

# PRIVATE BERTHING AGREEMENT - 2019



This Agreement is made on \_\_\_ day of \_\_\_\_\_ 2019

**BETWEEN:** Empuja Pty Ltd ACN 135 384 039 as trustee for the Darrouzet Property Trust (“We/Us/Our”)  
**Street Address:** Coral Sea Marina | Resort, Shingley Drive, Airlie Beach QLD 4802  
**Postal Address:** PO Box 579, Airlie Beach QLD 4802 | **Phone:** (07) 4946 2400 | **Email:** marina@csmr.com.au

**AND:** \_\_\_\_\_ (“You/Your”)  
**Business/Trading Name (if Company):** \_\_\_\_\_ **ABN/ACN (if Company):** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Suburb:** \_\_\_\_\_ **Postcode:** \_\_\_\_\_ **Country:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_  
**Key Person (if Company):** Name: \_\_\_\_\_ Relationship: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
**Point of Contact for vessel:** Name: \_\_\_\_\_ Relationship: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
**How did You hear about us?**  Magazine/news  Internet search  Boat Show  Yacht Club  
 Social media  Repeat customer  Other: \_\_\_\_\_

## REFERENCE TABLE

**Start Date:** \_\_\_\_\_  
**End Date:** 31 December 2019  
**Berth:** The berth/s in the Marina as designated by Us from time to time  
**Berthing Period:** The period or periods which, from time to time, We agree to allow You to berth the Vessel in the Marina, which in all cases will start at 12:00pm on the first day of the period and end at 11:00am on the last day of the period, or as otherwise agreed or extended by the parties  
**Fee:** \$\_\_\_\_\_ AUD incl GST per \_\_\_\_\_  
**Payment Date:** The earlier of:  
(a) seven (7) days after the end of each Berthing Period;  
(b) seven (7) days after receiving written demand by Us; or  
(c) the date as otherwise agreed between the parties  
**Vessel:** **Name:** \_\_\_\_\_ **Registration No.:** \_\_\_\_\_ **Type:**  Power  Sail  
**Make:** \_\_\_\_\_ **Model:** \_\_\_\_\_ **Year:** \_\_\_\_\_ **Hull Type:**  Multihull  Monohull  
**Size:** LOA: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_  
*For guidance on size – see rule 2.1(d) of, and the measurement diagram in, the Marina Rules in Schedule A*  
**Shore Power Requirements:**  15amp  2 x 15amp  32amp  63amp  125amp  
**Captain:** \_\_\_\_\_, and any other person who may be in control of the Vessel from time to time  
**Insurance:**  Copy of Certificate of Insurance provided to Us in compliance with clause 5

## BACKGROUND

- A. We own and operate the **Coral Sea Marina | Resort** located at Airlie Beach QLD 4802, which comprises of (amongst other things):
- (a) a group of floating mooring berths and waterways (“the Marina”); and
  - (b) land adjacent to or in the vicinity of the Marina which is associated with the use of the Marina and contains various marine facilities, retail shops and restaurants (“the Precinct”),
- (collectively “the Marina Precinct”).
- B. You own and/or operate the Vessel and have requested access to the Marina for the purpose of berthing the Vessel.
- C. We agree to allow you to berth the Vessel in the Marina in accordance with the terms and conditions of this Agreement.

## OPERATIVE PROVISIONS

### 1. Right to berth the Vessel and use the Marina

1.1 In consideration of You paying to Us the Fee by the Payment Date, We agree to allow You to:

- (a) berth the Vessel in the Berth;
- (b) use the Berth for the purpose of embarking and disembarking from the Vessel; and
- (c) access those parts of the Marina Precinct intended by Us for common use by:
  - (i) occupants of the Marina Precinct ("*the Facilities Areas*"); and
  - (ii) visitors from the general public ("*the Common Areas*"),for the purposes for which they are intended,

during any Berthing Period from the Start Date to the End Date, pursuant to the terms and conditions set out in this Agreement or as otherwise varied in writing.

1.2 The parties acknowledge and agree that the terms and conditions of this Agreement will apply to any berthing of the Vessel at the Marina at any time, pending an updated agreement being entered into.

