



# **THE PROTOCOL GOVERNING THE 37TH AMERICA'S CUP**

**The Royal New Zealand Yacht Squadron Incorporated**

and

**Royal Yacht Squadron Limited**

**15 November 2021**

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This **Protocol Governing the 37th America's Cup** is made on 15 November 2021

**between** (1) **The Royal New Zealand Yacht Squadron Incorporated**  
**and** (2) **Royal Yacht Squadron Limited**

## **Introduction**

- A. The Royal New Zealand Yacht Squadron Incorporated ("**RNZYS**"), having defended the 36th America's Cup, holds the silver trophy known as the America's Cup in accordance with the terms of a Deed of Gift dated 24 October 1887 (the "**Deed of Gift**").
- B. On 17 March 2021, immediately following the final race of the 36th America's Cup, RNZYS received and accepted a notice of challenge for the 37th America's Cup from Royal Yacht Squadron Racing Limited in accordance with the Deed of Gift.
- C. Royal Yacht Squadron Racing Limited changed its name to Royal Yacht Squadron Limited ("**RYS**") on 24<sup>th</sup> March 2021.
- D. RYS, having submitted the first valid notice of challenge for the 37th America's Cup has been appointed as the initial Challenger of Record.
- E. RNZYS and RYS believe that a form of protocol is a desirable way of mutually consenting to various items that, in accordance with the Deed of Gift, may be agreed between the yacht club holding the America's Cup and the yacht club challenging for the America's Cup.
- F. Accordingly, RNZYS and RYS now record in this Protocol (the "**Protocol**") the arrangements they have mutually agreed for and in respect of the 37th America's Cup ("**AC37**") in accordance with the terms of the Deed of Gift.
- G. In this Protocol COR/D have sought to continue the development of the America's Cup as the premier event in the sport of sailing, consistent with the provisions of the Deed of Gift, so as to:
  - a. maintain the balance between sailing and design;
  - b. keep the America's Cup at the forefront of technology;
  - c. endeavour to increase the number of Competitors involved in the America's Cup;
  - d. increase public engagement with the America's Cup;
  - e. cut the cost of design, production and operations of AC75 Yachts; and
  - f. maintain the value of the existing fleet of AC75 Yachts.

**It is agreed as follows**

# PART A: INTERPRETATION

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## 1. Interpretation

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### 1.1 Definitions

In the interpretation of this Protocol, defined terms used herein shall have the meanings set out in Schedule 1.

### 1.2 Interpretation

In the interpretation of this Protocol:

- (a) the use of the words “including”, “include”, “in particular”, “for example” and similar words or expressions shall be construed as illustrative and shall not imply any limitation to the words following such expression;
- (b) unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing any gender include any gender;
- (c) the **Introduction** forms part of this Protocol;
- (d) the headings to the Articles of this Protocol are for convenience only, have no legal effect and shall not be taken into account in the construction or interpretation of this Protocol;
- (e) no rule of construction will apply to the disadvantage of a Person on the basis that that Person put forward this Protocol or any part of it;
- (f) any obligation in this Protocol on a party not to do something includes an obligation not to agree or allow that thing to be done; and
- (g) references to writing include any modes of reproducing words in a legible and non-transitory form.

### 1.3 Conflicting documents

In the event of a conflict between any provision or provisions of this Protocol and any other document, other than the Deed of Gift, the terms of this Protocol shall prevail.

### 1.4 Official dictionary

The official language of this Protocol is English. Unless separately defined in Schedule 1, the meaning of any word used in this Protocol and any document governing the whole or any part of AC37 shall be determined by reference to the Oxford English Dictionary as it exists (as at the date of this Protocol) in the official online dictionary available at [www.oed.com](http://www.oed.com) (or such later official website of the Oxford English Dictionary).

## 1.5 **Articles / Schedules**

In the interpretation of this Protocol, a reference to an **Article** or **Schedule** is a reference to an article of or schedule to this Protocol.

## 1.6 **Dates and times**

Unless otherwise specified, all dates and times referenced in, or in any communications pursuant to, this Protocol are the dates and times in New Zealand time ("**NZT**").

## 1.7 **Meanings**

In the interpretation of this Protocol, the words "shall", "must" and "will" are mandatory; and the word "may" is permissive.

## PART B: EVENT STRUCTURE

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### 2. Defender and Challenger of Record

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#### 2.1 Role of the Defender

- (a) The Defender has responsibility for meeting its obligations under the Deed of Gift and this Protocol.
- (b) RNZYS has appointed Team New Zealand Limited (“**TNZL**”) to represent it as the sailing team that will defend the America’s Cup in AC37 on its behalf and to organise the delivery of all of the Events that will comprise AC37.
- (c) In this Protocol, RNZYS and TNZL are together referred to as the “**Defender**”.

#### 2.2 Role of the Challenger of Record

- (a) RYS, having submitted the first valid notice of challenge for the 37th America’s Cup, has been appointed as the initial challenger of record and is responsible for:
  - (i) acting as the single point of communication between the Challengers and the Defender in relation to matters covered by this Protocol; and
  - (ii) meeting its obligations under the Deed of Gift and this Protocol.
- (b) RYS has appointed Athena Racing Limited (“**ARL**”), competing as INEOS Britannia, to represent it as the sailing team that will challenge for AC37 on its behalf.
- (c) In this Protocol, RYS and ARL are together referred to as the “**Challenger of Record**”.

#### 2.3 Role of COR/D

- (a) In this Protocol, when acting together the Defender and the Challenger of Record shall be referred to as “**COR/D**”.
- (b) The responsibilities of COR/D are as prescribed in this Protocol.

### 3. America’s Cup Event Authority

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#### 3.1 Appointment

The Defender has incorporated a New Zealand registered company, AC37 Event Limited (“**ACE**”), for the purpose of fulfilling the event management obligations under this Protocol.

#### 3.2 Responsibilities of ACE

- (a) ACE has the sole responsibility to:
  - (i) organise and manage the format and commercial rights of AC37; and
  - (ii) implement the decisions and instructions of COR/D in relation to the Rules;



as provided in this Protocol.

- (b) More specifically, ACE shall be responsible for:
  - (i) establishing and implementing the timing and format of AC37 and the Events consistent with the terms of this Protocol;
  - (ii) working with the Defender to select the Host City(ies) and Venue(s) for each of the Events and reaching any agreement(s) with the relevant authorities in each case;
  - (iii) the development, protection, management and exploitation of the commercial and media rights referred to in Parts H and I of this Protocol;
  - (iv) endeavouring to ensure that the objectives set out in Paragraph G of the Introduction to this Protocol are met for AC37;
  - (v) endeavouring to raise funds, to meet its costs of AC37;
  - (vi) promoting AC37 and the Events;
  - (vii) the delivery of an independent and professional on-water racing operation for each Event in accordance with COR/D instructions (where required under this Protocol);
  - (viii) recruitment and training of on-water event officials;
  - (ix) race management logistics in accordance with COR/D instructions; and
  - (x) other obligations specifically given to ACE under this Protocol.

## **4. Competitor Forum**

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### **4.1 Constitution and purpose**

ACE shall establish and maintain a Competitor Forum as a consultative body only for the purpose of regular consultation and communication with all Competitors.

### **4.2 Meetings of the Competitor Forum**

- (a) Meetings of the Competitor Forum shall be held:
  - (i) at least once every one hundred and twenty (120) days for the duration of this Protocol (as scheduled by ACE); and
  - (ii) on an ad hoc basis at the request of COR/D, ACE or the Regatta Director (on reasonable notice under the circumstances).
- (b) Meetings of the Competitor Forum shall be attended by:
  - (i) up to three representatives from each Competitor;
  - (ii) the appropriate personnel from ACE; and
  - (iii) the Regatta Director (once appointed).

- (c) A Competitor that is:
  - (i) in default of any payment obligation referred to in Article 20;
  - (ii) (subject to Article 4.2(d)) eliminated from the AC37 competition;
  - (iii) disqualified from participation in the AC37 competition;
  - (iv) otherwise ineligible to participate in Events; or
  - (v) no longer a Competitor by reason of the withdrawal of its challenge or otherwise;

will not be entitled to attend a meeting of the Competitor Forum.

