



## MEMBERSHIP AGREEMENT

This Membership Agreement (**Agreement**) is made on \_\_\_\_\_ between:

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

and

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

(each a **Party**)

**Membership Type selected by Member (please tick) (see clause 4):**

**Mid-Week Membership**

**Full Membership**

### Recitals

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

#### 1. Term

- (a) This Agreement commences on the date of this Agreement and is ongoing until terminated in accordance with clause 8 of this Agreement.

#### 2. Definitions and interpretation

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

**Boat Hire Agreement** means the agreement governing the hire of any Vessel from Us, which must be entered each time a Member hires a Vessel.

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

**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, on any given day, the length of time between the hours of 9.00am and 4.00pm (during NSW Eastern Standard Time) or 9.00am and 6.00pm (during NSW Eastern Daylight Time).

**Joining Fee** means an initial non-refundable joining fee of \$5000.00;

**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** means a member of the FPBC and includes You, the person described as such in the party details at the beginning of this Agreement.

**Membership** means a Member's membership of the FPBC.

**Membership Type** means the type of Membership selected by a Member, as noted above and as defined in clause 4 of this Agreement.

**NSW General Boat Licence** is a general boat licence issued by Service NSW (or any succeeding body).

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

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

**Special Event Day** means any day on which Australia Day, Easter, Christmas Day, Boxing Day and New Year's Day fall.

**Vessel** means any boat hired by Members from MW Marine.

**Weekday** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales and any Special Event Day.

**Weekend Days** means any day which is a Saturday or Sunday, excluding Public Holidays, in New South Wales.

(c) 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. Membership 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
- (c) by entering this Agreement, You are purchasing a Membership and will become a Member of the FPBC.

### 4. Membership Type

You are required to select one of the following Membership Types, with such selection noted at the start of this Agreement:

- (a) **Mid-week Membership:** which:
  - (i) incurs the Joining Fee;
  - (ii) incurs a monthly Membership fee of \$900.00 (plus GST), payable in advance; and
  - (iii) includes access to Our Boat Hire Services on 3 Weekdays per Month (which cannot be accumulated and rolled to the following Month).
- (b) **Full Membership:** which:

- (i) incurs the Joining Fee;
- (ii) incurs a monthly Membership fee of \$1,300.00 (plus GST), payable in advance;
- (iii) provides access to Our Boat Hire Services on 2 Weekend Days per Month;
- (iv) provides access to Our Boat Hire Services on 2 Weekdays per Month (which cannot be accumulated and rolled to the following Month); and
- (v) entry into a ballot for access to Our Boat Hire Services on Special Event Days, to be determined by nominations called 4 weeks in advance and selected through a random result generator.

### 5. Membership Obligations

As part of Your Membership, You:

- (a) must hold and maintain a current valid NSW General Boat Licence, proof of which must be provided prior to execution of this Agreement;
- (b) will receive, and must participate in, a basic level of training from Us on the operation of Our Vessels;
- (c) are permitted to use our Boat Hire Service in accordance with Your Membership Type, subject to execution of a Boat Hire Agreement at the time of hire;
- (d) must book any Boat Hire Service by providing no less than 24 hours’ notice to Us;
- (e) are permitted to book all of Your Boat Hire Service Weekdays or Weekend Days (as applicable depending on membership Type) in advance to the end of the current Month;
- (f) agree to provide a minimum of 48 hours’ notice of cancellation of any booking of Our Boat Hire Service and failure to do so may result in Your forfeiture of that Weekday or Weekend Day booking for the relevant Month.
- (g) agree that Your ability to access and book Our Boat Hire Service is subject to availability; and
- (h) in circumstances where a Vessel is taken out of service, We will endeavour to provide an alternative Vessel or provide a proportionate credit to Your following Month’s allocation of Weekdays or Weekend Days (as applicable depending on Membership Type).

### 6. Boat Hire Service Obligations

Each time You use Our Boat Hire Service, 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. Such damage will be quoted and undertaken by a repairer of Our choosing;
- (c) to remove all personal belongings and rubbish from the Vessel at the end of each Hire Period and that failure to do so will incur a cleaning fee of \$550.00 (plus GST);
- (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 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;
- (f) that failure to return the Vessel by the end of the Hire Period will incur a fee of \$550.00 (plus GST) per hour;
- (g) 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;
- (h) 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;
- (i) that all children wear a personal floating device (life jacket) appropriate for their age, size and weight, at all times whilst on the Vessel;
- (j) You are not permitted to use the Vessel beyond the Zulu Line between Iron Cove Bridge, Sydney

Harbour and Sydney Heads, Watsons Bay NSW, Australia;

- (k) You are not permitted to pick up additional passengers from any public wharf or other ferry wharf;
- (l) You must safely anchor the Vessel at any location where You moor the Vessel and/or cut the engine;
- (m) You must keep safe and be able to produce the keys to the Vessel at all time;
- (n) must not leave the Vessel unattended at any time during a Hire Period;
- (o) must ensure You and any passengers are wearing appropriate footwear, namely, non-marking soled shoes or bare feet;
- (p) 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;
- (q) that animals are not permitted on the Vessel;
- (r) that smoking is not permitted onboard the Vessel and that any smoking stains or odours evident at the end of a Hire Period will incur a fee of \$550 (plus GST) and possible expulsion from the club
- (s) 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; and
- (t) You will pay Us for fuel usage at the end of the Hire Period, which will be calculated at current bowser rate as at the date of hire.

