



# MARINA OPERATING PROCEDURE

**THIS AGREEMENT** is made between the Marina Manager and the Marina User and the parties acknowledge and agree:

A. The Body Corporate leases the Marina from the State of Queensland in terms of the Head Lease.

B. The Body Corporate has granted rights to operate and manage the Marina to the Marina Manager in terms of Sub Lease.

C. The Marina Manager has the right to permit persons to occupy and use Berths in exercise of its management rights in terms of the Sub Lease.

D. The Marina Manager has agreed to permit the Marina User to use the Berth for mooring the Vessel in terms of this Agreement.

E. The Marina User has agreed to use the Berth for mooring the Vessel in terms of this Agreement.

#### **THE PARTIES FURTHER ACKNOWLEDGE AND AGREE:**

##### **1. Definitions** – In this Agreement:

**Agreement** means this Marina Berth Mooring Agreement and includes the Reference Table.

**Berth** means the Berth in the Marina identified in Reference Table and shown in the Marina Plan displayed in the Marina Office.

**Body Corporate** means the Body Corporate for Blue on Blue – Magnetic Harbour CTS 37149

**Claim or Claims** means and includes any complaint, action, suit, clause of action, proceedings, arbitration, debt due, accounts, costs and expenses (including legal costs and expenses) claim, demand, verdict or judgement arising under the provisions of any statute, award, order or determination.

**Collision Regulations** means the International Regulations for the Prevention of Collisions at Sea adopted for the safe navigation of vessels at sea within Australian waters and includes all marine safety laws and regulations that apply within the State of Queensland.

**Expiry Date** means the last day of the Term when the Marina Users right to moor the Vessel in the Berth shall end namely the date specified in the Reference Table or the last day of the Berth Fee period referred to therein.

**GST** means the goods and services tax payable on taxable supplies in Australia.

**Head Lease** means Term Lease 0/219713 between the State and the Body Corporate a copy of which is displayed on the Notice Board at the Marina Office.

**Major Repairs** means works of a substantial nature including sandblasting, painting, refitting of the Vessel and those works referred to in clause 4.1 (g) of the Head Lease

**Marina** means the Magnetic Island Marina, Nelly Bay Harbour, Magnetic Island described as the Marina in the Head Lease and includes all plant, equipment and other articles or chattels of any kind either leased, managed or owned by the Marina Manager;

**Marina Manager** means Motor Finance Direct Pty Ltd A.C.N. 061 670 479 trading as Magnetic Island Marina A.B.N. 26 061 670 479 its permitted assigns and includes where the context permits its staff and its appointed Manager.

**Marina Office** means the office premises maintained by the Marina Manager at the Marina.

**Marina User** means the Marina User named in the Reference Table and includes where the context permits the Marina User's agents and invitees including the master and crew of the Vessel.

**Minister** means the Minister administering the *Land Act 1994*:

**Minor Repairs** means routine maintenance to the Vessel that do not constitute Major Repairs.

**PPSA** means the Personal Property Security Act 2009

**party or parties** means a party or the parties to this Agreement and includes their permitted successors and assigns.

**Permitted Use** means the right to use the Berth during the Term for mooring the Vessel and to enter and leave the Marina in terms of this Agreement.

**Race Week** means a yacht racing series conducted in the waters off Magnetic Island in the last week of August or first week of September in each year hosted by Townsville Cruising Yacht Club and known as the Sealink Magnetic Island Race Week Series the scheduled dates for which may be shown in the Reference Table.

**Released Matters** means the scope of the releases given by the Marina User to the Marina Manager in terms of clause 6.1 of this Agreement.

**Services** means all services or systems of any kind from time to time provided to the Marina and/or the Berth, including without limitation, the provisions of security, lighting, power, water, removal or disposal or garbage or other electronic media and all services or systems from time to time utilised or access to the Marina and all wires, cables, pipes, conduits, tanks, cisterns, electrical, mechanical plant and those plant;

**State** means the State of Queensland.

**Start Date** means the first day of the Term.

**Sub Lease** means a Sub Lease No. 708884812 from the Body Corporate to the Marina Manager being a Sub Lease granted pursuant to the Head Lease a copy of which is displayed on the Notice Board in the Marina Office..

