We were required to exercise.
  - (d) To the extent permitted by law, We shall not be liable to You for any Loss arising out of or in connection with this Agreement or a Boat Hire Agreement.
  - (e) Nothing in this Agreement is intended to exclude either party's liability for Loss which cannot be excluded under any applicable law (including but not limited to the Australian Consumer Law), including for death or personal injury caused by a party's negligence, fraud or misrepresentation.
  - (f) Notwithstanding any clause in this Agreement, Our liability for any Loss arising under this Agreement is limited to, and shall not exceed, the value of performing the relevant Boat Hire Service again.
- 11. Title**
- (a) You acknowledge that nothing in this Agreement or any Boat Hire Agreement is intended to pass title in any Vessel from Us to You and We shall retain all rights, title, and legal and beneficial ownership of any Vessels which are hired as part of Our Boat Hire Services.
- 12. Privacy and Personal Information**
- (a) We agree only to use and disclose Personal Information provided by You in accordance with

the Privacy Act and Our Privacy Policy. A copy of Our Privacy Policy is available on Our website.

- 13. Assignment and Subcontracting**
- (a) You must not assign, transfer or subcontract any rights You may have under this Agreement.
  - (b) We may assign, transfer or subcontract all or part of this Agreement without Your consent.
- 14. Governing Law**
- (a) This Agreement is to be governed and construed by the laws of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 15. Severance**
- (a) If any provision of this Agreement is held to be prohibited, void, illegal or unenforceable in any jurisdiction, that provision is to be severed and the validity or enforceability of the remainder of this Agreement will not be affected.
- 16. Survival**
- (a) Without limiting any other clause of the Agreement, clauses relating to indemnities, liability, and Personal Information will survive expiry of the Agreement.
- 17. Entire Agreement**
- (a) This Agreement contains the entire understanding of the parties in relation to its subject matter and supersedes any prior agreement by the parties in relation to the same subject matter.
  - (b) You acknowledge that we, nor anyone on Our behalf, have not made any representations to You upon which You are relying in entering this Agreement, unless specified in this Agreement

**EXECUTION**

Signed by **Four Points Boat Club Pty Ltd as Trustee for the Four Points Boat Club Trust** ACN 645 442 539 in accordance with section 127 *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
(Director Signature)

\_\_\_\_\_  
(Director/Company Secretary Signature)

Signed by \_\_\_\_\_

in the presence of:

Signed by **Member:** \_\_\_\_\_

\_\_\_\_\_

(Signature of Member)

(Name of Member *(print)*)