- (d) If the Challenger of Record is eliminated during or at the end of the Challenger Selection Series but continues in its role as Challenger of Record, it may continue to take part in meetings of the Competitor Forum.
- (e) Once appointed, Competitor Forum meetings will be chaired by the Regatta Director who will be responsible for setting the agenda at each meeting. Prior to the appointment of the Regatta Director, the agenda shall be set and meetings will be chaired by a person agreed by COR/D.
- (f) Where a matter requires the attendance of additional persons, the Regatta Director may request and/or allow additional expert representatives (including from Competitors) that are relevant to that agenda item only.
- (g) Meetings of the Competitor Forum may be held in person, by telephone or other audio/visual link-up.
- (h) ACE, acting on the instructions of the Regatta Director, shall promptly provide Competitors with details of agenda items to be discussed at a Competitor Forum meeting.
- (i) The Competitor Forum shall act as a consultative body only and decisions of the Competitor Forum shall not be binding on any party except in relation to a vote under Article 22.1(c), in which case the voting requirement of that Article shall apply.

## PART C: EVENT FORMAT

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### 5. AC37 Events

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The following events will form the regattas to determine the yacht club that will become the holder of the 37th America's Cup:

- (a) the America's Cup Preliminary Regattas;
  - (b) the America's Cup Challenger Selection Series; and
  - (c) the 37th America's Cup Match;
- (together, the "AC37 Events").

### 6. America's Cup Preliminary Regattas

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- (a) The intention of COR/D is for ACE to stage up to three (3) America's Cup Preliminary Regattas (the "**Preliminary Regattas**"). At the date of this Protocol, it is intended that:
  - (i) up to two of these Preliminary Regattas may be held at venues different to that of the Match Venue (the "**Initial Preliminary Regattas**"); and
  - (ii) the final Preliminary Regatta would be held at the Match Venue, immediately prior to the CSS (the "**Final Preliminary Regatta**").
- (b) After consultation with COR/D, ACE will publish:
  - (i) the Host City and Venue for each Initial Preliminary Regatta; and
  - (ii) the period scheduled for completion of each Preliminary Regatta (the "**Preliminary Regatta Racing Period**");

at least six (6) months prior to the first race of the relevant Preliminary Regatta.
- (c) It is currently anticipated that each of the Initial Preliminary Regattas will be conducted over a period of up to ten (10) days, including two weekends and additional practice days during the week.
- (d) COR/D will publish the format, scoring and Preliminary Regatta Conditions for each Preliminary Regatta at least one (1) month prior to the first race of the relevant Preliminary Regatta.
- (e) ACE, in consultation with the Regatta Director and COR/D, shall prescribe event logistics and other relevant considerations for each Preliminary Regatta as soon as practicable following finalisation of the Venue for each Preliminary Regatta.
- (f) Competitors shall race in:
  - (i) AC40 Yachts for the Initial Preliminary Regattas; and
  - (ii) AC75 Yachts for the Final Preliminary Regatta.

## 7. America's Cup Challenger Selection Series

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### 7.1 Overview

The America's Cup Challenger Selection Series ("**CSS**") shall comprise:

- (a) a Round Robin stage;
- (b) a Semi-Finals stage; and
- (c) a Finals stage.

### 7.2 Format

Each stage of the CSS shall be completed in accordance with the CSS Conditions which shall include the following agreed principles:

- (a) each race shall be a match race between two (2) boats;
- (b) the Racing Area shall be the same as for the Match;
- (c) the winner of each race scores one (1) point, the loser scores no points;
- (d) all Competitors shall comply with the Racing Rules and Sailing Instructions;
- (e) an abandoned race is not a completed race;
- (f) the Defender will be eligible to compete in the Round Robin stage but not the Semi-Final or Final stages of the CSS;
- (g) COR/D may, at any time prior to the commencement of any stage of the CSS, in consultation with the Regatta Director and the Competitor Forum, agree to alter the CSS Conditions and/or the Racing Rules, and such changes shall be implemented by ACE;
- (h) changes to the Sailing Instructions shall be at the discretion of the Regatta Director with the agreement of COR/D and in consultation with ACE; and
- (i) Competitors shall race in yachts that comply with the AC75 Class Rule.

### 7.3 Round Robin stage

- (a) The Round Robin stage may consist of a single, double or greater number of rounds depending upon the number of eligible Competitors and the time available for racing.
- (b) Each Competitor will face each other Competitor once during each round of the Round Robin stage.
- (c) Seeding for the Round Robin stage of the CSS will be based on the final overall standing of each Competitor in the Preliminary Regattas.

### 7.4 Semi-Finals stage

- (a) The top four (4) placed Challengers in the Round Robin stage of the CSS shall qualify to compete in the Semi-Finals stage of the CSS. In determining the top four (4)

Challengers, the results from all races during the Round Robin stage between a Challenger and the Defender will be ignored.

- (b) The top placed Challenger in the Round Robin stage shall choose its opponent for the Semi-Finals stage of the CSS. The remaining two (2) Challengers shall race each other in a separate Semi-Final.
- (c) The winner of each Semi-Final shall be the first Challenger to score at least five (5) points after applying any penalties.
- (d) If there are less than four (4) Challengers in the Round Robin stage of the CSS, there shall be no Semi-Finals stage and the top two (2) placed Challengers therein shall qualify for the Final Stage of the CSS. In determining the top two (2) Challengers, the results from all races during the Round Robin stage between a Challenger and the Defender will be ignored.

## 7.5 Final stage

The winner of each Semi-Final shall compete against each other in the Final stage. The winner of the Final stage will be the first Challenger in the Final stage to score at least seven (7) points after applying any penalties. The Challenger that wins the Final stage shall qualify to compete against the Defender in the Match. If for any reason the winner of the Final stage is ineligible or unable to compete as the challenger against the Defender in the Match, then the next highest placed Challenger that is eligible and able shall be the challenger in the Match.

## 7.6 Venue and dates

- (a) The CSS shall be held at the Match Venue during the CSS Racing Period.
- (b) The precise dates determining the CSS Racing Period shall be published by ACE (in consultation with COR/D) not less than twelve (12) months prior to the first scheduled race in the Match.
- (c) COR/D may, in consultation with ACE and the Regatta Director, adjust the race day schedule within the CSS Racing Period to meet circumstances such as prevailing weather at the Venue and the intention to maximise weekend racing.

## 7.7 Preference for sail-off

The Regatta Director shall use best efforts to ensure that each of the Semi-Finals and Final stages of the CSS are completed without having to resort to tie-breaks other than a sail-off.

# 8. Match

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## 8.1 Venue and dates

- (a) The 37th America's Cup Match ("**Match**") will be contested between the Defender and the winner of the CSS.
- (b) The Match Venue and the approximate dates for the Match (the "**Match Racing Period**") shall (unless otherwise agreed by COR/D) be announced by the Defender on or before 31 March 2022.
- (c) The precise dates determining the Match Racing Period and the race schedule shall be announced by ACE on or before 30 November 2022.

- (d) The dates of the Match Racing Period and the preceding CSS Racing Period shall both be scheduled sometime between January and September 2024. This timing will either be confirmed or adjusted by COR/D in conjunction with the Match Venue announcement depending upon such factors as the hemisphere in which the selected Match Venue is located.

## 8.2 Format

The Match will be completed in accordance with the Match Conditions which shall include the following agreed principles:

- (i) each race shall be a match race between two (2) boats;
- (ii) the winner of each race scores one (1) point, the loser scores no points;
- (iii) the winner of the Match will be the first Competitor to score at least seven (7) points after applying any penalties;
- (iv) the Challenger and the Defender shall comply with the Racing Rules and the Sailing Instructions;
- (v) an abandoned race is not a completed race;
- (vi) changes to the Sailing Instructions shall be at the discretion of the Regatta Director with the agreement of COR/D and in consultation with ACE;
- (vii) Competitors shall race in yachts that comply with the AC75 Class Rule;
- (viii) if no Challenger is eligible and able to compete in the Match as at the scheduled start date of the Match Racing Period, the Defender will be declared the winner of the Match; and
- (ix) if the Defender is ineligible or unable to compete in the Match as at the scheduled start date of the Match Racing Period, the Challenger which is eligible to compete in the Match under Article 7.5 shall be declared the winner of the Match.

## 9. Youth and Women's America's Cup Regattas

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### 9.1 Event details

- (a) In addition to the AC37 Events, in order to help promote the goals set out in Paragraph G of the Introduction to this Protocol, ACE intends to hold or approve one or more youth regattas and one or more women's regattas as additional regattas in association with the America's Cup (the "**Youth and Women's AC Regattas**").
- (b) Competitors will be required to participate in the final for each of the Youth and Women's AC Regattas and may also but shall not be required to participate in earlier or qualifying Youth and Women's AC Regattas (if any).
- (c) Full details of the Youth and Women's AC Regattas, including race conditions, commercial conditions (including entry fee), eligibility restrictions for crew and the venue shall be set out in the Youth and Women's AC Agreement which will be released by ACE (after consultation with COR/D) no later than 30 June 2023.
- (d) Third party yacht clubs that are not Competitors may, at the discretion of ACE, be permitted to enter the Youth and Women's AC Regattas.