### 2. Compliance with the Marina Rules

2.1 You must at all times, promptly and at Your own cost, comply with the Marina Rules (as may be supplemented or amended from time to time), a current copy of which are annexed to this Agreement and are incorporated into this Agreement by reference.

### 3. Payment and other important matters

#### Payment and cancellation

3.1 You must pay to Us any amounts owing under this Agreement by any method reasonably required by Us, in full and without set-off, counterclaim, withholding or deduction. You may be required to complete a credit application form.

3.2 If You fail to pay the Fee to Us by the Payment Date, or any other amount owing under this Agreement has not been paid to Us by the relevant due date, We reserve the right (at Our absolute discretion) to:

- (a) refuse to allow You to use, access and/or occupy the Berth and/or the Marina Precinct;
- (b) stop providing utility and other services; and/or
- (c) charge interest at the standard contract default rate published by the Queensland Law Society from time to time.

3.3 Once You have paid the Fee to Us for any particular Berthing Period, the Fee will be non-refundable and is not transferable, except if the Berthing Period is more than three (3) months long and you wish to cancel any part of the Berthing Period, in which case You can seek either:

- (a) a credit of the dollar value of the balance remaining of the Berthing Period towards any future berthing, provided that the credit is used by You within twelve (12) months of the cancellation (otherwise the credit will be forfeited); or
- (b) a refund of 50% of the balance amount paid, excluding the first three (3) month period for which no credit or refund will be provided.

#### Key

3.4 On arrival at the Marina, We will issue You with a key/access device ("*the Key*") to enable you to access the Marina. We may require You to pay Us a security deposit in exchange for the Key.

3.5 You must ensure that the Key is safely and properly guarded at all times and used only by You or Your Associates to access the Marina Precinct as contemplated in this Agreement.

3.6 At the end of each Berthing Period, or as otherwise agreed to by Us, You must return the Key to Us.

3.7 If the Key is not returned to Us, or is returned to Us damaged, You must pay any costs We incur to replace or repair the Key and/or to secure the Marina Precinct. We reserve the right to have recourse to any security deposit paid by You.

#### Pricing adjustments

3.8 We may, from time to time, adjust the Fee payable under this Agreement by giving written notice to You. If You are dissatisfied with the adjusted fee, You may terminate this Agreement within seven (7) days of receiving notice of the adjusted fee, on the condition that You pay to Us all moneys owing as at that date.

#### Services

3.9 In addition to the Fee, You must also:

- (a) promptly pay, no later than seven (7) days after receiving written request from Us, any and all charges (whether imposed by Us or a third party provider) associated with any utility, refuelling or other service (on a usage basis) supplied directly to the Berth or the Marina Precinct or which relate to Your use and/or occupation of the Berth or the Marina Precinct; and
- (b) if, at Your request, We provide You with any additional services beyond what is contemplated in this Agreement, or We procure that additional services be provided to You, pay Us for those services at the rate agreed (or in the absence of agreement, the rate customarily charged by Us at the time for such services) at the times agreed between the parties and, in the absence of any such agreement, on demand.

### 4. Reservations

4.1 You acknowledge and agree that:

#### Non-exclusivity

- (a) Your right to occupy and use the Berth and the Marina is non-exclusive;

#### No representations or reliance

- (b) We have not made any representations to You (in any form) regarding the suitability or otherwise of the Berth and/or the Marina Precinct for its intended use;
- (c) You must make and rely on Your own enquiries regarding the suitability and appropriateness of the Berth and/or the Marina Precinct for its intended use;

## Risk

(d) You will be using and/or occupying the Berth and the Marina Precinct at Your own risk;

## Interruption to services

(e) We will not be liable to You for any loss or damage which You may suffer because of any unforeseen interruption to any utility, refuelling or other service provided to the Berth or the Marina Precinct at any time;

## Surrounding Environment

(f) there are a number of inherent, obvious and other risks involved in operating vessels outside of the Marina and participating in water activities in the Whitsundays Region ("*the Surrounding Environment*");

(g) We will not be liable for any failure on Your part to properly educate Yourself or Your Associates of the risks associated with using the Surrounding Environment and taking necessary steps to minimise those risks; and

(h) You and Your Associates will be using the Surrounding Environment at Your own risk.