**Sub Lessee** means a sub lessee of the Berth from the Body Corporate.

**Term** means the period between the Start Date and Expiry Date specified in the Reference Table.

**Vessel** means the vessel identified in the Reference Table.

##### **2. Licence to use Berth**

- 2.1. Subject to payment of the Berth Fee in advance the Marina User shall be entitled to enter and leave the Marina in the Vessel and use the Berth for the Permitted Use during the Term.
- 2.2. The Marina Users right to use the Berth is not exclusive and is subject to the Marina Managers continuing right to manage use and occupy the Berth and is granted by way of licence only and is not a lease or sub lease of the Berth
- 2.3. The Marina User agrees to pay the Berth Fee in advance for the periods identified in the Reference Table.
- 2.4. The Berth Fee includes GST.
- 2.5. The Marina User agrees that it shall cause the Vessel (and all other property of the Marine User) to be removed from the Berth and the Marina on or before the close of business on the Expiry Date.
- 2.6. The Marina User must vacate the Berth during Race Week if the Term falls within the period of the event and in that event no Berth Fee shall be payable for that period.

##### **3. Safe Operation of the Vessel within Nelly Bay Harbour and the Marina**

- 3.1. The Marina User must operate the Vessel in a good and seamanlike manner and in compliance with the Collision Regulations and the rules in this clause 3 at all times when entering or leaving the Marina and in mooring the Vessel in the Berth.
- 3.2. The Marina User acknowledges that these terms and conditions apply in addition to other applicable rules regulations and legislation for the safe operation of Vessels within the Marina, including the terms of the Head Lease.
- 3.3. All Vessels entering the Marina must be in a sea worthy condition and able to manoeuvre under their own power.
- 3.4. A four (4) knot speed limit and no wash must be observed in all navigable areas of the Marina and Nelly Bay Harbour.
- 3.5. Marina Users are advised that the entrance to the Marina is narrow, and because of its shape, there is a blind corner for Vessels arriving and departing.
- 3.6. Large commercial vessels with restricted manoeuvrability operate within both the harbour and Marina and must be given right of way by the Vessel at all times whilst doing so
- 3.7. The Marina User must not permit any other vessel to use the Berth.
- 3.8. The Vessel must be moored in a safe and seamanlike manner and must be secured to the bollards provided with sound mooring lines properly sprung so as to prevent the Vessel causing damage to the Marina infrastructure.
- 3.9. Pets must not be kept on the Vessel and are not permitted within the Marina.