- (e) Subject to Article 11.1(a), it shall be a condition of eligibility for the AC37 Events that Competitors sign the Youth and Women's AC Agreement and compete in the final regatta for each of the Youth and Women's AC Regattas, representing the country of its yacht club. It is intended that crew members aged 25 years and under on the date of the first race of the Match shall be eligible to compete in the youth regattas. There shall be no age restriction for the women's regattas. The crew nationality requirements in Article 30.1(b) shall also apply to the Youth and Women's AC Regattas.

## 9.2 Class of Yacht

- (a) The Youth and Women's AC Regattas shall be sailed with four (4) crew in the AC40 Yachts supplied to Competitors under Article 22.2(b).
- (b) Each Competitor will be required to make available the AC40 Yacht that it purchases from ACE (or its nominated manufacturer) under Article 22.2, for use by other teams competing in the Youth and Women's AC Regattas. In the event that a Competitor acquires more than one AC40 Yacht under Article 22.2, ACE may require that such Competitor supplies all of its AC40 Yachts (such request to depend on the number of entries in each regatta and the number of AC40 Yachts available for use). Such AC40 Yachts shall be supplied to ACE in a condition that is fully compliant with the AC40 Class Rule, and free of any branding and with one set of new unbranded sails.
- (c) There shall be no charter fee payable by ACE for the use of the AC40 Yachts under Article 9.2(b), however ACE, as the organising authority for both regattas, will be responsible for insurance, maintenance and upkeep (fair wear and tear excepted) of each AC40 Yacht during the period of each regatta. ACE shall be responsible for meeting the costs of any repairs, removal of event branding and shall deliver the yacht(s) back to each Competitor at the relevant Venue as soon as practicable after the conclusion of the relevant regatta. Transport of each AC40 Yacht to and from the Venue of each Youth and Women's AC Regatta shall be at the cost of the Competitor. Further details will be outlined in the Youth and Women's AC Agreement.

## 10. Requirement to Race

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### 10.1 Requirement to race

Competitors shall participate in:

- (a) all AC37 Events; and
- (b) the final regatta for each of the Youth and Women's AC Regattas (if it is held);

subject to the discretion of COR/D to excuse any Competitor pursuant to Article 10.2.

### 10.2 Penalties for breach

- (a) Unless COR/D (in consultation with the Regatta Director) is satisfied on reasonable grounds that a failure to comply with Article 10.1 was due to unintended damage, circumstances beyond the reasonable control of the Competitor and/or reasonable and genuine safety concerns of the Competitor, then:
  - (i) in the event that a Competitor fails to compete in any AC37 Event in which it is required to compete under Article 10.1:
    - (A) the Arbitration Panel shall impose the points penalties set out in Clause 10.2(b) on the Competitor; and

- (B) COR/D may apply to the Arbitration Panel for it to impose such financial penalty it considers appropriate having regard to the nature and manner of the breach; and
- (ii) in the event that a Competitor fails to compete in the final regatta for each of the Youth and Women's AC Regattas, COR/D may apply to the Arbitration Panel for it to impose such financial penalty it considers appropriate having regard to the nature and manner of the breach.
- (b) For each failure to compete in an AC37 Event:
  - (i) where the failure is by a Challenger, the Challenger will be docked one (1) point in every ongoing or remaining stage of the CSS and the Match;
  - (ii) where the failure is by a Defender, the Defender will be docked one (1) point in the Match;

subject to a maximum of three (3) docked points per Competitor.

## **11. Postponement / Cancellation**

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### **11.1 Initial Preliminary Regattas / Youth and Women's AC Regattas**

- (a) If for any reason it becomes impossible or unfeasible or uneconomic for ACE to hold either the Youth and Women's AC Regattas and/or one or both of the Initial Preliminary Regattas, including but not limited to force majeure or the failure or inability of the host entity/city/country to abide by their agreement with ACE, or insufficient numbers of AC40 Yachts being available for use, ACE, having consulted the Competitor Forum, COR/D and the Regatta Director, may postpone and/or relocate, or cancel, such event or events.
- (b) ACE, in consultation with COR/D, shall provide no less than sixty (60) days' notice to Competitors of any rescheduled Initial Preliminary Regatta or any final Youth and Women's AC Regatta. Such notice shall include all details necessary to enable Competitors' participation in accordance with COR/D's instructions and this Protocol.
- (c) If ACE fails, or is unable, to provide the notice required under Article 11.1(b), Competitors shall not suffer any sanction under Article 10.2 if they are unable to attend the rescheduled Event. In the event of cancellation of one or both of the Initial Preliminary Regattas, ACE shall refund each Competitor a proportion of the entry fees it has paid for such Preliminary Regattas but only to the extent that ACE has not spent, or irrevocably committed to spend, such entry fees in organising the relevant event.

### **11.2 Final Preliminary Regatta / CSS / Match**

- (a) If for any reason it becomes impossible or unfeasible or uneconomic for ACE to hold the whole or any part of the Final Preliminary Regatta and/or the CSS and/or the Match, including but not limited to force majeure or the failure or inability of the host entity/city/country to abide by their agreement with ACE in each case, ACE may, with COR/D's agreement (COR/D having taken due consideration of any contractual commitments to which ACE is subject), select an alternative Host City and/or Venue and/or dates for the affected part of the Final Preliminary Regatta and/or the CSS and/or Match (as applicable), provided that ACE shall give Competitors as much notice as reasonably practicable in the circumstances both that a change to the Host City, Venue and/or dates are being considered and of the new Host City, Venue and/or dates once selected.



- (b) If the Match is to be rescheduled, it shall take place during the next available Northern or Southern Hemisphere sailing period as prescribed by the Deed of Gift (depending on the Venue for such rescheduled Match) and COR/D shall liaise in good faith to agree if any other consequential changes to this Protocol, the Class Rules and/or the AC Technical Regulations would be necessary or desirable.

## PART D: COMPETITORS

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### 12. Challenger of Record

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#### 12.1 Appointment of initial Challenger of Record

RYS, together with its representative sailing team INEOS Britannia, has been appointed as the initial Challenger of Record, having submitted the first notice of challenge to RNZYS for AC37 that met the requirements of the Deed of Gift and RNZYS having accepted such challenge.

#### 12.2 Withdrawal of challenge

- (a) The initial Challenger of Record shall remain in the position of Challenger of Record (even if eliminated from the CSS) unless it withdraws its challenge for AC37.
- (b) If the Challenger of Record withdraws its challenge, then the Defender shall promptly appoint one of the other remaining Challengers as the new Challenger of Record, such appointment to be at the sole discretion of the Defender.

### 13. Entry of Further Challengers

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#### 13.1 Entry Period

- (a) Subject always to Articles 13.1(b) and 13.3 below, the Defender shall be entitled, at its discretion, to accept Additional Challenges for AC37 where the Notice of Challenge (in each case) is received by the Defender pursuant to Article 14.1 from 00:00 NZT on 1 December 2021 through until 23:59 NZT on 31 July 2022 (the “**Entry Period**”).
- (b) No Additional Challenge shall be reviewed by the Defender during the period commencing on 17:00 NZT on 22 December 2021 and ending on 00:00 NZT on 16 January 2022, but any such Additional Challenges shall still be reviewed in the order of their receipt.
- (c) The Defender shall be entitled, at its discretion, to reject any Additional Challenge but only after consultation with the Challenger of Record.

#### 13.2 Late entries

- (a) Subject always to Articles 13.2(b) and 13.3 below, late challenges for AC37 may be accepted by the Defender following the close of the Entry Period (“**Late Challenge**”), provided that:
  - (i) such Late Challenge is submitted in accordance with Article 14.1 by no later than 31 May 2023;
  - (ii) the Late Challenger:
    - (A) provides each of the documents prescribed in Article 14.1;
    - (B) pays the fees prescribed in Articles 15.1 and 15.3; and
    - (C) pays the Late Entry fees prescribed in Article 15.4.

- (b) The Defender must consult with the Challenger of Record before accepting any Late Challenge that is submitted after 30 September 2022.
- (c) The Defender will promptly:
  - (i) publish all accepted Late Challenges, together with the date on which they were accepted; and
  - (ii) confirm with the Challenger of Record when all payments due from the Late Challenger under Article 15 have been received.
- (d) A Late Challenger is not entitled to participate in the Competitor Forum and its consent will not be required to any proposed change to the Class Rules until all fees payable by it, as referred to in Article 20, have been paid to ACE in full.