## **5. Insurance**

5.1 You must take out and maintain with a reputable insurer for the duration of any Berthing Period:

(a) public liability insurance (including but not limited to marine liability insurance) for at least \$10,000,000.00 per occurrence which contains a principal's extension clause and covers the operation of the Vessel and any personal injury and/or property damage to third parties, including any liability arising out of a cyclone, windstorm or other severe weather event;

(b) comprehensive property damage insurance for the market value of the Vessel from time to time, which includes cover for (and does not exclude) damage to the Vessel caused by a cyclone, windstorm or other severe weather event and any associated costs, including costs involved with salvage and wreck removal;

(c) any other insurances required by law or which, in Our reasonable opinion, a prudent person in Your position would take out in relation to the Vessel or Your use of the Vessel.

5.2 You must also:

(a) upon the Vessel first arriving at the Marina and at any time requested by Us prior to the End Date, give Us written evidence, including copies of any certificate/s of currency and/or policy wordings, showing that You have taken out adequate insurance in compliance with this clause; and

(b) promptly notify Us if an insurance policy required by this clause is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with any part of the Berth, the Marina and/or the Precinct; and

(c) not do anything which might affect Our rights under any insurance policy taken out in relation to the Berth, the Marina and/or the Precinct.

## **6. Release & Indemnity**

6.1 You agree:

(a) not to make any claim or demand against Us;

(b) to release Us from any liability (to the extent permitted by law); and

(c) to indemnify Us and keep us indemnified,

in relation to:

(d) any claim, demand, suit, proceeding or other action made against Us; or

(e) damage, cost, expense or any other form of loss We may suffer or incur,

caused or contributed to by, or arising out of or in connection with:

(f) the use and/or occupation of the Berth, the Marina, the Common Areas, the Facilities Areas, the Precinct and/or the Surrounding Environment by You or Your Associates;

(g) any damage, loss, injury or death caused or contributed to by any act, omission, negligence or default of You or Your Associates; and/or

(h) Your breach of, or failure to observe the terms and conditions of, this Agreement, except to the extent any such loss is caused by Our own negligence.

## **7. Default**

7.1 You will be in default of this Agreement if:

(a) the Fee, any part of it or any other moneys payable by You to Us pursuant to this Agreement or otherwise are in arrears and remain unpaid for seven (7) days after any of the due date/s for payment (whether demanded or not);

(b) You fail to promptly comply with, or ensure compliance with, any of the terms and conditions of this Agreement which ought to be performed or observed by You or Your Associates;

(c) You abandon, vacate or otherwise surrender the Berth or the Vessel in a manner which is inconsistent with the use contemplated by this Agreement (in Our reasonable opinion); or

(d) You enter into any form of external administration, liquidation, bankruptcy, insolvency or are wound up or dissolved, enter into a scheme of arrangement for creditors, are placed under administration or a receiver and manager is appointed.

## **8. Termination**

### Our right to terminate

8.1 If You are in default under this Agreement and have not remedied the default within a reasonable time after being given written notice by Us to remedy the default (bearing in mind that what constitutes "a reasonable time" will vary significantly from case to case and will be determined by Us at Our absolute discretion), We may terminate this Agreement by notice in writing to You and in such a case, without prejudice to Our other rights (whether accrued under this Agreement or otherwise), We:

(a) may enter upon and move the Vessel to another area within the Marina or the Precinct and charge You for the reasonable costs incurred in doing so, which becomes a debt due and payable to Us; and

- (b) will not otherwise be restricted or limited in Our right to continue or pursue any recovery claim or proceeding that We may otherwise have against You.

#### Further rights of termination

8.2 In addition to the rights contemplated in *clause 8.1*, We may also: -

- (a) terminate this Agreement with immediate effect if you breach *clause 2* of this Agreement and the breach (in our opinion) threatens the safety of any person or property within the Marina Precinct; and
- (b) suspend the performance of, or elect to terminate this Agreement if the performance of this Agreement is, or will be significantly impacted by any circumstance or event beyond Our reasonable control, including but not limited to acts of god, storms, tidal surges, tidal lows, extreme weather or any other form of inclement weather, acts of war, terrorism, malicious damage and/or strikes.

