

**P & J O'CONNELL INVESTMENTS PTY LTD T/A**

**WHITSUNDAYS CHARTER AGENCY ABN  
34730306286**

**EVENT MANAGEMENT TERMS AND  
AGREEMENT**

## **Event Management Terms and Conditions**

**A. About the Website,**

- A. 1. Welcome to [www.whitsundaysyachtcharters.com.au](http://www.whitsundaysyachtcharters.com.au) (the **Website**) operated by **Whitsundays Charter Agency** ABN 34 730 306 286 (**We, Us, Our,** or **Whitsundays Charter Agency**). Please read these terms and conditions (the **Terms**) carefully. Access to and use of the Website, or any of its associated services, is provided by Whitsundays Charter Agency.
- A. 2. The Website is a web-based marketplace that allows you to easily connect with us to organise and book your Yacht Charter.
- A. 3. Whitsundays Charter Agency reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Whitsundays Charter Agency updates the Terms, it will use reasonable endeavours to provide you with notice of updates of the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, Whitsundays Charter Agency recommends that you keep a copy of the Terms for your records. The access and use of the Website by you after Whitsundays Charter Agency makes any changes constitutes the acceptance of any such changes and you will be bound by those changes. If you do not agree to any changes, you must cease usage of the Website and any of its associated products or Services immediately.

## **B. Acceptance of the Terms**

B. 1. By using and/or browsing the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of the Booking Services, immediately.

B.3 These Terms are the agreement between you and Whitsundays Charter Agency.

B.4 If you are accessing and using the Website on behalf of a corporation or other entity, you warrant that you have been authorised by the corporation or other entity to enter into and agree to these Terms on the corporation's or entity's behalf and bind them to these Terms.

B.5 You may not access the Website or use the Services and may not accept the Terms if:

(a) you are not of legal age to form a binding contract with Whitsundays Charter Agency; or

(b) you are a person barred from receiving the Booking Services under the laws of Australia or other countries including the country in which you are a resident in or from which you use the Booking Services.

B. 6. By accepting these Terms, you warrant that you have familiarised yourself with, and agree to be bound by the Terms and the Privacy Policy found at <https://www.whitsundaysyachtcharters.com.au/legal-privacy/> (the **Privacy Policy**). If you do not agree to the Terms or the Privacy Policy, you must cease usage of the Website and any of its associated products or Booking Services immediately. For the avoidance of doubt, if there is any conflict between the Quote and the Terms, or the Privacy Policy, any conflicting term of the Quote will be severed.

B.7 Whitsundays Charter Agency recommends that you regularly check these Terms for any material changes and to keep a copy of the Terms for your records.

## **C. Definitions and Interpretation**

In these Terms, unless the context otherwise requires, the following expressions have the following meanings:

**Agreement** means the Terms for the provision of Booking Services.

**Booking Services** means the booking services which are to be provided by Us to you as specified in the Quote.

**Business Day** means any day other than a Saturday, Sunday or bank holiday.

**Calendar Day** means any day of the year.

**Change of Law Event** means:

- (a) the adoption, promulgation, modification or re-interpretation after the date of this Agreement or Quote, which amends or conflicts with the laws prior to entering into this Agreement or Quote; and
- (b) the imposition after the date of this Agreement or Quote of any term or condition in connection with the issuance, renewal, extension, replacement or modification of any law, which establishes requirements that restrict movements, and gatherings or that is made in response to a pandemic.

**Deposit** Means the initial deposit payment of \$1,500 of the total Fees to be paid within 24 hours of the execution of the Invoice.

**Existing Material** means Material, other than New Material, that is:

- (a) incorporated in New Material by or on behalf of Us, or
- (b) supplied or required to be supplied under this Agreement by Us.