### 13.3 Restrictions

Additional Challenges and Late Challenges will only be accepted if:

- (a) they comply with Articles 14.1 and 14.2; and
- (b) the Additional Challenger or Late Challenger meets the qualification requirements of this Protocol and the Deed of Gift for a challenging yacht club.

### 13.4 List and order of Challengers

Following the close of the Entry Period, the Defender shall publish a list of accepted Challengers received during the Entry Period and the order in which their Notices of Challenge were received by the Defender, and thereafter keep the list updated to include any accepted Late Challenges and withdrawals.

## 14. Entry Process

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### 14.1 Submission of Notice of Challenge

All Additional Challenges and Late Challenges for AC37 must include a Notice of Challenge in the form set out in Schedule 2 and a Deed of Participation, in each case duly completed and signed, and must be submitted to the Defender:

- (a) by email to the Defender at [russell.green@emiratesteamnz.com](mailto:russell.green@emiratesteamnz.com), with a copy to [ayoung@rnzys.org.nz](mailto:ayoung@rnzys.org.nz),
- (b) with the originals to be received by the Defender within ten (10) days at:

**The Royal New Zealand Yacht Squadron**  
181 Westhaven Drive  
Westhaven Marina  
Auckland 1011  
New Zealand

### 14.2 Review of Notices of Challenge

- (a) The Defender will review and accept Additional Challenges and Late Challenges for AC37 in the order that the challenges are received. If the Defender is satisfied that a challenge is valid and that the challenging yacht club meets the requirements of this Protocol and the Deed of Gift, the Defender will advise the challenging yacht club and

will provide written confirmation of the bank details for payment of the fees prescribed in Article 15.

- (b) The Defender will not accept an Additional Challenge or Late Challenge from a yacht club which cannot demonstrate, to the Defender's satisfaction, that it meets the following requirements as at the date of the Notice of Challenge:
  - (i) it must be incorporated, patented or licensed by the legislature, admiralty or other executive department of its country;
  - (ii) it must hold an annual regatta on an ocean water course of the sea or on an arm of the sea;
  - (iii) it must have been in existence for a minimum of three years prior to the date of the Notice of Challenge;
  - (iv) it must have a membership of at least 200 members;
  - (v) it must be financially supported by a majority of its membership on a pro-rata basis;
  - (vi) it must operate as a yacht club and have objectives consistent with the furtherance of yachting activities; and
  - (vii) it must be a member of its national sailing authority.
- (c) The Defender may in its discretion allow any challenging yacht club a period of up to two (2) weeks after being so notified by the Defender to correct any deficiencies in its Notice of Challenge or provide requested follow-up information, during which period that challenger shall not lose its priority date in the list of challengers. At the end of such period, if the deficiencies have not been corrected and/or the requested follow-up information has not been provided, the Notice of Challenge shall be deemed not accepted.

### 14.3 Challenge Representative

When submitting its challenge, each yacht club shall nominate a challenge representative who will be the sole person authorised to receive and issue official communications from and to the Defender for the entire duration of AC37 and associated events (the "**Challenge Representative**"). A yacht club may replace at any time its Challenge Representative by giving prior written notice to COR/D, ACE and, once appointed, the Regatta Director.

## 15. Entry Fees

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### 15.1 Initial Entry Fees

Each Challenger shall pay the initial Entry Fees to the Defender as follows:

- (a) a first instalment of US\$1,000,000 (one million United States dollars) by wire transfer direct to the bank account nominated by ACE (the "**ACE Account**") by no later than seven (7) days following the written confirmation of acceptance of the challenge provided by the Defender pursuant to Article 14.2 (the "**First Instalment**"); and
- (b) a second instalment of US\$1,250,000.00 (one million two hundred and fifty thousand United States dollars) by wire transfer direct to the ACE Account by 1 September 2022 (the "**Second Instalment**"),

(together, the “**Initial Entry Fees**”), each such payment to be non-refundable.

## 15.2 Election to pay the Second Instalment of the Initial Entry Fee in instalments

- (a) A Challenger may elect to pay the Second Instalment of the Initial Entry Fee (in accordance with the payment instructions provided in Article 15.1(b)) in the following four (4) deferred instalments, provided that the total amount payable will be increased to US\$1,400,000.00 (one million four hundred thousand United States dollars):
- (i) US\$350,000 (three hundred and fifty thousand United States Dollars) by no later than 1 September 2022;
  - (ii) US\$350,000 (three hundred and fifty thousand United States Dollars) by no later than 1 October 2022;
  - (iii) US\$350,000 (three hundred and fifty thousand United States Dollars) by no later than 1 December 2022; and
  - (iv) US\$350,000 (three hundred and fifty thousand United States Dollars) by no later than 1 February 2023;
- (b) If any Challenger elects to pay the Second Instalment in instalments pursuant to Article 15.2(a) above, then:
- (i) it shall not be entitled to participate in the Competitor Forum; and
  - (ii) its consent will not be required to any proposed change to the Class Rules;
- until such Challenger has paid the Second Instalment to ACE in full.

## 15.3 Additional Entry Fees

In addition to the Initial Entry Fees above, each Challenger will be required to pay the following additional payments in order to participate in AC37:

- (a) **ACPI contribution:** the sum of US\$25,000 (twenty-five thousand United States Dollars) by wire transfer direct to the nominated bank account of ACPI, as a non-refundable contribution to ACPI's costs (in accordance with Article 66.2 below) to help protect the America's Cup trademarks, such amount to be payable at the same time as the First Instalment is due;
- (b) **Website contribution:** the sum of US\$150,000 (one hundred and fifty thousand United States Dollars) by wire transfer direct to the ACE Account, as a non-refundable contribution towards ACE's costs in hosting and maintaining the Official AC Website (which will include Competitor specific sections) and the Official AC Social Media Channels, such amount to be payable at the same time as the First Instalment of the Initial Entry Fees are due; and
- (c) **Performance Bond:** by 1 September 2022, provide a valid and binding performance bond of US\$1,000,000 (one million United States Dollars) to assure the Challenger's participation in AC37, and compliance with this Protocol, as further described in Article 17,

(together, the “**Additional Entry Fees**”).

## 15.4 Late Entry Fees and Payment

- (a) In addition to the Entry Fees, all Late Challengers shall pay a late entry fee calculated at the rate of US\$100,000 per month (or part thereof) from 1 August 2022 up until the date the Late Challenge is received by the Defender (the "**Late Entry Fees**").
- (b) Late Entry Fees, Additional Entry Fees, Preliminary Regatta Fees and Retrospective Shared Costs (as defined in Article 19(d)) shall be paid by Late Challengers to ACE in full at the same time as the First Instalment.
- (c) Where the Late Challenge is submitted after 1 September 2022, the Second Instalment shall be paid by the Late Challenger in full to ACE at the same time as the First Instalment in the increased amount set out at Article 15.2(a). Where such Late Challenger elects to pay the Second Instalment in deferred instalments under Article 15.2(a), the Late Challenger must pay all those instalments which are due and payable as at the date of acceptance of their Challenge.

## 16. Preliminary Regattas Entry Fees

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- (a) In addition to the Initial Entry Fees, Additional Entry Fees and Late Entry Fees set out in Article 15 of this Protocol, each Challenger shall pay to ACE the sum of US\$200,000 (two hundred thousand United States dollars) for each Preliminary Regatta (the "**Preliminary Regatta Fees**"). Each payment will be due no later than two (2) months before the start date for the relevant Preliminary Regatta Racing Period. Such payments shall be non-refundable, paid by wire transfer direct to the ACE Account and shall be applied to the payment of any costs associated with the relevant Preliminary Regatta.
- (b) Preliminary Regatta Fees must be paid by all Challengers regardless of whether they are able to take part in any or all Preliminary Regattas for whatever reason (including by reason of force majeure).

## 17. Performance Bond

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### 17.1 Form

The Performance Bond described in Article 15.3(c) may be provided either:

- (a) in cash by wire transfer direct to the segregated Performance Bond bank account nominated by ACE for such purposes (details to be provided upon request); or
- (b) by way of a standby letter of credit (with a term expiring no earlier than 180 days after the final race of the Match) issued by a bank approved by ACE in the form approved by ACE at its sole discretion. In the event that the financial condition of the issuer bank changes in any materially adverse way, as determined by ACE in its sole discretion, the Competitor shall within fifteen (15) days of written notice from ACE obtain a replacement standby letter of credit from an issuer bank and in the form approved by ACE.

