

**WHITSUNDAYS YACHT CHARTERS BAREBOAT CHARTER -  
TERMS & CONDITIONS**

**THE PARTIES**

**AGREE:**

**Interpretation**

The Operator is Whitsundays Yacht Charters (M.J. McCarthy & M. T. McCarthy). The Charterer is the person or group having the holiday (charter) aboard the nominated vessel. In this agreement, unless the context otherwise requires, the singular includes the plural and vice versa, words denoting gender shall include all other genders, headings are for convenience of reference only and shall not affect the construction of the agreement. Children are defined as persons under the age of sixteen years. .

**1. Available for charter**

The Operator shall have the nominated vessel available for your holiday at the agreed boarding time. The vessel will be presented clean, fuelled and in full commission ready for service at the agreed time of boarding. Your boarding location is at Abell Point Marina – South End. Your briefer will meet you at an agreed time and location before entering any of the marina fingers. The Operator will allow credit pro rata for charter fees covering periods of delay in availability if we exceed your time of boarding and where possible, if agreed to by both parties, extend your charter by the same amount subject to availability on the last day of your charter. The Operator has the right, at its discretion, to substitute a boat of similar type or to postpone the charter subject to weather and or the condition of the boat from the previous charter. Weather will only affect a charter if cyclone conditions have been predicted in the 24 hours prior to your charter as per our Safety System Procedure Manual.

**IMPORTANT NOTE FOR NOMINATED SKIPPERS WITHOUT EXPERIENCE:** Rain, strong / gale force winds, cloudy or overcast conditions, ARE NOT reasons for cancellation. Any postponement by the Operator within any notice period will be compensated with a combination of an additional days charter (at no cost) for your postponed holiday and the Operator will also pay out a maximum of \$70.00 to each crew member listed on the crew form for your airline rebooking or change fee. Refunds are not available for postponed charters by the Operator or the Charterer. Postponements by the Operator can be rebooked for any time into the foreseeable future; No blackout periods can be used against any postponement. The Operator will have no further liability to the Charterer beyond the postponement, extra day and flight rebooking fees. The Charterer warrants that they will examine the Boat before taking delivery and by accepting the Boat shall be deemed to have satisfied him or herself that the Boat is staunch and properly outfitted for a vessel of her type, size and accommodation. Should the Charterer not be ready to accept delivery of the Boat at the stated time for delivery for any reason, the Operator has the right to set the time of delivery any time within the next twenty-four hour period subject to availability of Briefers. In this event, there shall be no partial refund for any of the charter time lost. The charter period commences at the time of boarding and the boat cannot depart from the marina without a compulsory briefing, Skipper or any additional training if booked or deemed necessary by your Briefer.

## 2. Payment and Postponement

- The charter cannot commence without ALL payments being made in full.

In the event that the Charterer cancels this agreement by notice in writing received by the Operator more than sixty days prior to the commencement of the charter period, the charter fee will be refunded to the value of 80%. Any portion of the charter booked using a promotional offer WILL NOT be refunded under the terms and conditions of the promotional offer. If less than sixty days of notice of cancellation is given; the full charter fee shall remain due and payable and will not be waived or refunded unless the Operator is able to obtain an alternative booking for the same charter period and at the same rate or higher. 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. Under any cancellation, a maximum of only 80% will be honored as set out in either occasion detailed above. These funds will be used for relevant administration costs to the business.

## 3. Damage Levy Fee and Bond

The charterer shall pay a Damage Levy Fee or we will hold a Bond.

- **Damage Levy Fee** is available for charters at the advertised daily rate. This fee reduces your Insurance excess to \$1000.00. Damage Levy Fee can only be honored if during the charter the boat is operated only in approved areas and in a safe and responsible manner in accordance with your briefing and all charter notes.

- This arrangement applies to a first incident only.
- This arrangement excludes toilet blockages which incur a fee of \$180.00 per blockage.

- **Bond** - Alternatively a Bond of \$3000.00 will be held against your nominated credit card for the duration of your charter and for a period no greater than 14 days after your charter. The Operator reserves the right (without showing cause) to apply, up to a maximum of \$3,000.00 bond (deducted from your nominated Credit Card on M. J. McCarthy & M. T. McCarthy facilities) to any charter where a Damage Levy Fee is not paid and damage occurs to the vessel or its systems and chattels. This fee covers the standard insurance excess associated with the cover over this vessel. Notice of intent to claim will occur no later than 14 days after the end of your charter and no monies will be deducted from your card without confirmation of the same.

## 4. Inventory

At the time of delivery the Charterer has the right to check and sign for a record of inventory and on redelivery to attend to checking with the Operator and to countersign the record of inventory after checking. Any lost or damaged inventory item shall have all expenses relating to the loss or damage debited against the amounts detailed in **3.** above.