**Expected Attendees** means the number of expected Registered Attendees of the Yacht Charter set out in the Quote.

**Fee** means any fees made to Us, including the fees set out in the Quote.

**Force Majeure** means a circumstance beyond the reasonable control of a Party and which results in that Party being unable to observe or perform an obligation on time under this Agreement (other than an obligation to make a payment). Such circumstances include but are not limited to:

- (a) acts of God, lightning strikes, cyclones, earthquakes, floods, droughts, storms, tempests, mudslides, washaways, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, and revolution;

- (c) transportation delays;
- (d) power failure;
- (e) industrial action;
- (f) disease and a pandemic;
- (g) inability or failure of a third-party service provider to provide services;
- (h) failure of internet and telecommunication services; and
- (i) reduction in attendee number below the Expected Attendees as a result of poor weather or the time of year the Yacht Charter is being held.

**Intellectual Property Rights** means all past, present and future rights in relation to copyright, trademarks, designs, patents or other proprietary rights, or any rights to registration of such rights, whether created directly or indirectly during the performance of the Services by either Party.

**Month** means a calendar month.

**New Material** means material that is specifically created, written, developed or otherwise brought into existence by or on behalf of Us for the sole purpose of the provision of the Booking Services to you for the Yacht Charters, that may incorporate Your Material and Our Material.

**Our Material** means any Intellectual Property Rights created, written, developed or otherwise brought into existence by the Parties during the course of this Agreement or otherwise brought into existence by Us whilst providing the Services to you.

**Parties** means you and Us.

**Quote** means the quote provided by Us to you for the Booking Services.

**Quote, Confirmation** means Our acceptance and confirmation of the Quote.

**Registered Attendee** means any attendee that has registered through the registration site or that attends the Yacht Charter.

**Yacht Charter** means the hiring of a yacht charter for which you require the Booking Services as described in the Quote.

**Your Material** means any Intellectual Property Rights created, written, developed or otherwise brought into existence by You prior to this Agreement or during the course of this Agreement.

Each reference in these Terms to “writing” and any similar expression includes electronic communications whether sent by e-mail, text message, fax or other means.

## 1 The Contract

1.1 It is agreed by the Parties that We shall provide the Booking Services to you and you shall pay the Fees for the Booking Services in accordance with the Quote.

1.2 Nothing provided by Us including, but not limited to, sales and marketing literature, budgets or any other documents provided from time to time will constitute a contractual offer capable of acceptance. You acknowledge and agree that only the Quote constitutes a contractual offer, and it is only regarded as accepted where it is executed by the Parties.

1.3 These Terms govern the sale and provision of Booking Services by Us and will form the basis of the Agreement between Us and you in accordance with the Quote. Before submitting the Quote, please ensure that you have read this Agreement carefully. If you are unsure about any part of this Agreement, please contact Us for clarification.

1.4 The Parties acknowledge and agree that the following information has been made available to you prior to the formation of the Agreement between Us and you, save for where such information is already apparent from the context of the transaction:

- (a) the main characteristics of the Booking Services.
- (b) Our identity (set out above) and contact details (as set out below in clause 13).
- (c) the total Fees for the Booking Services including taxes, or if the nature of the Booking Services is such that the Fees cannot be calculated in advance then the manner in which it will be calculated.
- (d) the arrangements for payment, performance, and the time by which (or within which) We undertake to perform the Booking Services.
- (e) our complaints handling policy.

(f) details of after-sales services and commercial guarantees, where applicable; and

(g) the duration of the Agreement, where applicable, or if the Agreement is of indeterminate duration or is to be extended automatically, the conditions for terminating the Agreement.

## **2 Quote**

2.1 We will provide the Quote to you in writing by email or in paper form. Your acceptance of the Quote will be confirmed in writing or upon instructing Us to begin providing the Services.

2.2 You acknowledge and agree that the Quote for Booking Services will be subject to these Terms and you warrant that you agree to be bound by same.

2.3 The agreed terms of the Quote may be changed after receiving the Quote Confirmation from Us, but before the Yacht Charter begins. Any change or variation to these terms must be in writing and agreed to by both Parties before the change or variation can take effect.

2.4 We will use all reasonable endeavours to accommodate any requested changes to the Quote but cannot guarantee that We will be able to do so. You acknowledge and agree that if any changes to the Quote are made which will lead Us to incur additional costs, then these additional costs must be agreed to in writing between the Parties prior to Us incurring them and are payable by you.