### 17.2 Return of balance

Subject always to Article 21(c), the balance of a Challenger's Performance Bond held by ACE will be returned not later than sixty (60) days after the Challenger has discharged all of its obligations in relation to AC37 to the reasonable satisfaction of ACE. ACE shall take best endeavours to make such determination as quickly as possible after the date on which the relevant Challenger ceases participation in AC37, and shall provide all information

reasonably requested by such Challenger in the event that the Performance Bond is not returned in full.

### 17.3 **Maintaining Performance Bond**

In the event that a Challenger forfeits any or all of its Performance Bond, the Challenger shall immediately provide a renewed (or new) Performance Bond for the full US\$1,000,000 (one million United States Dollars). If the full amount of the total Performance Bond is not timely reinstated following any forfeiture (in whole or in part), the Challenger shall cease to be eligible for AC37, including for any entitlements as a Challenger under the Rules, and shall be disqualified from further participation in AC37 by ACE.

### 17.4 **Extension**

If the CSS and/or the Match is postponed, ACE may require each Challenger to maintain the Performance Bond on the same terms, except that the Performance Bond period shall be extended to one hundred and eighty (180) days after the last re-scheduled race of the Match.

## 18. **Defender Payments**

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In recognition of the commitment made by the Defender to provide the financial resources to deliver the Events, the Defender will not be required to make a further contribution by way of Entry Fees or Performance Bond.

## 19. **Shared costs**

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- (a) In addition to the payment of the Entry Fees by the Challengers under this Protocol, all Competitors shall be required to contribute on an equal basis to the costs of the following joint initiatives:
  - (i) the joint weather programme (of a scale similar to AC36), as detailed in Article 40;
  - (ii) the Joint Recon Programme as detailed in the AC Technical Regulations; and
  - (iii) any other joint arrangements that are agreed to by COR/D from time to time, (together, the "**Shared Costs**").
- (b) COR/D shall agree on the costs and providers in respect of each joint initiative.
- (c) Each Competitor will be required to contribute an equal amount towards the Shared Costs, such amounts to be payable by each Competitor to ACE in advance or arrears (as determined by COR/D) in accordance with the budget for the relevant joint initiative as determined by Article 19(b).
- (d) Late Challengers will be required to pay a full share of Shared Costs, including such share of any Shared Costs they would have incurred up to the date of acceptance of their challenge if their challenge had been submitted within the Entry Period, ("**Retrospective Shared Costs**"), at the same time as they pay their Entry Fees. ACE shall credit Retrospective Shared Costs received from Late Challengers to other Competitors proportionately so as to ensure all Shared Costs are shared equally.

## 20. Failure to pay Entry Fees or Shared Costs

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- (a) A Challenger shall pay the applicable Initial Entry Fees, Additional Entry Fees, Late Entry Fees, Preliminary Regatta Fees and their portion of any Shared Costs in full as a condition precedent to its eligibility to compete in the Preliminary Regattas and CSS.
- (b) If a Challenger fails to pay when due any applicable fees referred to in Article 20(a), or the Defender fails to pay when due any Shared Costs, then if such default is not remedied within seven (7) days following issue of a demand for remedy by ACE or COR (and unless otherwise agreed by COR/D):
  - (i) the penalty for such default shall be exclusion from AC37 Events upon application to the Arbitration Panel by either or both of the Challenger of Record or the Defender (at its sole discretion), except that a failure to pay the First Instalment on time (which is subsequently remedied) will only result in the following penalties for the defaulting Challenger:
    - (A) if remedied before the end of the Entry Period, a late payment fee of five thousand US Dollars (US\$5,000) per day that the Challenger remains in default (up to a maximum of one hundred thousand US Dollars (US\$100,000)); or
    - (B) if not remedied before the end of the Entry Period, the defaulting Challenger shall be considered a Late Challenger subject to the requirements of Articles 13.2 and 15.4; and
  - (ii) during the period the Competitor is in default of payment, that Competitor may not:
    - (A) exercise any of its rights granted under this Protocol (and for the avoidance of doubt this shall mean that the AC75 Class Rule may be amended during the relevant period without the consent of that Competitor); and
    - (B) participate in the joint initiatives referred to Article 19.

## 21. Withdrawal of Challenge

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- (a) A Challenger may withdraw by written notice to the Defender. All rights of a Challenger under the Rules shall cease immediately upon confirmation of receipt of that Challenger's withdrawal by the Defender.
- (b) A Challenger that withdraws from AC37 in accordance with the terms of this Protocol has no obligation to fulfil those requirements of Articles 15, 16 and 19 that are not required to have been performed as of the effective date of the Challenger's withdrawal.
- (c) Subject to Article 21(b), in the event that a Challenger withdraws before it is eliminated in the CSS, such withdrawal will result in the forfeiture of its Performance Bond (if such bond has been provided at the time that the Challenger has withdrawn).



## PART E: YACHTS/CREW

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### 22. Yachts

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#### 22.1 AC75 Class Rule

- (a) COR/D shall publish Version 2 of the AC75 Class Rule in conjunction with this Protocol (the “**AC75 Class Rule**”).
- (b) Only yachts complying with the AC75 Class Rule will be eligible to compete in the Final Preliminary Regatta, the CSS and the Match.
- (c) The AC75 Class Rule cannot be amended or replaced other than as specifically allowed in the AC Technical Regulations.

#### 22.2 AC40 Yachts

- (a) ACE (with support from the Defender) shall be responsible for developing and publishing as soon as practicable a one-design class rule for AC40 Yachts (the “**AC40 Class Rule**”), which shall be the yachts used for the Initial Preliminary Regattas and the Youth and Women’s AC Regattas (“**AC40 Yacht**”). The AC40 Class Rule cannot be amended or replaced other than as specifically allowed in the AC Technical Regulations. ACE shall keep COR fully informed during the development of the AC40 Class Rule and give due consideration to input from COR. The AC40 Yacht is still in design phase but based on current estimates the price of an AC40 Yacht package will not exceed the sum of US\$1.85 million (excluding the cost of sails and running rigging which will be purchased separately). If however, due to factors outside the control of ACE such as increases in the cost of materials caused by supply constraints or similar circumstances the price does increase beyond US\$1.85 million, then ACE shall provide a full breakdown of all costs, supported by financial information capable of being audited.
- (b) Each Competitor shall purchase at least one AC40 Yacht from ACE (or its nominated manufacturer) which shall be supplied to the Competitor to a standard specification mandated by ACE with compliant componentry and equipment so that the yacht is capable of receiving an AC40 class certificate in accordance with the AC40 Class Rule.
- (c) The terms and conditions under which each Competitor will purchase an AC40 Yacht from ACE (or its nominated manufacturer) will be set out in a separate standardised purchase agreement to be entered into between ACE (or its nominated manufacturer) and each Competitor. The purchase price of each AC40 Yacht shall be identical for each purchaser for all AC40 Yachts ordered before 31 March 2022 and thereafter shall be no less than the amount paid by Competitors who have ordered AC40 Yachts before 31 March 2022.
- (d) Competitors will be allocated their AC40 Yachts in the following order of priority:
  - (i) the Defender;
  - (ii) the Challenger of Record;
  - (iii) each remaining Challenger in the order in which their challenges were accepted by the Defender in accordance with the list published pursuant to Article 13.4; and then

- (iv) third parties that are not Competitors.
- (e) Outside the period of the Initial Preliminary Regattas and the Youth and Women's AC Regattas, Competitors will be entitled to use their AC40 Yacht as a test yacht, including the utilisation of componentry that is not compliant with the AC40 Class Rule (subject to the restrictions outlined in that rule), provided that the AC40 Yacht is returned to an AC40 Class Rule compliant condition for each Initial Preliminary Regatta and Youth and Women's AC Regatta. Any changes required to bring the AC40 Yacht back to a condition that is compliant with the AC40 Class Rule will be at the cost of the relevant Competitor.

### 22.3 AC Technical Regulations

- (a) COR/D shall publish the "AC Technical Regulations" at the same time that the AC75 Class Rule is published under Article 22.1.
- (b) In addition to complying with the relevant Class Rule, each Competitor must ensure compliance with the AC Technical Regulations.
- (c) The AC Technical Regulations may only be amended in accordance with the provisions of the AC Technical Regulations.