#### **9. End of term obligations**

9.1 In addition to Your general obligations contained in the Marina Rules, You must, on or before the end of each Berthing Period or the earlier termination of this Agreement:

- (a) remove Your property and the Vessel from the Berth and the Marina; and
- (b) otherwise remedy any breaches of this Agreement.

9.2 If You fail to comply with *clause 9.1(a)*, You authorise Us to do anything contemplated in *clause 8.1(a)* in relation to the Vessel.

#### **10. General**

##### Assignment

10.1 The rights granted under this Agreement are not capable of assignment by You. You must not transfer or assign Your rights under this Agreement, or sublet or permit any person to use or occupy the Berth and/or the Marina, without Our prior written consent.

##### Extending obligations

10.2 You acknowledge that the use of the words "You" or "Your" in this Agreement is taken to be construed as extending (where the context permits) to include:

- (a) the Key Person and the Captain;
- (b) Your directors, officers, employees, agents, clients, invitees and/or contractors; and
- (c) Your personal representatives, successors and assigns, collectively being "*Your Associates*".

10.3 You must ensure (and procure that) Your Associates comply at all times with the terms and conditions of this Agreement.

10.4 You will be fully responsible for the actions and conduct of Your Associates at all times while they are present within the Marina Precinct, including anything which if done by You would constitute a breach of this Agreement.

10.5 Any reference to the words "We", "Us" or "Our" is taken to include (where the context permits) our employees, agents, contractors and the manager of the Marina from time to time.

##### Joint and several liability

10.6 If You consist of more than one individual or entity, the liability of each individual or entity to Us under this Agreement is joint and several.

##### Consent

10.7 If anything in this Agreement requires the consent or approval of Us, We may withhold that consent or approval in Our absolute discretion or grant consent subject to conditions.

##### Governing law

10.8 This Agreement is governed by the law in force in Queensland and the parties submit to the exclusive jurisdiction of the courts of Queensland in relation to it.

##### Inconsistencies with any Law

10.9 Any covenants implied by law or otherwise are not excluded but will be taken to have been modified (where permitted) to the extent of any inconsistency with this Agreement.

##### GST

10.10 The parties acknowledge that the Fee is inclusive of GST, as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

10.11 If a party makes a taxable supply to the other party under or in connection with this Agreement for a consideration which represents its value other than to which the Fee relates, then the party liable to pay for the taxable supply must also pay to the maker of the supply, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in relation to the taxable supply.

##### Trustee liabilities

10.12 You acknowledge that:

- (a) Emprja Pty Ltd ACN 135 384 039 ("*Emprja*") enters into this Agreement solely in its capacity as trustee of the Darrouzet Property Trust;
- (b) Emprja will not be liable to pay or satisfy any of its obligations out of any assets of which it is not entitled to be indemnified from the Darrouzet Property Trust, in relation to any liability incurred by it in its capacity as trustee of the Darrouzet Property Trust; and
- (c) if You are unable to recover all money which may be owing to You arising from non-performance by Us of Our obligations, You will not be able to seek to recover the shortfall by bringing a claim against Emprja in its personal capacity, including but not limited to applying to have Emprja wound up.

Costs

10.13 Each party must bear its own costs in relation to this Agreement, but You must pay Our legal and/or other costs We incur in relation to any enforcement of this Agreement against You.

Capacity

10.14 By entering into this Agreement, You warrant and represent to Us that:

- (a) all of the warranties, statements and/or information provided by You to Us prior to entering into this Agreement, as set out in this Agreement or otherwise provided to Us, are, or will be, true and correct in all respects;
- (b) You have obtained all authorities and/or consents needed by You to enter into this Agreement and do all things contemplated by this Agreement from any government or regulatory body or other person who has an interest in the Vessel;
- (c) You, and any duly authorised representative/s who execute this Agreement for and on behalf of You, have full power and authority to enter into this Agreement; and
- (d) You are entering into this Agreement in Your personal capacity and not as an undisclosed trustee on behalf of any trust, unless You have given notice in writing to Us or such details are specified on the first page of this Agreement.