## **5. Running Expenses**

The Charterer shall pay all running expenses during charter period including the need for any emergency services, pilotage, port charges, Skipper, Crew charges (if required), service calls if applicable, refueling costs, provisions, supplies, EMC, Marina fees, Mooring fees, towing fees etc. The Charterer is required to provide credit card details and authorization for payment to cover any outstanding **fees** and **charges**.

## **6. Competency**

In this clause "competent person" means a person competent in the handling of the type of boat chartered including:

- Knowledge and practical experience of seamanship, navigation, language and terms; and
- Knowledge and practical experience in the handling of inboard auxiliary powered craft and associated equipment of the general type and size of boat.
- The Charterer warrants that he / she is a competent person in the handling and operations of the type of boat chartered, including boating experience, VHF radio, Chart Plotters, Wind instruments, Depth instruments, auto pilot, mooring and anchoring,
- The Charterer undertakes not to permit any other person to operate the Boat unless that person is a competent person.
- Fluent English – The nominated skipper for the charter must be able to speak and understand all communications in the English language.

The Operator reserves the right to require the Charterer and any other person who shall operate the Boat to demonstrate to the Operator that they are competent persons. Should the Operator through their Coxswain qualified (minimum) Briefers, not be satisfied with the competency of the Charterer, the Operator may require a Skipper to be placed on board the Boat for such period as determined by the Operator. In the event that the Charterer or any other person is considered by the Operator to be an incompetent person as a result of any misleading, deceptive conduct or misrepresentation by the Charterer and upon which the Operator has relied to form an opinion, then the Operator shall have the right to install a competent Skipper aboard the Boat; and at its election, where deemed necessary, to terminate this agreement. The Operator shall have the right to recover all losses against the Charterer without any liability to refund or compensate the Charterer.

## **7. Navigation and Other Limits**

The Charterer shall restrict the cruising of the Boat from 0700 to 1600 hours unless authorized by the Operator. The Charterer shall limit his cruising perimeter to the area and limitations clearly defined and specified by the Operator. The Boat shall be employed exclusively as a pleasure boat for the sole and proper use of members of the Charterer's party. The Charterer shall not carry on the Boat more than the specified number in the party and the Charterer shall not permit any other party, except

competent persons within the Charterer's party, to operate the Boat, unless the prior written permission of the Operator is obtained. The Charterer shall not race the Boat. The Charterer shall not "raft up" the Boat against any other vessel. Except with authorisation of the Operator, the Boat must not be used for towing. There must be no transferring of any equipment from the Boat. The Charterer shall not engage in trade including transporting merchandise or passengers for pay. No goods, documents or drugs shall be carried which would involve the risk of seizure of the Boat by any government. Pets shall not be taken on the Boat. Children must be under the control of a responsible adult. That adult is responsible for the conduct and personal safety of the children whilst on the Boat. The Charterer shall not allow any person on board to commit any act contrary to the laws of Australia, or of any other government within the jurisdiction of which the Boat may be at any time and shall comply with the law in all other respects. The Charterer shall not tie the Boat up at any jetties or piers except those approved by the Operator prior to the charter or make any landing with the Boat. Scuba diving from the boat is only permitted where an appropriate dive flag is flown (not supplied) and only by qualified personnel. No more than 8 dive tanks can be loaded into the transom steps (4 each side). SCUBA diving from the boat or the tender is performed at the charterers own risk.

### **8. Charterer's Authority**

At the commencement of the charter period the Operator shall relinquish its possession and command of the Boat to the Charterer and full authority regarding the management of the Boat and its crew or members of the charter party shall be transferred to the Charterer for the period of this charter. Should a Skipper be put on board, either at the Charterer's request or at the Operator's option, the Skipper shall have sole responsibility for the Charterer and the Charterer shall pay the Operator for the Skipper at the current daily rate as detailed in all communications with the Charterer. It is then the Charterer's responsibility to feed the Skipper and accommodate him / her in a private cabin. If a Skipper is put on the Boat, then although the Charterer shall have possession, command, navigation and full control over the Boat, the Skipper is to be sole judge as to whether it is reasonable or prudent to travel at any time and as to whether any specified anchorage is reasonably safe that has been requested by the Charterer.

### **9. Redelivery**

The Charterer shall redeliver the Boat to the Operator free from any indebtedness which may have occurred on the Charterers account at the Port of Return, together with all of its equipment, in the same good condition as it was at the time of delivery, save for fair wear and tear from ordinary and proper use. If for any reason other than that the Boat has become a total loss, the Charterer fails to redeliver the Boat at the agreed place and time, he shall pay the Operator demurrage at the rate of the charter fee per day (\$2392.00) of the Boat plus 50% for every day or part of a day ("Agreed Demurrage") until redelivery is affected. If the Charterer leaves the Boat at any place other than the Port of Return he shall pay to the Operator, all expenses involved in transferring the Boat to the Port of Return: Agreed Demurrage for the number of days required for the transfer; plus any losses or damage not covered by the Operator's insurance which may occur on or to the Boat or otherwise arising from the redelivery until it has been redelivered to the Charterer at the Port of Return. In the event that the Charterer should elect for any reason to redeliver the Boat prior to the end of the charter period, the Operator shall not be liable to return any part of the charter fees.