## 23. Class of Yacht for AC38

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23.1 In order to promote competition and sustainability, amongst other things, in AC38, as a condition of its eligibility to compete in AC37:

- (a) each of the Challenger of Record and the Defender shall sign a copy of the Deed of Participation; and
- (b) each Competitor shall submit a signed copy of the Deed of Participation to the Defender with its Notice of Challenge in accordance with Article 14.1;

subject always to the terms of the Deed of Gift.

23.2 The Deed of Participation shall include the following conditions:

- (a) if a Competitor wins the Match and becomes the next holder of the America's Cup, the AC75 Yacht class will be retained for AC38 and both the challenger series and the match for AC38 will be contested in AC75 Yachts;
- (b) all Competitors agree not to challenge for or defend AC38 in any class of yacht that is not compliant with the version of the AC75 Class Rule as at the date of the final race of the AC37 Match, or agreed developments which do not alter the fundamental concept of the AC75 Class as a 75-foot LOA Bermudan sloop rigged foiling monohull;
- (c) an acknowledgement that damages for breach of the Deed of Participation shall not be an adequate remedy and that any and all of the other parties thereto shall be entitled to an injunction to restrain a breach of the deed by any other party;
- (d) an obligation to pay liquidated damages of twenty million US Dollars (US\$20,000,000) (or the maximum sum which may otherwise be permitted by applicable law) into a bank account nominated by COR/D to be shared equally between the non-breaching parties to the Deed of Participation;
- (e) an obligation not to:

- (i) assist any third parties to compete in;
  - (ii) procure any third party to compete in; or
  - (iii) procure any third party to assist any of the parties to compete in, AC38 in any class of yacht which is not an AC75 Yacht; and
- (f) an obligation on parties to procure that the sailing teams representing them in AC37, together with all members of the sailing teams' management boards and sailing crew agree not to compete in, or attempt to enter, AC38 in any class of yacht which is not an AC75 Yacht.

## 24. Cost containment and limitations

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The following provisions shall apply as conditions of eligibility for all Competitors in AC37:

### 24.1 Components

- (a) Each Competitor shall only be entitled to build a maximum of one (1) new AC75 Hull during AC37.
- (b) The AC Technical Regulations will contain restrictions on the number of, and modifications to, components that can be used on:
  - (i) an AC75 Yacht; and
  - (ii) any other sailing yacht (or platform towed to simulate a sailing yacht) that exceeds 6 metres LOA that is capable of producing design or performance information for use either directly or indirectly in the design, construction or sailing of an AC75 Yacht.

### 24.2 Sailing limitations

- (a) Each Competitor may only sail one AC75 Yacht at a time.
- (b) The periods specified in Articles 24.2(c)(ii) and 24.2(d) below ("**Non-Sailing Periods**") are based on the Match being sailed in June 2024 and are subject to change by COR/D if the timing of the Match changes as a result of the location of the selected Match Venue (including the hemisphere in which the selected Match Venue is located). The finalised dates for Non-Sailing Periods will be published within one month of the Match Venue announcement under Article 8.1.
- (c) Subject to the exception specified in Article 24.2(f), no Competitor shall sail an AC75 Yacht during the following periods:
  - (i) from 17 March 2021 until 17 September 2022; and
  - (ii) for a period of any eight (8) consecutive weeks to be selected by the Competitor between 1 March 2023 and 31 May 2023.
- (d) No Competitor shall sail either an AC75 Yacht or an AC40 Yacht (whether or not in Class Rule compliant mode) from 1 June 2023 to 30 September 2023 except at the Match Venue. This prohibition shall not apply to any Preliminary Regatta held during this period outside the Match Venue.

- (e) Any of the Challenger of Record, the Defender or the Regatta Director may apply to the Arbitration Panel to impose such penalty as it determines appropriate for any breach of Clauses 24.2(c) or (d) including, but not limited to:
  - (i) financial penalties and extension of the next Non-Sailing Period for the breaching Competitor by one (1) week for each day (or part of a day) that such Competitor has sailed during a Non-Sailing Period; and
  - (ii) in the case of repeated breaches, exclusion from all subsequent AC37 Events.
- (f) As an exception to the restrictions above, if a New Competitor purchases a Version 1 AC75 Yacht, such New Competitor will be entitled to sail that Version 1 AC75 Yacht for a maximum of 20 Sailing Days between 17 June 2022 and 17 September 2022 subject to the provisions of the AC Technical Regulations.
- (g) Each Competitor shall provide the Regatta Director (if appointed, otherwise ACE) with a declaration of compliance following the expiry of the relevant Non-Sailing Periods set out in Articles 24.2(c) and (d) above and all Notices of Challenge filed under Article 14.1 shall also include a declaration undertaking to comply with the requirements of Article 24.2 as applicable.
- (h) There shall be no sailing or testing of AC75 Yachts, AC40 Yachts, Surrogate Yachts or LEQ12 yachts (or any combination thereof) in a coordinated manner with other Competitors or third parties except:
  - (i) when participating in scheduled AC75 Yacht racing or AC40 Yacht racing during AC37 Events; or
  - (ii) when participating in Official Training or Official Practice, in each case to be designated as such by the Regatta Director, during periods to be specified by ACE in consultation with the Regatta Director.
- (i) The following shall be considered sailing in a “coordinated manner” for the purposes of Article 24.2(h) above:
  - (i) yachts sailing within 400 metres of each other on the same approximate heading for more than 20 seconds;
  - (ii) yachts rounding shared practice marks within 30 seconds of each other; or
  - (iii) non-compliance with the Sailing Instructions or such other guidelines issued by the Regatta Director from time to time.
- (j) Subject to Article 24.2(e), the Regatta Director (when appointed) shall be responsible for managing and monitoring the permitted and prohibited sailing under this Article 24.2.

### 24.3 Surrogate Yachts

No Competitor shall acquire, sail, test, allow any sailing team member to sail on board or obtain any performance data from a third party sailing any Surrogate Yacht. The determination as to whether a yacht is a Surrogate Yacht or not shall be the sole responsibility of the Rules Committee (when appointed) whose decision shall be final. For the avoidance of doubt, the Rules Committee (once appointed) may consider breaches of this Article 24.3 which occurred prior to its appointment and apply appropriate penalties retrospectively.

## 24.4 Testing limitations

No Competitor shall carry out fluid dynamic testing of designs, at any scale, in any controlled environment such as a wind tunnel, cavitation tunnel, towing tank or manoeuvring basin. Any fluid dynamic testing of designs can only be undertaken in the open air and on open water, subject to the restrictions of this Article 24.

## 24.5 Class limitations

- (a) The Class Rules shall detail all limitations which may include, but not be limited to, the incorporation of one design and/or standard single manufacturer elements; restrictions on materials, components and equipment; restrictions on construction techniques; and sail restrictions (“**Limitations**”).
- (b) The interpretation, calculation and enforcement of the Limitations and the determination on the compliance or not with such Limitations shall be the sole responsibility of the Rules Committee whose decision shall be final. Any measurement required by the Rules Committee to make a decision under this Article shall be carried out on its behalf by the Measurement Committee.

## 25. Shrouding

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The AC Technical Regulations shall specify criteria in relation to shrouding of a Competitor’s yachts.

## 26. Constructed in country

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- (a) In respect of an AC75 Yacht that is constructed after 17 March 2021, the Deed of Gift requirement that the yacht of a challenging yacht club be constructed in the country of the challenging yacht club, and the yacht representing the yacht club holding the America’s Cup be constructed in the country of such yacht club, shall be deemed to be satisfied by the lamination or another form of construction of the Hull in such country. Replaceable bows and sterns, materials, tooling and other components and hardware used in or during the lamination or other form of construction of the Hull may be obtained from any country. In order to ensure compliance with this Article the following provisions shall apply:
  - (i) a Competitor shall arrange in a timely manner for a member of the Measurement Committee to inspect the Hull at the place of construction to determine whether the Hull has been constructed in accordance with this Article and, if this rule is met, the Measurement Committee shall certify it as per its findings (“**Constructed in the Country Certificate**”). Such a certificate by the Measurement Committee shall be final;
  - (ii) for the avoidance of doubt, the fabrication, acquisition or use of any component, materials or resources used to complete an AC75 Yacht may be sourced without restriction as to their country of origin, place of fabrication, assembly, construction or development, but any such component, materials or resources must nevertheless comply with the AC75 Class Rule; and
  - (iii) the repair, modification or replacement of any part of an AC75 Yacht that has received the Constructed in the Country Certificate may be undertaken in any country.
- (b) In respect of a Version 1 AC75 Yacht, the Deed of Gift requirement that the yacht of a challenging yacht club be constructed in the country of the challenging yacht club shall be deemed to be satisfied if the modifications to such yacht required to enable it to

comply with the AC75 Class Rule are carried out in such country and the yacht is relaunched and sailed in that country. It shall be the responsibility of the Competitor to satisfy the Measurement Committee that it has complied with these requirements in a manner to be specified by the Measurement Committee.