- 3.10. The Marina User must not refuel the Vessel by any means or load combustible liquids and materials in the Vessel at any time within the Marina
  - 3.11. Fishing is prohibited within the Marina Berth
  - 3.12. The Vessel together with all of its accessories and gear including spars, bow fittings and anchors must not overhang or obstruct any part of the Marina, including pontoons, common areas, walkways and adjacent Berths.
- 4. Marina User and Vessel must be Insured**
- 4.1. During the Term the Marina User must own a current policy of insurance with a reputable insurer licenced to operate within Australia identifying the Vessel as insured property and must be insured for all usual risks including loss or damage to persons and property including the Vessel (for its market value) howsoever arising where the sum insured for third party risk is not less than AUS\$10,000,000.00 (here called 'the Insurance Policy').
  - 4.2. The Marina User must provide the Marina Manager with a current certificate of insurance evidencing the currency of the Insurance Policy before the Vessel is moored in the Berth.
- 5. Risk**
- 5.1. The Vessel remains at the sole risk of the Marina User at all times for all risks to persons or property howsoever arising.
  - 5.2. The Marina User acknowledges and agrees that the Vessel shall be operated or manoeuvred within the Marina including the Berth at the sole risk and responsibility of the Marina User.
  - 5.3. The Marina User acknowledges and agrees that the Marina User and all persons including the Marina Users invitees to the Marina and the Vessel, the Marina User, family members and guests, crew and others who enter or leave the Marina (including the Vessel) at the invitation or with the permission of the Marina User do so at the sole risk of the Marina User.
- 6. Release**
- 6.1. To the extent permitted by law, the Marina User hereby releases the Minister, the State, the Sub Lessee, and the Marina Manager (including its servants, officers, agents and employees) against all Claims made for any loss, costs, expense, damage, claim, and liability of any kind (including liability in negligence) that they incur or become liable for due to the Marina User's use of the Marina or Berth or in connection with the following Release Matters:
    - 6.1.1. Damage, loss, injury or death to a person.
    - 6.1.2. Damage, loss or injury to property.
    - 6.1.3. The exercise of any rights under any lease.
    - 6.1.4. The state of repair or condition of the Marina or the Berth.
    - 6.1.5. Constructions of the Marina and any matter relating to the Marina; or
    - 6.1.6. Depth of the Marina.
  - 6.2. To the extent that the provisions of clause 6.1 constitutes a promise for the benefit of a third party within the meaning of the *Property law Act 1974*:
    - 6.2.1. The Marina Manager is taken to be the agent of each beneficiary of the promise; and
    - 6.2.2. Execution of this Agreement by the Marina Manager shall constitute acceptance of the promise by each beneficiary.
- 7. Indemnity**
- 8.** To the extent permitted by law, the Marina User hereby indemnifies and agrees to keep indemnified the Minister, the State, a Sub Lessee and the Marina Manager (including its servants, officers, agents and employees) against any Claims made against the Marina Manager for any loss, costs, expense, damages, and liability of any kind (including liability for negligence) that the Marina Manager may incur or become liable for arising from the Marina Users use of the Marina or Berth or in connection with any of the Release Matters or arising from the failure of the Marina User to fulfil and perform any of the obligations and duties of the Marina User in the terms and conditions of this Agreement.
- 9. Disposal of Wates and Sewage**
- 9.1. The Marina User will not use, drop, discharge or place overboard from the Vessel any litter, filth, sewage, build contents, dry or wet refuse, water material or any other substance, other than clean water.
  - 9.2. Marina Users must dispose of all rubbish and refuse in the bins and containers provided.
  - 9.3. The Marina User must vacate the pump out station immediately following the request from the Marina Manager or Emergency Services. This clause does not apply to competitors in the Race Week event identified by the host club.
- 10. Maintenance and Repair Obligations**
- 10.1. Major Repairs are prohibited in the Marina.
  - 10.2. Minor Repairs may be carried out with the Marina Manager's consent . The Marina User must provide safe and secure access for crew, passengers, visitors, contractors and authorised officers to a Vessel moored in the Berth.
  - 10.3. Gangways should be stored safely and not impede access by either vehicles or pedestrians and nor impede any access to any firefighting equipment.
  - 10.4. Engine operation or start keys and a list of authorised people permitted to have access to the Vessel must be provided to the Marina Manager if the Vessel is to be unoccupied for a period exceeding seven (7) days.
- 11. Damage to property, Marine Incidents and Safety**
- 11.1. Any damage, incident to hazard within the Marina must be reported to the Marina manager immediately.
  - 11.2. The Marina User agrees to pay the Marina Manager on demand, the cost (including legal cost) associated with the repair of Marina, for damage caused by the Vessel or a person associated with Vessel, the removal of a hazard created by the Vessel including the raising and removal of a sunken Vessel, and/or damage caused by the Vessel to another vessel in the Marina.
- 12. Non-compliance with terms of Agreement**
- 12.1. The Marina User acknowledges and agrees that the Marine User will be in default hereunder if the Marine User fails to observe and perform any of the terms and conditions of this Agreement to be observed and performed by the Marine User.
  - 12.2. In the event that the Marine User is in default hereunder the Marine Manager may, in addition to any other right the Marine Manager may have in terms of this Agreement or at law immediately terminate this Agreement by written notice delivered to the Vessel whereupon the Marine User must pay all outstanding Berth Fees due and payable in full and thereafter forthwith remove the Vessel from the Marina.
  - 12.3. The Marine User warrants and undertakes that the Marine User is the sole owner of the Vessel, that it is free of all encumbrances, liens and interests and that the Marine User has all necessary right and authority to enter into this Agreement.
  - 12.4. In consideration of the Marine Manager agreeing to enter into this Agreement with the Marine User the Marine User hereby charges the Vessel with payment of all monies owing by the Marina User to the Marine Manager hereunder for the Berth Fee, additional service charges, costs incurred by the Marine Manager in exercising its rights hereunder.
  - 12.5. The Marina User agrees that this Agreement creates a security interest in the Vessel and is a Security Agreement in terms of the PPSA.
  - 12.6. The Marina User acknowledges and agrees that the security interest of the Marine Manager may be registered on the Register maintained under the PPSA.
  - 12.7. The Marina User acknowledges and agrees that if the Marine User is in default hereunder, the Agreement is terminated by Notice and monies are or may be or become due and owing by the Marina User to the Marina Manager hereunder the Marine User may take possession of the Vessel and take steps to sell the same on such terms as the Marina Manager may determine at its sole discretion.