## **3 Fees**

3.1 The Fees of the Booking Services will be calculated in accordance with the details of the Yacht Charter set out in the Quote and include the following progress payments:

(a) payment of the Deposit; and

(b) payment of the remaining balance of the total Fee amount 120 days prior to the charter.

(c) If your booking dates are within 120 days prior to the charter, full payment for the charter is required.

(d) If you are booking on a Last-Minute deal promotion payment in full is required and the 7-day cooling-off period does not apply.

3.2 We will use reasonable endeavours to ensure all Fees listed on the Website are true, correct and free of error. We reserve the right to correct any errors pertaining to the

Fees on the Website. If the Fees shown in the Quote differs from Our current price, we will inform you upon receipt of the Quote.

3.3 You acknowledge and agree that We may vary the Fees at any time and at our sole discretion until the Quote is accepted by Us.

3.4 All Fees are listed in Australian Dollars and are inclusive of GST unless otherwise stated in the Quote.

3.5 You acknowledge and agree that We will charge you for all disbursements that occurred in performing the Booking Services, including, but not limited to, a 1.75% surcharge for domestic credit cards, 3% for AMEX and a 2.9% surcharge for international credit cards.

## **4 Payment Terms**

4.1 We shall issue an invoice to you for payment of the Deposit and the remainder of the Fee.

4.2 If your booking is within 120 Days of the charter full payment is required

4.3 You shall make payment of the Fees by the due date set out in the invoice.

4.4 You shall pay the Deposit no later than 24 hours following the execution of the Invoice and prior to us commencing the Booking Services.

4.5 You shall pay the remaining balance of the Fee no later than 120 Business Days prior to the date of the Yacht Charter. If the outstanding amount is not made by the due date Whitsunday charter agency will retain the deposit and reopen the dates for the charter.

4.6 We shall issue a separate invoice to you for any additional items such as out-of-pocket expenses or any additional items requested by you after the remaining balance of the Fees has been paid. You shall pay the costs of the additional items in accordance with the invoice. We will not incur any additional expenses without notifying you of these additional expenses and your acceptance of the same. You agree that the miscellaneous fees stated in the Quote are only an estimate and may vary.

4.7 Payment of the Fees can be made by Direct Deposit or Credit Card. Credit Card payments will incur a 1.75% surcharge for Visa and Mastercard and 3% for American Express.

4.8 You acknowledge and agree that full payment of the Fees is required by the due date on the invoice. Failure to make payment by the due date on the invoice will result in you forfeiting your Deposit and Us not providing the Booking Services to you and the dates of your Yacht Charter may be re-opened for re-booking purposes.

4.9 All amounts owing will accrue interest at an annual rate of 15% and may be reported to a credit reporting or debt recovery company.

## **5 Providing the Booking Services**

5.1 Upon receipt of the Fee, we will provide the Booking Services as specified in the Quote.

5.2 If We require any further information, items or action from you in respect to the Quote to provide the Booking Services, we will inform you of this as soon as is practicable.

5.3 We will use all reasonable endeavours to complete the Booking Services and provide you with the Yacht Charter by or on the dates specified in the Quote, but we cannot guarantee that We will be able to do so such as if a Force Majeure event or Change of Law Event occurs.

5.4 We will use all reasonable endeavours to accommodate your requests for the Yacht Charter, including medical requests, but We cannot guarantee that your request will be accommodated.

5.5 You acknowledge and agree that you are required to submit certain information and documentation to the owner of the yacht or the manager of the Yacht Charter including but not limited to identification documents that may be required by the relevant maritime agencies prior to your departure.

5.6 You warrant that during the provision of the Booking Services, you will:

(a) cooperate with Us as we may reasonably require, and

(b) provide any documentation and/or information that We reasonably require for the provision of the Booking Services in the timeframe that we request and that you have fully disclosed to Us all information relevant to the provision of the Booking Services.

5.7 Any documents, itinerary or confirmation required for the Yacht Charter will be provided to you once the payment of the remaining Fee is made. We suggest you keep any receipts, confirmation emails, Quotes and/or other documentation received when using the Booking Services.