Severability

10.15 If the whole or any part of a provision of this Agreement is void, illegal or unenforceable, that provision will be deemed severed from this Agreement but the balance of this Agreement will remain in full force and effect, unless the severance alters the basic nature of this Agreement or is contrary to public policy.

Time is of the essence

10.16 Time is essential for all of Your obligations under this Agreement.

Variation

10.17 The provisions of this Agreement shall not be varied unless the parties verbally agree, and We communicate this to You in writing, or if the parties otherwise agree in writing.

Waiver

10.18 No waiver by Us will be effective unless it is in writing and the acceptance by Us of money payable under this Agreement will not constitute a waiver.

Definitions

10.19 Capitalised terms use throughout this Agreement are either defined in the Reference Table or throughout the body of this Agreement.

10.20 Any reference to the term "Agreement" means this agreement and includes any schedules or annexures annexed to this agreement or any variations or modifications agreed in writing from time to time.

## EXECUTION

### EXECUTED AS AN AGREEMENT

#### EXECUTION BY YOU

By signing this Agreement, You acknowledge that the You have read, understood and agree to be bound by the terms and conditions of this Agreement, the Marina Rules and the Extreme Weather Procedure in relation to any berthing of the Vessel at the Marina:

**IF AN INDIVIDUAL**– SIGNED by \_\_\_\_\_  
and in the presence of:

\_\_\_\_\_  
*Your Full name:*  
*Date:*

\_\_\_\_\_  
*Witness Full name:*  
*Date:*

**IF A COMPANY**– SIGNED by \_\_\_\_\_  
in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
**Director**  
*Full name:*  
*Date:*

\_\_\_\_\_  
**Director/Secretary**  
*Full name:*  
*Date:*

#### EXECUTION BY US

**SIGNED by Emprja Pty Ltd ACN 135 384 039  
as trustee for the Darrouzet Property Trust:**

\_\_\_\_\_  
**Director/Secretary/Authorised Person**  
*Full name:*  
*Date:*

#### OFFICE USE/NOTES:

# SCHEDULE A – MARINA RULES

The following general rules apply in relation to the use and/or occupation of the Marina Precinct by You and/or Your Associates from time to time:

## 1. Vessel

- 1.1 The Vessel must be kept in a sound, safe, secure, watertight and seaworthy condition.
- 1.2 The Vessel will only be admitted to the Marina if it is in a seaworthy condition and is under its own power, except in the case of a volunteer marine rescue recovery.
- 1.3 A maximum speed limit of six (6) knots (no wash) is to be observed when the Vessel is approaching, within or departing from the Marina.
- 1.4 Upon entering the Marina, the Vessel will be immediately subject to Our direction. The Vessel must only be manoeuvred and berthed by You as directed by Us.
- 1.5 You must:
  - (a) promptly comply with and observe Our directions, including any directions by Our staff;
  - (b) comply with standard navigational practices and navigate the Vessel in the Marina so as to not endanger or inconvenience other users of the Marina Precinct;
  - (c) ensure the Vessel is operated in a safe and proper manner by a person who has sufficient skills, qualifications, training and experience to do so;
  - (d) ensure the Vessel is not operated recklessly or negligently or cause any damage to any part of the Marina Precinct.
- 1.6 Any refuelling of the Vessel at the Marina must only be done at the fuelling facility as designated by Us from time to time.
- 1.7 Fuel must be booked in advance. We may also require You to make payment in advance. If We do, We may issue you with a fuel card with pre-loaded credit. You will be bound by the terms and conditions which govern the use of fuel cards issued by Us.
- 1.8 Upon completion of refuelling (and payment if not already made), the Vessel is required to depart from the fuelling facility immediately.
- 1.9 No spilling of fuel or oil is permitted from the Vessel during refuelling (or otherwise). It is Your responsibility to ensure this does not occur. Any such incidents must be reported to Us immediately. We will then ascertain what steps are necessary to rectify the situation. The costs of any such rectification will be borne by You.
- 1.10 If any oil leak occurs from the Vessel or otherwise, it must be:
  - (a) contained by a suitable method (for example, by using the spill kits located throughout the Marina);
  - (b) reported to Us immediately;
  - (c) disposed of in the oil recycling containers located at the Marina;
  - (d) repaired as soon as possible; and
  - (e) inspected by Us.
- 1.11 You must not discharge anything of whatever nature into the waters in the Marina and must not (while the Vessel is in the Marina) use any toilet on the Vessel unless the toilet is connected to an approved holding tank in the Vessel.
- 1.12 If We observe the Vessel is discharging contaminants (including but not limited to oil, fuel or sullage water) in the Marina, We will attend to the Vessel and endeavour to contain and manage the situation. In such an event:
  - (a) We will notify You of the incident as soon as reasonably practicable;
  - (b) You must cease any activity resulting in the discharge;
  - (c) We may, at our absolute discretion, board the Vessel if it is unattended to de-activate the pumps;
  - (d) We will deploy anti-pollution materials (if necessary) and take steps to remove the contaminant from the Marina by mechanical or other suitable methods;
  - (e) You will be liable to reimburse Us for any costs or expenses incurred in relation to any such clean-up; and
  - (f) We will prepare and file a report pursuant to the *Environmental Protection Act 1994* (Qld), if necessary.
- 1.13 You must:
  - (a) ensure that the Vessel does not become unsightly or dilapidated so as to reflect unfavourably on the Marina;
  - (b) keep the decks of the Vessel free and clear of debris, bottles, papers, trash and other unsightly material at all times;
  - (c) ensure that the Vessel is kept free from pests, insects, vermin, infectious diseases and infections;
  - (d) ensure that all dinghies, tenders, rafts, equipment and other property are stowed aboard the Vessel at all times while in the Marina, unless You have obtained Our prior written permission;
  - (e) take all necessary precautions against the outbreak of fire in or upon the Vessel while it is the Marina;
  - (f) ensure that the Vessel is secured appropriately when not in use for any period of time;
  - (g) take all reasonable precautions to protect the Vessel and Your property from theft and/or vandalism;
  - (h) ensure that the Vessel has adequate covers (for example a canopy, storm curtains/covers or tonneau covers) to protect the Vessel from any inclement weather; and
  - (i) not use the Vessel in the Marina as a residence, sleeping quarters or permanent place for human habitation, unless the Vessel is being used by a private operator pursuant to a Private Berthing Agreement.

## 2. Berth

- 2.1 The Vessel must, at all times while moored within the Marina:
  - (a) sit within the dimensions of the Berth;
  - (b) not exceed the engineering rating of the Berth;
  - (c) not encroach on the boundary of any other berth in the Marina or overhang any walkway or pier;
  - (d) not be larger than as recommended under *Australian Standard AS 3962-2001: Guidelines for design of marinas*;

**NOTE:** Measurement of the vessel is to be length overall (LOA), being the measurement to its outer most extremities, including the anchor, bow, motor and tender.



- (e) be moored with mooring lines (provided by You) which are adequate for the size and weight of the Vessel and in good condition;
- 2.2 You must:
- (a) arrange (at Your expense) for any additional or replacement mooring lines to be obtained and used if, in Our opinion, the mooring lines you have provided are inadequate or We consider additional lines are necessary;
  - (b) keep the Berth, and any other area of the Marina used by You from time to time, in a clean state and free from rubbish at all times;
  - (c) keep the sight line of any navigation leads, light or mark which crosses the Berth clear of obstruction (to Our satisfaction); and
  - (d) not leave any fuel containers on the Berth or anywhere else within the Marina.
- 2.3 Only approved power leads which are compliant with *Australian Standard AS 3760:2010 In-service safety inspection and testing of electrical equipment*, have been checked for correct polarity, have been tested and tagged by a licensed electrical contractor within a reasonable time prior to the Start Date and inspected by Us can be used to connect to the power supply which runs to the Berth.
- 2.4 We reserve the right to disconnect (without notice) power cords if We consider them to be potentially dangerous, damaged, across walkways and (in particular) if they are being used in non-compliance with rule 2.3.