12.8. If the Vessel is sold pursuant to the Marina Managers power to do so in terms of this Agreement the proceeds of sale shall be applied firstly in discharge of the costs incurred in the sale, secondly in payment of all monies owing by the Marina User to the Marina Manager hereunder and lastly the balance of the proceeds then remaining (if any) shall be paid to the Marina User.

### 13. Utilities and Services

- 13.1. Each Berth within the Marina is supplied with a 15amp 240v single phase power and 20mm water connection. Charges may apply to power usage.
- 13.2. Additional Services may be provided at cost to the Marina User on the terms specified by the Marina Manager from time to time.

### 14. No warranty

- 14.1. The Marina Manager makes no warranty to the Marina User about the sufficiency, safety or adequacy of the Marina or any Services provided for use with the Marina, and no such warranty or representation is to be implied from anything said or written, including any representations as to the depth of the Marina.
- 14.2. The Marina User acknowledges that they use the Marina in the condition, state of repair and adequacy from time to time at their own risk in every respect.

### 15. Compliance with Head Lease

15.1. The Marina User must observe and comply with the terms and conditions of the Head lease that must be observed and performed by the Marina Manager in its use and access to and from the Marina, including the following:

15.1.1. The Marina User must not:

- (a) Destroy or interfere with any vegetation, forest products or quarry material (including any stone, gravel, sand, earth, soil, rock, guano or clay) in the Marina;
- (b) Interfere with any navigation mark or lights erected within the Marina;
- (c) Live aboard or allow the Vessel to be used as a permanent place for human habitation;
- (d) Occupy any Berth other than the Berth indicated on the Reference Schedule; or
- (e) Store or permit to be kept or stored in the Marina, any materials or a dangerous, flammable, explosive or hazardous nature.

15.1.2. The Marina User must:

- (a) Only use the Marina for Marina purposes;
- (b) Comply with lawful requirements of the Townsville City Council;
- (c) Environmental Protection Agency, Queensland Transport and Great Barrier Reef Marine Park Authority; and
- (d) Keep sight line of any navigation leads clear from obstructions.

### 15.2. Nuisance

- 15.2.1. All Marina Users must adhere to requirements under the Environmental Protection Act 1994 and associated Environmental Policies.
- 15.2.2. The Marina Manager may cease any activity considered to negatively affect other users and surroundings areas.
- 15.2.3. Disorderly conduct will not be tolerated and may result in the ejection from the Marina.
- 15.2.4. Vessels must not become unsightly (this includes hanging washing, personal items or signs on Vessels).
- 15.2.5. Vessels must reflect favourably on the general appearance and reputation of the Marina.
- 15.2.6. The Marina User is responsible for the security of their own Vessel and Property.
- 15.2.7. The Townsville area is prone to box jellyfish and Irukandji jellyfish species. First aid should be administered immediately in the event of an actual or suspected jellyfish sting.
- 15.2.8. Children must be accompanied by an adult at all time with the Marina.

### 15.3. General

- 15.3.1. This Agreement binds the parties and their permitted successors and assigns.
- 15.3.2. The Marina User has no right to assign the Marina Users rights and obligations under this Agreement.
- 15.3.3. The parties agree that if any dispute arises between them and is to be determined by a Court then they agree that the dispute shall be determined in accordance with the laws of the State in a Court in Townsville Queensland.