## **10. Cleaning**

If, upon completion of the charter, the Charterer has not left the Boat in a reasonable state of cleanliness, then the Charterer shall pay for the costs of cleaning the Boat.

## **11. Service Calls**

In the event of a malfunction of the Boat or its equipment, the Operator shall subject to prevailing weather conditions use its best endeavors to reach the Boat with a service call at the earliest opportunity. In the event a service call is not in the Operator's opinion reasonably possible, or if the problem cannot be otherwise rectified, the Charterer shall proceed to the point designated by the Operator where repairs or replacement, where possible, will be made. If the Service Call is made due to a fault or condition to the boat made by the charterer, then the service call will be charged directly to the Charterer.

## **12. Recall**

The Operator reserves the right to recall the Boat at any time if the weather is considered by the Operator to be a threat to safe operation of the boat; (Cyclone Warning within 24 hours) or in the Operator's opinion the Boat is being improperly or incorrectly sailed, managed or controlled so as to imperil the Boat, other vessels, property or life. A recall may include, but is not limited to, a recall to the Operator's base or an instruction to proceed to a safe haven deemed to be safe for the prevailing conditions. During a recall, the Charterer may be required to vacate the Boat depending on the conditions. The Operator shall not be liable for any lost time, expense or losses to personal goods of property due to recall and the Operator is not liable to repay any charter fees. **The Charterer is advised to take out the appropriate insurance cover for such events.**

## **13.Replacement**

In the event that a fault in the Boat is detected before or during the charter period that may cause unsatisfactory performance of the Boat or equipment, then the Operator has the right to expeditiously affect repairs. In the event that the Boat is in the Operator's opinion inoperable during part of the charter period through no fault of the Charterer rendering total or premature termination of the charter, the Operator may endeavor to provide, as a substitute, an alternative boat of similar size and quality for the charter period. If no substitute boat can be provided, the Charterer shall be entitled to reimbursement of charter fees for each full day of the charter which has not been used, less any cost incurred by the Operator under this clause.

## **14. Accident or Breakdown**

In the event of any accident, loss, breakdown or disaster, the Charterer shall give immediate notice to the Operator and shall not, except to the extent necessary to minimize a loss of the Boat, authorize or undertake repairs without prior authorization of the Operator. The Charterer shall be responsible for the costs and consequences of any unauthorised repairs. The Charterer shall make no admission of liability to any party and no refund shall be made in respect of any claim arising out of such accident, loss, breakdown or disaster, save as is otherwise provided in this agreement. The Operator, at its discretion, shall determine if the cost of any repair, service (including cost for service vessels), breakdowns, recall or repossession or any other costs incurred by the Operator are chargeable to the Charterer and, if so, shall be owing by the Charterer.

## **15. Limitation of Liability**

Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified. To the extent permitted by law, the Boat, once chartered by the Charterer and delivered to the Charterer by the Operator or collected from the Port of Delivery by the Charterer, shall be entirely at the risk of the Charterer. The liability of the Operator to the Charterer or any other person for any direct or indirect, special or consequential loss or damage to property (real or personal) or persons, including personal injury or death, however caused or whether or not caused by or arising from any negligence or default, act or omission of the Operator in connection with the charter of the Boat, the performance of the services or the Operator's obligations under this Agreement or otherwise shall be limited to the supply of those services again or, at the Operator's discretion, a further charter of the Boat or another vessel.

## **16. Alcohol and Drugs**

The use or consumption of illegal drugs by anyone using the Operator's facilities, property or boats, either ashore or afloat, is prohibited. The consumption of alcohol will increase the risk of injury around docks, water and boats and the Charterer accepts that risk. The Operator shall not be liable for any personal injury or death arising from or in any way related to the use or consumption of alcohol or illegal drugs and the Charterer shall indemnify and hold the Operator harmless in respect of any claims against the Operator arising out of such personal injury or death. Currently a 0.05% maximum limit applies to the nominated skipper AT ANY TIME while on a charter boat unless that boat is secured to a marina. At anchor or mooring, the 0.05% limit is still in force.

## **17. Personal Losses**

The Operator shall not be liable for loss of personal property and goods of the Charterer whilst on the Operator's property or boats.