### 3. Conduct

- 3.1 You must promptly, at all times and at Your own cost:
- (a) observe, perform, fulfil and comply with (on time) all requirements of any law, statute, rule, regulation, engineering rating, industry standard or requirement of any State, Federal or local government or other authority with jurisdiction relating to the Vessel, the Business (in the case of commercial operators) and/or Your use and occupation of the Marina;
  - (b) obtain and maintain any necessary permits, consents, approvals, licences and/or registrations to operate the Vessel, the Business (in the case of commercial operators) and/or access the Marina;
  - (c) make arrangements to ensure the safe, proper and lawful disembarkation of all persons from the Vessel and at all times while they are present on the Marina Precinct (with the same obligation applying in reverse on embarkation);
  - (d) unless otherwise agreed to or allowed by us, provide and use Your own equipment (and not Ours) in relation to Your use of the Berth, including but not limited to using Your own (branded) trolleys which are safe and comply with all relevant guidelines, standards and/or regulations;
  - (e) ensure that any gates, entrances and/or exits within the Marina Precinct which are opened by You are properly closed (and secured, if appropriate) after each use; and
  - (f) ensure that no unauthorised persons or external contractors access the Marina, without first obtaining Our prior written consent.
- 3.2 Enclosed footwear must be worn at all times while You are within the Marina Precinct, including but not limited to any walkways, the fuel wharf, refuse station, the Facilities Areas and the Common Areas.
- 3.3 Noise should be kept to a minimum at all times and You must have regard to other occupiers of the Marina Precinct when operating radios and/or musical apparatus so as not to create a nuisance.
- 3.4 Swimming, diving and/or fishing within the Marina is prohibited.
- 3.5 Children must be supervised and accompanied by adults at all times while in the Marina Precinct.
- 3.6 Animals must be leashed/caged at all times and must not be permitted to foul any part of the Marina. Animals must not be stored or allowed aboard the Vessel unless You obtain Our prior written consent.
- 3.7 No feeding of fish or birds within the Marina is permitted.
- 3.8 Consumption of alcohol is prohibited within the Marina Precinct, except within licenced premises or onboard the Vessel (in the case of private operators).
- 3.9 Smoking is not permitted anywhere in the Marina Precinct except in those areas (if any) which are designated as being smoking areas. No cigarette butts are to be disposed overboard.
- 3.10 Car parking is not included and (depending on availability) will incur an additional charge. All persons park at their own risk.
- 3.11 No unregistered vehicles/trailers are permitted within the Marina Precinct. No boats or tenders on trailers are permitted to be parked in any general car park located within the Precinct and must instead be stored within a designated storage area within the Precinct.
- 3.12 You must not do anything which is immoral, noxious, offensive, hazardous or likely to cause nuisance or injury to any person.
- 3.13 You shall be solely responsible for the conduct of Your Associates. Disorderly conduct by You or Your Associates may result in Us requesting that You or Your Associates vacate the Marina Precinct.
- 3.14 Laundry of any type or items of apparel or equipment must not be hung out to dry or air in public view aboard the Vessel or any part of the Marina Precinct.
- 3.15 No chemicals, flammable or volatile liquids or substances (including gas) may be stored in the Vessel other than those that are reasonably required for the operation of the Vessel (and then only in such quantities as are reasonably required and in appropriate and approved containers) or used within the Marina except as otherwise approved by Us. We may conduct inspections and/or audits of the Vessel to ensure Your compliance with this clause and the overall safety of the Marina Precinct. You authorise Us to board the Vessel for this purpose.
- 3.16 All sewerage must only be disposed of in the sewage pump out station at the Marina.
- 3.17 Nothing must be thrown overboard the Vessel while it is in the Marina, including but not limited to fish scraps. Refuse, garbage and plastic bags must be placed in rubbish bins provided within the Marina, other than fish scraps which must be bagged and taken off-site for disposal. If refuse items are too large or You require assistance, We can assist in arranging for disposal (upon request).
- 3.18 You must not at any time:
- (a) cause or permit any damage to occur to the Berth, the Marina and/or the Precinct or any other vessel or item of property located in the Marina Precinct, whether by virtue of the operation of the Vessel or otherwise. If damage does occur:
    - (i) you must:
      - (A) give immediate verbal and written notice to Us of any such damage, and the circumstances surrounding same;
      - (B) after giving Us notice, promptly repair any damage caused by the act, omission, negligence or default of You or Your Associates as the case may be as directed by Us, or (on demand by Us) pay to Us the Cost of undertaking such repairs so the We can engage Our own contractors;