## **6 Issues in Relation to the Provision of Booking Services**

6.1 We always use reasonable efforts to ensure that Our provision of the Booking Services is trouble-free. You warrant that where you become aware of something that may delay our provision of the Booking Services or the information or documentation you have provided to Us is incorrect or has an error, you will inform Us of the circumstances as soon as is practicable.



6.2 We will use reasonable efforts to remedy any issues with the Booking Services as quickly as is reasonably possible and practical in the relevant circumstances.

6.3 We are not responsible and not liable for any delay to the Booking Services caused by your failure to inform us of any circumstances pursuant to clause 6.1 or if the information, documentation or items you provide is incomplete or otherwise incorrect and not within the timeframe that we request. You acknowledge and agree that We may charge you for any additional costs incurred by Us for any additional work that may be required from Us to correct or compensate for a mistake made as a result of incomplete or otherwise incorrect information or items that you have provided or action that you have taken. We will not be liable or responsible in any way for any delay in the provision of the Booking Services as a result of your breach of clauses 5.5 and 6.1.

6.4 We will not charge you for remedying issues under clause 6 where the issues have been caused by Us, any of our agents, employees, directors, officers, or subcontractors,

6.5 As a consumer, you have certain legal rights with respect to the Australian Consumer Law. More information on your rights as a consumer can be obtained from the Office of Fair Trading.

## **7 Liability**

7.1 We will not be responsible for any loss or damage that is not foreseeable or occurs as a result of a Force Majeure event or a Change of Law Event.

7.2 We provide the Booking Services for domestic purposes only.

7.3 The parties agree that they and each of their affiliates, employees, agents, contributors and licensors shall not be liable to each other in any way, including, but not limited to, for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by either party, however, caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

7.4 We are not responsible for any pre-existing faults or damage in or to your property.

7.5 We will not be liable or responsible for any property and yacht damage, injuries sustained, or accidents caused, by you or any of the Registered Attendees that may occur through the provision of the Booking Services or on the date of the Yacht Charter, unless the property and yacht damage or the injuries sustained by you or any of the Registered Attendees are as a result of Our breach of these Terms or as a result of our negligence.

7.6 To the extent permitted by law, our liability under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise will be limited to, at our option:

- (a) the re-supply of any Booking Services to you.
- (b) the payment of the costs of having any Booking Services provided again;
- (c) the payment of an amount not exceeding the Fees paid by you for any Booking Services.

7.7 Nothing in these Terms seeks to exclude or limit Our liability for death or personal injury caused by Our negligence (including that of Our employees, agents or sub-contractors), or for fraud or fraudulent misrepresentation.

7.8 Nothing in these Terms seeks to exclude or limit Our liability for the following with respect to your rights as a consumer:

- (a) breach of your right to title and quiet possession as implied by Schedule 2 of the Competition and Consumer Act 2010 (the **Australian Consumer Law**); and
- (b) breach of terms relating to description, satisfactory quality, fitness for purpose and samples as implied by the Australian Consumer Law.

## **8 Force Majeure and Change of Law Event**

8.1 We will not be liable for any failure or delay in performing Our obligations due to a cause that is beyond our reasonable control, including but not limited to, a Force Majeure event occurring or a Change of Law Event.

8.2 If any Force Majeure event or Change of Law Event occurs that is likely to adversely affect Our performance of any of Our obligations under these Terms:

- (a) We will inform you as soon as is reasonably possible.
- (b) Our obligations under these Terms will be suspended during, but no longer than, the period the Force Majeure event continues, and any further period that is unreasonable in the circumstances and any time limits that We are bound by will be extended accordingly.
- (c) We will inform you when the Force Majeure event is over and provide details of any new dates, times or availability of Booking Services and/or the Yacht Charter as necessary; and
- (d) if a Force Majeure event or Change of Law Event occurs and you wish to

cancel the Quote, you may do so in accordance with your right to Cancel under clause 10.

8.3 Where the Agreement or Quote cannot be fulfilled due to a Force Majeure event or a Change of Law Event including if the result cancels any flights, restricts gatherings or restricts movement, We are entitled to retain the Deposit, and any additional third party costs actually incurred by Us up until the point that the Agreement or Quote cannot be fulfilled.