## 27. **Customs house registry**

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Competitors need not provide a customs house registry of any AC75 Yacht or AC40 Yacht.

## 28. **Transport and Logistics**

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- (a) Competitors shall arrange, at their own cost, transport of their yachts and associated equipment to each Venue.
- (b) Each Competitor shall comply with all requirements published by the Regatta Director for the handling and the mooring of AC75 Yachts and AC40 Yachts in any Venue.

## 29. **Crew Restrictions**

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A person who has crewed on a Competitor's yacht during the CSS shall not crew on any other Competitor's yacht while it competes in a race in an AC37 Event, except with the consent of all Competitors still competing in the AC37 Events at that time.

## 30. **Crew Nationality**

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### 30.1 **Nationality rules**

In an effort to better maintain the provision in the Deed of Gift for "*Friendly competition between foreign countries*", the following nationality rules shall apply:

- (a) for all racing in the Preliminary Regattas, the CSS and the Match, 100% of the crew sailing each yacht in each race shall be nationals of the country of the yacht club that the relevant Competitor represents; and
- (b) for all racing in the Youth and Women's AC Regattas, 100% of the crew sailing each yacht in each race shall be nationals of the country of the yacht club that the Competitor (if participating) or yacht represents. If ACE accepts teams from other countries (not represented by the Competitors) for the Youth and Women's AC Regattas, 100% of the crew of those teams sailing each yacht in each race shall be nationals of the country of the yacht club that the team represents. Article 30.3 shall also apply to a team competing in the Youth and Women's AC Regattas.

### 30.2 **Nationality criteria**

For the purposes of Article 30.1, a crew member shall be deemed to be a "national" of a country if they satisfy any one (or more) of the following criteria:

- (a) such crew member held a valid passport (or other valid proof of citizenship accepted by ACE) of the country of the yacht club that the Competitor represents as at 17 March 2021; or
- (b) such crew member was physically present in the country of the yacht club that the Competitor represents (or acting on behalf of such yacht club at the venue for AC36) for a total of 548 days between (but excluding) 17 March 2018 and 18 March 2021. If

a crew member is present in the country for only part of a particular day, that day will be counted as a full day.

### 30.3 Emerging Nations

- (a) A Challenger or prospective team who has advised the Defender of their intention to challenge for AC37 (a “**Prospective Challenger**”) may apply to COR/D for:
  - (i) a ruling that the country of the yacht club will be considered as an Emerging Nation for the purposes of this Article 30; and
  - (ii) a dispensation from the crew nationality requirements of Article 30.1 to allow a specific number of approved non-nationals to compete as crew on the Competitor’s AC75 Yacht or AC40 Yacht.
- (b) Such applications shall be determined by COR/D in its sole discretion.
- (c) If a country is approved as an Emerging Nation by COR/D, the number of non-nationals approved to compete on the yacht of that Challenger will be determined by COR/D based on the following factors:
  - (i) the experience (including America’s Cup racing) and skill level of the Challenger’s or Prospective Challenger’s sailing team;
  - (ii) the experience and skill level of each non-national sailor either engaged or whom the Challenger or Prospective Challenger proposes to engage for AC37; and
  - (iii) other relevant circumstances of the Challenger or Prospective Challenger.
- (d) Approvals under this Article will be given for specific sailors and may be amended or reviewed by COR/D, at their sole discretion at a later date upon application by a Competitor if there is a change of personnel or a change in other relevant circumstances.
- (e) It shall be the responsibility of COR/D to ensure that the decisions made under this Article are as far as possible equitable in relation to other Competitors.

### 30.4 Disputes

Any disputes relating to this Article 30 will be resolved by the Arbitration Panel Fast Track Process.

## 31. Support Vessels

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- (a) The Racing Rules agreed under Article 33.1(d) shall contain requirements in relation to team support vessels based on rule 87 of the Racing Rules of Sailing America’s Cup Version for AC36 together with any additions or amendments agreed by COR/D.
- (b) At the date of this Protocol (and subject to Article 31(g) below), COR/D is considering a requirement that each Competitor will be required to employ a minimum of two hydrogen powered support vessels (“**HSVs**”) at the Match Venue to support its on-water race operations, each HSV to be at least 10m LOA. This requirement, and the extent to which it will apply to the Competitors, will be confirmed in a Notice to Competitors published by COR/D on or before 1 June 2022, subject to COR/D first verifying that the current prototype under construction is fit for purpose following the completion of final sea trials.

- (c) All HSVs shall be capable of achieving a cruise speed of 25 knots under hydrogen fuel cell power alone with no other source of power other than hydrogen fuel cell and batteries. The general minimum specification for an HSV is:
- (i) a range of 75nm at an average speed of 25 knots;
  - (ii) a duty cycle corresponding to two back-to-back AC75 Yacht race distances at AC75 Yacht VMG speeds directly up and down the course;
  - (iii) a top speed of 50 knots;
  - (iv) a length of 10m LOA;
  - (v) capacity for 6 people including the driver plus two hundred and fifty kilograms (250kg) of additional payload;
  - (vi) 160kw of hydrogen fuel-cell power, supplemented by batteries; and
  - (vii) capability to fully foil at a boat speed of 24 knots and above.
- (d) In order to further the promotion of the America's Cup and showcase the technology and its sustainability benefits in the media coverage of the event, Competitors will be required to have two HSVs inside the race course boundaries in locations specified by the Regatta Director from the time of the warning signal for any race in which their yacht is competing until the completion of such race.
- (e) Competitor's HSVs must be operational and located at the Match Venue from the start of the Final Preliminary Regatta until the conclusion of a Competitor's racing in the Challenger Selection Series or Match. If at any time an HSV is out-of-service and not operational then an exemption may be obtained from the Regatta Director but such HSV cannot be replaced by an additional non-hydrogen powered support vessel.
- (f) When both of the Competitor's HSVs are operational, a Competitor's entire support boat fleet will be restricted to a maximum of the two (2) HSVs on the course and three (3) additional non-hydrogen powered support vessels operating in the Racing Area.
- (g) Each Competitor shall be entitled to purchase two (2) 10 metre HSVs from ACE (or its nominated manufacturer) under agreements similar in structure to the purchase of the AC40 Yachts under Article 22.2. The price of a 10 metre HSV shall not exceed two million New Zealand Dollars (NZ\$2 million). If however, due to factors outside the control of ACE such as increases in the cost of materials caused by supply constraints or similar circumstances the price does increase beyond two million New Zealand Dollars (NZ\$2 million), then ACE shall provide a full breakdown of all costs, supported by financial information capable of being audited, to all Competitors. In addition, if such price increase of the ACE-supplied HSV is greater than forty percent (40%) then each Competitor shall only be required to purchase one (1) HSV from ACE or its nominated supplier and employ it at the Match Venue under Article 31(b).
- (h) If a competitor chooses to purchase HSVs from ACE (or its nominated manufacturer) in accordance with Article 31(g), the purchase agreement shall include a statement setting out HSV service requirements, warranty obligations and provisions that ACE (or its nominated manufacturer) will make to ensure the Competitor's HSVs remain operational including trained staff at the Match Venue to assist in servicing such HSVs.
- (i) A Competitor may also elect to construct its own HSV providing it meets the specifications in Article 31(c).



## 32. Television and technical equipment on-board

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### 32.1 Equipment

- (a) While racing in the AC37 Events, or when sailing in the Racing Area within three (3) weeks prior to any AC37 Event, the AC40 Yachts, AC75 Yachts, support boats and crew of each Competitor shall carry and operate such television, audio, biometric, navigation and associated telemetry systems and/or other equipment as may be required by AC Media, in consultation with the Regatta Director. The amount and placement of such equipment shall be consistent for all Competitors. The precise requirements shall be communicated to each Competitor through the issue of a Media Equipment Specification notice, to be issued by AC Media no later than a date to be agreed by COR/D. Such Media Equipment Specification notice shall not require the Competitors to take any action which would constitute a breach of any applicable data privacy laws with respect to employees, contractors, customers and other persons connected with them.
- (b) All equipment installed under Article 32.1(a) will be provided, paid for and owned by AC Media (or its appointed production partner) and each Competitor agrees to return such equipment to AC Media in good working order within 10 days of such Competitor's final participation in the AC37 Events. Each Competitor agrees not to make any modifications to such equipment so that it operates in the manner intended by AC Media.
- (c) Each Competitor will use reasonable efforts to obtain adequate all risks insurance cover for the replacement value of all equipment installed under Article 32.1(a) for the period such equipment is under the Competitor's control. In the event that a Competitor damages or loses such equipment during the period that it has been installed on a Competitor's yacht, support boat or crew member (or is otherwise under the Competitor's control), such Competitor will be liable to AC Media for the replacement value of such damaged or lost equipment provided that such liability shall only apply if the relevant insurance policies do not cover the damage or loss incurred.