**7. Payment**

- (a) You agree to pay:
  - (i) the Joining Fee prior to or at the signing of this Agreement; and
  - (ii) the monthly fee detailed in clause 4, depending on Your selected Membership Type, monthly in advance on the first day of each calendar month.
- (b) By signing this Agreement, You authorise Us to:
  - (i) in the case of payment by direct debit, to directly debit Your monthly

Membership fee from Your nominated bank account; or

- (ii) in the case of credit card payment, to directly charge Your monthly Membership fee to Your nominated credit card.
- (c) The above authorisation is a continuing authorisation until this Agreement is terminated in accordance with clause 8.
- (d) Where We incur a merchant fee for any direct debit or credit card charge, as authorised by You above, this fee will be passed on to You.

**8. Termination**

- (a) We may terminate this Agreement (and therefore Your Membership) by:
  - (i) giving written notice to You to the end of the following month (for example, if written notice is provided in January, Your Membership will terminate at the end of February)
  - (ii) immediately upon written notice to You, where:
    - (A) You have breached this Agreement or a Boat Hire Agreement and You have failed to rectify the breach upon being given 14 days' written notice to rectify that breach; or
    - (B) You have breached this Agreement or a Boat Hire Agreement and the breach cannot be rectified.
- (b) You may terminate this Agreement (and therefore Your Membership) by:
  - (i) giving written notice to Us to the end of the following month (for example, if written notice is provided in January, Your Membership will terminate at the end of February); or
  - (ii) immediately upon written notice where:
    - (A) We have breached this Agreement or a Boat Hire Agreement and We have failed to rectify the breach upon being given 14 days' written notice to rectify that breach; or
    - (B) We have committed a breach of this Agreement or a Boat Hire

Agreement and the breach cannot be rectified.

- (c) If this Agreement is terminated pursuant to clause 8(a)(i), 8(a)(ii) or 8(b)(i), no refund of Your monthly Membership fee will be provided.
- (d) If this Agreement is terminated pursuant to clause 8(b)(ii), We will provide a pro rata refund of the current monthly Membership fee paid.
- (e) No refund of the Joining Fee will be payable upon termination of this Agreement.
- (f) Where circumstances beyond Our reasonable control, including but not limited to , acts of God (flood, earthquake, tornado, fire, etc.), war, strikes, threats or acts of terrorism or similar acts, pandemic, disease, government travel advisory warnings, government acts or regulations, civil disorder make it inadvisable, impracticable, illegal, or impossible to perform Our obligations under this Agreement, We may terminate this Agreement, without liability except as to reimbursement of a pro rata refund of the current monthly Membership fee paid, or may provide the opportunity for Membership fees to be temporarily paused, upon written notice to you.
- (g) You will be entitled to suspend Your Membership for one Month in every year of your Membership by providing at least 14 days written notice, with no monthly Membership fee payable during the suspended month.

**9. 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 or a Boat Hire 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 or a Boat Hire Agreement.

**10. 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 or a Boat Hire 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, or where We are not insured, You will remain liable for all Loss suffered by Us in accordance with clause 9.

#### **11. 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 11(d) and 11(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 11(a) and 11(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.

#### **12. 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.

#### **13. Privacy and Personal Information**

- (a) You must inform Us of any details or Personal Information that may affect Your Membership and must notify Us of any changes to Your contact details, address and nominated bank account details.
- (b) You acknowledge that We may use Your Personal Information for the purpose of contacting You with regard to Your Membership or any Boat Hire Service, as well as to keep you informed of any promotions or other marketing purposes.
- (c) You acknowledge that, where You become liable for payment under this Agreement, We may supply Your Personal Information to an authorised deposit-taking institution, credit reporting or debt recovery agency, in order to give effect to the terms of this Agreement.
- (d) 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.

#### **14. Dispute Resolution**

- (a) Where any disagreement or dispute between the parties arises in connection with this Agreement (**Dispute**), one party must give to the other written notice that a Dispute has arisen (**Dispute Notice**).
- (b) The parties must use reasonable efforts to resolve the Dispute in good faith.
- (c) If the parties cannot resolve the Dispute within 14 days of either party issuing a Dispute Notice, then

the Parties shall refer the Dispute to a mediator, to be agreed between the parties, or if a mediator cannot be agreed within a further 14 days, the mediator will be appointed by the President of the Law Society of New South Wales. The costs of the mediator is to be shared equally between the parties.

- (d) If the Dispute is not resolved within 14 days of the commencement of the mediation either party may then, but not earlier, commence court proceedings.
- (e) This clause 14 does not affect either party's right to seek interlocutory relief.

**15. 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 subcontractor all or part of this Agreement without Your consent.

**16. 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.

**17. 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.

**18. Survival**

- (a) Without limiting any other clause of the Agreement, clauses relating to indemnities, liability, Personal Information, termination and dispute resolution will survive termination of the Agreement.

**19. 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.

**20. Waiver**

- (a) Failure by a party to exercise a right under this Agreement, does not constitute a waiver of such right and does not prevent the exercise of that right at a later time. A right, power or remedy under this Agreement cannot be waived except in writing and signed by the other party.

**21. Relationship of parties**

- (a) This Agreement is not intended to create any relationship of partnership, agency, joint venture, or employment between the parties.

**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



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Name of Member (print)