8.4 We recommend that you familiarise yourself with any restrictions or requirements relating to COVID-19 frequently as information relating to COVID-19 may change without notice. You acknowledge and agree that by attending the Yacht Charter you may be exposed to COVID-19 and that you have made a decision to book a Yacht Charter after considering the health risks involved. You acknowledge and agree that you are responsible for the health risks relating to COVID-19 and that We are not liable or responsible for any of these health risks.

## **9 Postponing a Yacht Charter**

9.1 You agree that in the event that a Change of Law Event occurs that restricts gatherings or restricts movement, we may postpone your Yacht Charter to a later date once the Change of Law Event restrictions affecting your Yacht Charter is lifted and if it is financially feasible for both Parties.

9.2 We will not be held liable or responsible for any losses that occurred when postponing a Yacht Charter and you will be responsible for all additional costs and fees associated with postponing your Yacht Charter. If the postponement is financially detrimental to Us, then you agree to renegotiate an increase to the Fees and any other fees payable to Us.

9.3 All Fees and work made towards the Yacht Charter will remain valid if the Yacht Charter is postponed.

## **10 Cancellation**

10.1 We may cancel the Quote by providing written notice at any time prior to Us providing the Booking Services where the required personnel and/or required materials necessary for the provision of the Booking Services are no longer available and a reasonable substitute cannot practicably be found. Where the Quote is cancelled by Us pursuant to this clause, except when caused by a Force Majeure event or Change of Law Event (Refer Clause 8), after you have made any payment to Us pursuant to these Terms, we will refund you, within seven (7) days of such cancellation, all amounts paid by you to Us unless any third-party costs or expenses We have actually incurred.

10.2 Some bookings for your Charter have a seven (7) day change of mind and cooling off period. If you cancel the Quote within seven (7) days following the Quote Confirmation, we will refund to you the Deposit and any Fees this does not include the bank Credit card fees. The 7 Day cooling off period does not apply to The Last Minute Deals.

10.3 Where the Yacht Charter is cancelled by the third-party yacht owner or manager, you may incur a portion of the Fees. You may be offered alternative dates for the Yacht Charter, subject to availability, or a credit for the full amount of the Fees to be used on booking another Yacht Charter. You may use your credit by contacting us on the details set out in clause 13 of these Terms.

10.4 Where the Quote is cancelled due to a Force Majeure event or Change of Law Event, we are entitled to retain the Deposit, any costs or expenses incurred by Us and any additional third party costs actually incurred by Us up until the point of cancellation.

10.5 If a Change of Law Event prohibits the Expected Attendees from attending (the **Prohibition**), the Parties will use their best efforts to ensure the Yacht Charter occurs. If you reasonably determine the Yacht Charter is not feasible, meaning none of the Expected Attendees can attend the Yacht Charter due to the Prohibition, then you may immediately cancel the Quote.

## **Guest Cancellation**

10.6 Guests have a 7-day cooling off period after paying the \$1,500 deposit. If the guest has booked on a Last Minute Deal, this 7-day cooling off period does not apply. If a guest wishes to cancel their booking, Whitsundays Charter Agency (at the direction of the guest) will re advertise the dates in an attempt to recharter the dates.

Guests must be advised, if they choose to re advertise the dates, the dates will appear on various other Booking and Owner websites. If the dates are rebooked through another Booking Agent, Whitsundays Charter Agencies will have lost the whole booking and will not refund the deposit.

If the same dates are chartered by another guest through Whitsundays Charter Agency, the initial guest will be refunded, minus a 10% administrative fee of the full amount of the charter price. If the Operator is successful in obtaining an alternative booking but at a lesser rate or a lesser period, then there shall be a pro-rata refund only equal to the lesser agreement.

**Guests are strongly advised to obtain their own travel insurance in the event of circumstances that are out of their and the boat operator's/owner's control.**

Eg:

- Illness
- To cover flight costs in the case of either party cancelling the charter.
- Irreparable damage encountered on the vessel by previous guests
- A shortening or cancellation of your charter by either party for any reason,

not limited to inclement weather, cyclone warnings, cyclones and any unforeseen serviceability issues.