## **18. Insurance**

The Boat chartered is customarily insured for the charter period as protection against any accidental loss or damage that may occur, or be caused by, the Boat during the charter period so long as the Boat remains in the cruising limits and perimeters established in clause 7 and is operated in compliance with all the terms and conditions of this agreement. In the case of a Bond being taken, any excesses in connection with claims made under the policy may be debited by the Operator against the Charterer. In the case of loss, accident, breakdown, or a disaster, the Charterer shall give immediate notice to the Operator and shall not, except to the extent necessary to avert or minimize damage or a loss of the Boat, attempt repairs without authorization of the Operator. As a guide, the boat is insured up to \$1,000,000.00 and has a \$3,000.00 insurance excess. The insurance may also cover the tender within 2nm of the Mother Ship and any snorkeling / swimming within the marine park limits when swimming from the Mother Ship or the tender. (See 21. Watersports below)

## **19. Indemnity**

The Charterer shall indemnify, reimburse and hold the Operator harmless from and against any acts and all claims, losses, liabilities, demands, suits, judgment or causes / actions and all legal proceedings, whether civil or criminal, and arising under contract, tort, statute or otherwise, penalties, fines and other sanctions and any other costs and expenses (including legal costs and expenses) in connection with or which may result from, or arise in any manner out of any matter (either directly or indirectly) related to this charter agreement or arise out of the management, control, encumbering use or operation of the Boat by the Charterer. No claim of any nature shall be brought against the Operator by the Charterer or any of the charter party or any third party and the Charterer agrees that he/she shall indemnify the Operator in respect of any amount paid by or claimed against the Operator in respect of any such claim.

## **20. Total Loss**

Should the Boat become an actual or constructive total loss during the charter period, then the Operator may at its option substitute a vessel of similar type (if available) or deem this agreement to be at an end. In either circumstance, there should be no refund of any part of the charter fee. In the event that, in the reasonable opinion of the Operator, the Boat becomes inoperable during the Charter Period through action or inaction of the Charterer or any of his party, the Operator may, at its option, terminate this agreement and retain all charter fees paid. The Operator may then, at its option, offer a further charter to the Charterer on another vessel. The Charterer shall, if he accepts the offer, then pay a security bond and all costs of the further charter including the charter fee.

## **21. Water Sports**

The Operator shall not be liable for accidents, injuries or death due to: swimming, windsurfing, the use of the Boat's tender and outboard engine; or the use of snorkels, masks, fins or scuba equipment. The user of the equipment referred to in this clause must ascertain that he is experienced, qualified and capable of using the equipment and the equipment is suitable and in good condition for the purpose for which it will be used and for the person using it. The Operator's insurance underwriter may, at their discretion, support any claim for the tender within 2nm of the Mother Ship and any snorkeling / swimming within the marine park limits when swimming from the Mother Ship or the tender

## **22. Force Majeure**

The Operator is not liable to the Charterer for any claim arising under this agreement in contract, tort, statute or otherwise, due to the performance of any obligation accepted by the Operator that is prevented, delayed or interfered for any reason beyond the Operator's control as a result of force majeure including without limitation by any act of war or terrorism, strikes or other industrial action, accident, breakdown, fire, cyclones, lightning, winds, storms or other acts of God, acts of governments or government authorities or any events of a similar nature beyond the reasonable control of the Operator.

### **23. DAILY SCHEDULED CONTACT**

The Charterer agrees to be contacted by the Operator's base on or within such time as the Operator may at its discretion stipulate to the Charterer including each morning and afternoon on each day of the charter period and furnish necessary details of the Boat's position, intended plans for the day and intended anchorage position for that evening. Contact will be made in the first instance to the nominated skippers mobile phone, followed by a second call to the Boats satellite phone. Where the known forward anchorage is out of mobile range, an agreement will be made to call the satellite phone at the nominated time. In the event that the Charterer cannot be reached **on any two consecutive schedule periods**, then that Charterer shall be responsible for all costs or expenses incurred by the Operator in searching for the Charterer including but not limited to, the hire of aircraft or other means of transport.

### **24. Government Fees and Future Taxes**

Charterer's pay a maximum fee of \$34.00 per person for costs of the use of the Great Barrier Reef Marine Park. The Charterer shall also pay and discharge without exception all taxes, charges, assessments and outgoings and imposition relating to the charter imposed by or under federal, state or local law.

### **25. Non-assignment**

The Charterer shall not assign or sub-charter his interest in the Boat without the prior written consent of the Operator. The Operator may assign its rights under this agreement.

### **26. Applicable Law**

This agreement shall be governed by the laws of the State of Queensland and the Commonwealth of Australia and any dispute arising or relating to the agreement or the charter shall be referred to the courts of Queensland and be heard at the nearest relevant court, being the Magistrates Court at Proserpine, the District Court at Bowen or the Supreme Court at Mackay.