- (ii) to the Berth such that it cannot safely be used, We may at Our discretion (and without prejudice to any other remedy or right We may have) require the Vessel to be relocated to a similar berth within the Marina until such time as the Berth is considered safe for use;
- (b) in any way obstruct, overload, alter or interfere with:
  - (i) the Berth, the Marina, the Facilities Areas, the Common Areas and/or the Precinct;
  - (ii) the embarkation or disembarkation of persons or goods from other vessels at the Marina;
  - (iii) the proper and ordinary operation of the Marina Precinct; or
  - (iv) the connections, fittings or equipment relating to the supply of water, gas, electricity or other services to the Berth and/or the Marina Precinct;
- (c) erect, set up, install, store or leave behind any signage, structures or property (temporary or otherwise) on the Berth or anywhere within the Marina Precinct, unless You have Our prior written consent;
- (d) display any “for sale” or other similar sign on the Vessel, the Berth or anywhere else on the Marina Precinct, or advertise the Vessel as being for sale from the Berth (or that the Berth is for sale);
- (e) undertake or perform any works or alterations to the Vessel, including but not limited to sanding, sandblasting, painting, hot works, welding, hull cleaning, fitting out or refitting whatsoever, other than minor internal repairs, mechanical adjustments and/or electrical work (for which You have obtained Our prior written consent);
- (f) allow any contractors or tradespeople to carry out works to the Vessel or otherwise within the Marina Precinct unless they have been approved to work within the Marina by Us and have:
  - (i) registered with Our on-site office and completed Our workplace health and safety site induction prior to commencing works;
  - (ii) read and acknowledge their understanding of Our contractor induction booklet/form by signing and returning a copy of same to Us;
  - (iii) presented insurance and qualification certificates to our satisfaction;
  - (iv) tagged all tools and cords; and
  - (v) been issued with a contractor pass, which must be worn at all times and visible to Us;
- (g) use the Berth or the Marina Precinct for any purpose other as contemplated by Us on granting You the right to use the Berth or the Marina Precinct; and/or
- (h) allow any vessel other than the registered Vessel to use the Berth and/or enter the Marina.

#### 4. Our rights

4.1 We may, at Our discretion:

- (a) direct You to relocate the Vessel to any other berth/s in the Marina that is appropriate for the Vessel at any point during the Term; and
- (b) enter:
  - (i) the Berth at any time to:
    - (A) view its state of repair and condition, and that of the Vessel; and
    - (B) undertake any repairs to the Berth which may be reasonably necessary;
  - (ii) the Vessel to conduct inspections and move the Vessel as necessary without obtaining Your consent in the event of:
    - (A) an emergency;
    - (B) matters of public safety; or
    - (C) breach by You.

#### 5. Extreme Weather Preparedness

5.1 You must promptly comply with, and be aware of Your obligations under, the Extreme Weather Procedure.

5.2 The Extreme Weather Procedure has been developed by Us to ensure the safety of people, vessels and the Marina generally.

5.3 A copy of the Extreme Weather Procedure is available on the **Coral Sea Marina | Resort** website. We will also provide You with a copy upon request.

#### 6. General

6.1 We have fire & emergency evacuation procedures in place which You must comply with from time to time. Copies of these procedures will be provided upon request.

6.2 The fire fighting equipment within the Marina must not be used for any purpose other than fire fighting, without Our prior written consent.

6.3 If We request any information and/or document from You in relation to the Vessel, Your use of the Marina or otherwise, You must promptly respond to any such request and provide the requested information and/or document as soon as possible.

6.4 Any capitalised terms used in these Marina Rules have the meanings attributed to them in either Our standard Private Berthing Agreement or Commercial Berthing Agreement, whichever document governs the relationship between You and Us.