- A recall to the marina, for any reason relating to the safety of the crew, the safety of the vessel, maintenance to the vessel and or breach of hire agreement.
- A chase call or calls for any reason relating to the safety of the crew, the safety of the vessel, maintenance to the vessel and or breach of hire agreement.

## 11 Termination

11.1 We can terminate the Agreement immediately by providing written notice on becoming aware of one of the following having occurred:

- (a) you fail to make a payment on time as required under Clause 4; or
- (b) you have breached the Terms or Agreement in any material way and have failed to remedy that breach within fourteen (14) days of Us asking you to do so in writing; or
- (c) we are unable to provide the Booking Services due to an event outside of Our control, including for a Force Majeure event or Change of Law Event.

11.2 Where these Terms have been terminated pursuant to clause 11.1, We are entitled to retain any Fees paid by you towards the Yacht Charter and any third-party costs actually incurred by Us up until the point of termination.

## 12 Indemnity

12.1 You shall indemnify and defend Us and Our employees, agents and contractors (**Those Indemnified**) against claims, liabilities, losses, damages, costs and expenses made against, or suffered or incurred by, those Indemnified as a result of:

- (a) a breach of these Terms or the Agreement, or negligence relevant to the Services or the Agreement, by you or your guests, your agents, employees, contractors, directors, or officers;
- (b) any property damage or bodily injury caused or contributed to by you or your guests, your agents, employees, contractors, directors, or officers; or
- (c) an infringement or alleged infringement of a Parties' or a third party's intellectual property rights or moral rights or arising from an act made by you, or a person authorised by you.

12.2 In conducting a claim, suit or action in respect of which you indemnify Those Indemnified, you will, at your expense, comply with Our reasonable directions.

## **13 Communication and Contact Details**

13.1 If you wish to contact Us with questions or complaints, you may contact Us by telephone at 1300 253 316 or by email at [sales@whitsundaysyachtcharters.com.au](mailto:sales@whitsundaysyachtcharters.com.au)

13.2 In certain circumstances, you must contact Us in writing. When contacting Us in writing you may use the following methods:

- (a) contact Us by email at [sales@whitsundaysyachtcharters.com.au](mailto:sales@whitsundaysyachtcharters.com.au) or
- (b) contact Us by pre-paid post at Whitsundays Charter Agency Australia Pty Ltd. 1 Oxley Road, Hawthorn 3122

## **14 How We Use Your Personal Information (Data Protection)**

14.1 All personal information that We may collect (including, but not limited to, your name and address) will be collected, used and held in accordance with the provisions of the *Privacy Act 1988* (Cth) and your rights under that Act.

14.2 We may use your personal information to:

- (a) provide the Booking Services to you.
- (b) process your payment for the Booking Services.
- (c) inform the relevant maritime agencies of the Yacht Charter.
- (d) inform you of new products and services available from Us. You may request that We stop sending you this information at any time.

14.3 We will not pass on your personal information to any other third parties without first obtaining your express permission.

## **15 Insurances and Other Important Terms**

15.1 We may transfer or assign, our obligations and rights under these Terms (and under the Agreement, as applicable) to a third party (this may happen, for example, if We sell Our business). If this occurs, you will be informed by Us in writing. Your rights under these Terms will not be affected and Our obligations under these Terms will be transferred to the third party who will remain bound by them.

15.2 You may not transfer or assign your obligations and rights under these Terms (and under the Agreement, as applicable) without Our express written permission.

15.3 This Agreement is the entire agreement between Us and you in relation to its subject matter.

15.4 This Agreement is between you and Us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms.

15.5 If any of the provisions of these Terms are found to be unlawful, invalid or otherwise unenforceable by any court or other authority, that / those provision(s) shall be deemed severed from the remainder of these Terms. The remainder of these Terms shall be valid and enforceable.

15.6 No failure or delay by Us in exercising any of Our rights under these Terms means that We have waived that right, and no waiver by Us of a breach of any provision of these Terms means that We will waive any subsequent breach of the same or any other provision. A waiver given by Us is only effective and binding on Us if it is given or confirmed by Us in writing.

15.7 You will be responsible for obtaining and purchasing any personal travel insurance. We **strongly** suggest that you take out the appropriate personal travel insurance when attending the Yacht Charter; Please note: The Insurance Excess Reduction (IER) is not travel insurance. It only covers events that may happen to the boat during the charter. If you do not take the IER insurance prior to boarding the boat, you will be subject to the excess of \$4,000 if there is damage to the boat or a single event whilst the boat is under your care and control.

15.8 We will make every effort to ensure the Website and its content is accurate and free of error at all times, however, we cannot be held responsible for printing or typographical errors displayed on the Website.

15.9 We will use reasonable endeavours to ensure the Yacht Charter is implemented as arranged and set out in the Quote. However, we are not liable or responsible in any way for any act, omission or default, whether negligent or otherwise, by the third-party yacht owner.

15.10 We warrant that we will:

- (a) use reasonable care and skill in providing the Booking Services; and
- (b) comply with all applicable laws and regulations relating to the provision of the Booking Services.

15.11 We provide no guarantee that any results or objective can or will be achieved or attained through the Yacht Charter.

15.12 You understand and agree that:

- (a) You are responsible for any travel and any associated travel expenses incurred as a result of you attending the Yacht Charter and We will not be liable in any way for any travel leading up to the Yacht Charter.
- (b) You are subject to the terms and conditions of the hire agreement provided by the third-party yacht owners in addition to these Terms;

- (c) (c) Any insurance offered by the third-party yacht owners applies only to events that may occur during the Yacht Charter and are solely yacht related;
- (d) You will be responsible for the actions of any of your guests and Registered Attendees;
- (e) You and your guests and Registered Attendees must adhere to any third party services providers policies and procedures; and

## 16 Intellectual Property

16.1 Subject to this Agreement, you hereby grant to Us for no consideration, a limited, non-exclusive and non-transferable licence to use Your Material, on a royalty-free basis, for the sole purpose of performing any promotional, marketing or advertising activities for the provision of the Booking Services. All goodwill related to the use of any trademarks shall inure to the benefit of You. You reserve the right to revoke Your permission to use Your Material should the use be noncompliant with the media or promotional guidelines (if any), or negatively impacts, or disparages You or the goodwill existing therein.

16.2 Each Party may use the New Material on a royalty-free basis, for the sole purpose of performing any promotional, marketing or advertising activities for the provision of the Yacht Charter. Each Party reserves the right to revoke the other Party's permission to use the New Material should the use be noncompliant with the media or promotional guidelines (if any), or negatively impacts, or disparages the reputation of either Party.

16.3 We retain all Intellectual Property Rights in any of Our Materials used in the New Materials. For the avoidance of doubt, nothing in this Agreement assigns any Intellectual Property Rights to You that exist in Our Materials.

16.4 You retain all Intellectual Property Rights in any of Your Materials used in the New Materials. For the avoidance of doubt, nothing in this Agreement assigns any Intellectual Property Rights to Us that exist in Your Materials.

## 17 Dispute Resolution

17.1 If a dispute arises out of or relates to the Agreement or the Booking Services, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought):

- (a) A party to the Agreement claiming a dispute (**Dispute**) that has arisen under the Terms, must give written notice to the other party detailing the



nature of the dispute, the desired outcome and the action required to settle the Dispute (**Notice**).

(b) On receipt of the Notice by the other party:

(i) the parties will endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree within seven (7) days of the Notice;

(ii) if for any reason whatsoever, the Dispute has not been resolved within twenty-one (21) days after the date of the Notice, the parties must either agree upon the selection of a mediator or request that an appropriate mediator be appointed by the President of the Law Society of Melbourne or his or her nominee;

(c) the parties will each pay their own costs associated with the mediation. The parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing; and

(d) the mediation will be held in Melbourne, Australia.

17.2 All communications concerning negotiations made by the parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

17.3 If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.

## **18 Governing Law and Jurisdiction**

18.1 The Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Queensland, Australia.

18.2 Any dispute, controversy, proceedings or claim between Us and you relating to the Booking Services or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the non-exclusive jurisdiction of the courts of Queensland or the Federal Court of Australia and the exclusive jurisdiction is Melbourne Australia.