### 32.2 Access

- (a) Subject to applicable privacy laws, Competitors shall give AC Media full access to all equipment installed under Article 32.1(a) and its output during AC37 Events as determined by AC Media, in consultation with the Regatta Director, and communicated in advance to the Competitors. Competitors shall fully co-operate with AC Media with regards to the installation, operation and maintenance of all such on-board equipment.
- (b) AC Media will act in an independent manner and be responsible for ensuring that adequate measures are put in place (including confidentiality agreements with relevant production partners and technical/hardware measures) so that:
  - (i) performance information of individual yachts is not available to any other Competitor, other than such information that is available to the public; and
  - (ii) all data is processed in accordance with applicable privacy laws.
- (c) Each Competitor shall have reasonable access to all recorded data from equipment installed on their own yachts under Article 32.1(a) and AC Media shall use reasonable efforts to fulfil all requests by Competitors for such data, taking into account AC Media's own operational priorities.

### 32.3 **Telemetry**

As required by AC Media for media purposes, Competitors shall provide telemetry data from their competing yachts in all AC37 Events as further specified in the Class Rules.

### 32.4 **Event officials**

AC Media, in consultation with the Regatta Director, may require official event boats to carry television and technical equipment and personnel during the AC37 Events. Such equipment may be used to capture still and moving images that may be exploited by AC Media in accordance with Part I of this Protocol.

### 32.5 **Voice communications system**

COR/D, in consultation with the Regatta Director, may designate a prescribed on-board voice communications system for use in all AC37 Events. If so, Competitors will be notified by 17 September 2022 and such system shall become the sole on-board voice communications system used on Competitors' yachts on race days for all AC37 Events. If COR/D does not designate an on-board voice communications system, then Competitors may choose their own on-board voice communications system provided that such system meets the specifications provided by AC Media and is compliant with the Class Rules.

### 32.6 **Frequencies**

In consultation with AC Media, the Regatta Director shall assign radio frequencies for use by Competitors, Regatta Officials and AC Media during the AC37 Events.

### 32.7 **Open data**

From the date that the equipment detailed in Article 32.1 is operational as provided for therein through the last race of the Match, whenever an AC75 Yacht or AC40 Yacht of any Competitor is racing in an Event, AC Media shall make the data that is generated by AC Media's equipment and sensors pursuant to Article 32.1 available to the public provided that, in so doing, it complies with all applicable data privacy laws.

### 32.8 **Ownership**

All data and information of whatever nature, and for whatever purpose, produced by the television, audio and other electronic equipment carried on yachts and/or crew under this Article 32 shall be the property of the respective Competitor, who shall subject to all applicable data privacy laws:

- (a) grant sole rights to use such data and information for any lawful purpose to ACE for the duration of AC37; and
- (b) following the end of AC37, a non-exclusive right to use such data and information for any lawful purpose to ACPI in accordance with Article 60.5.

## PART F: RULES

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### 33. Rules

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#### 33.1 Governing Rules

AC37 shall be governed by:

- (a) the Deed of Gift (but excluding the Preliminary Regattas and CSS);
- (b) this Protocol;
- (c) the AC75 Class Rule, the AC40 Class Rule and the AC Technical Regulations;
- (d) the Racing Rules;
- (e) the Race Conditions; and
- (f) the Sailing Instructions;

(together, the “Rules”).

#### 33.2 Priority of Rules

Unless otherwise provided, the documents referred to in Article 33.1 shall have precedence in the order the documents are listed. Any conflict between the provisions of such documents shall be resolved in favour of the document first listed.

### 34. Race Conditions

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#### 34.1 Match Conditions

- (a) COR/D will agree upon, circulate to the Competitors and publish the Match Conditions on the Official Noticeboard not later than 30 June 2023 or such other date agreed by COR/D.
- (b) The Match Conditions shall:
  - (i) address all issues COR/D reasonably consider necessary to ensure that the Match is completed in accordance with this Protocol; and
  - (ii) reflect the principles set out in Article 8 above.
- (c) COR/D will use all reasonable endeavours to resolve any differences between them as to the terms of the Match Conditions through amicable negotiation within ten (10) working days of being informed of such difference by the other party, failing which the matter shall be resolved by the Arbitration Panel Fast Track Process.

## 34.2 CSS Conditions

- (a) COR/D will agree upon, circulate to the Competitors and publish the CSS Conditions on the Official Noticeboard not later than 30 November 2023 or such other date agreed by COR/D.
- (b) The CSS Conditions shall:
  - (i) address all issues COR/D reasonably consider necessary to ensure that the CSS is completed in accordance with this Protocol; and
  - (ii) be identical to the Match Conditions, subject to necessary changes to achieve the principles set out in Article 7 above.
- (c) COR/D will use all reasonable endeavours to resolve any differences between them as to the terms of the CSS Conditions through amicable negotiation within ten (10) working days of being informed of such difference by the other party, failing which the matter shall be resolved by the Arbitration Panel Fast Track Process.

## 34.3 Preliminary Regatta Conditions

- (a) COR/D will agree upon, circulate to the Competitors and publish the Preliminary Regatta Conditions on the Official Noticeboard not later than one month before the date of the first scheduled race in each Preliminary Regattas
- (b) The Preliminary Regatta Conditions shall:
  - (i) address all issues COR/D reasonably consider necessary to ensure that the Preliminary Regattas are completed in accordance with this Protocol; and
  - (ii) be identical to the Match Conditions, subject to necessary changes to achieve the principles set out in Article 6 above.
- (c) COR/D will use all reasonable endeavours to resolve any differences between them as to the terms of the Preliminary Regatta Conditions through amicable negotiation within ten (10) working days of being informed of such difference by the other party, failing which the matter shall be resolved by the Arbitration Panel Fast Track Process.

## 35. Sailing Instructions

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- (a) The Sailing Instructions for the CSS and the Match shall be issued by the Regatta Director after consultation with COR/D, not later than one month before the first scheduled race in the CSS.
- (b) The Sailing Instructions for the Preliminary Regattas will be issued by the Regatta Director after consultation with COR/D no later than two weeks before the first scheduled race of each Preliminary Regatta.

## 36. Wind Limits

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Unless the Regatta Director considers the sea state unsuitable in any case, the warning signal for all races for all AC37 Events shall only be made when the approximate average TWS is between 6.5 and 21 knots for the whole period between 9 minutes and 4 minutes before the start. The TWS shall be measured as a rolling average of one hertz samples over 30 seconds at approximately 5.5 meters above the water on the race committee signal boat. This TWS shall be corrected to represent the TWS relative to the water, based on the

forecasted tidal currents in the area where the race committee signal boat is located, using a procedure and tidal current forecast published by the Regatta Director.

## **37. Racing Areas and courses**

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### **37.1 Announcement of Racing Areas and course details**

- (a) ACE (in consultation with the Regatta Director if appointed) shall announce the Racing Areas for the AC37 Events as follows:
  - (i) for the Preliminary Regattas, by no later than the date that is two months before the first scheduled race of each Preliminary Regatta; and
  - (ii) for the CSS and the Match, by no later than 30 November 2022;
- (b) The course details for each AC37 Event shall be included in the applicable Sailing Instructions issued by the Regatta Director under Article 35.

### **37.2 Course configuration**

Unless otherwise agreed by COR/D and stated in the Sailing Instructions, the course used for all races in AC37 Events shall comprise a windward and leeward configuration with an upwind start.

### **37.3 Changes to Racing Areas**

Once announced, COR/D may subsequently agree to amend any Racing Area following consultation with the Regatta Director provided that the Racing Area for the Semi-Finals and Final of the CSS will always be the same as the Racing Area for the Match. The Sailing Instructions shall be promptly updated to reflect any agreed changes.

### **37.4 Equal access to course**

- (a) During the Semi-Finals and Final stages of the CSS, access to the course at the Venue of the Match shall be managed by the Regatta Director to ensure that, during the time of the day when racing in the Match is scheduled, access shall be shared equally between the Challengers and the Defender with the intention that if either has exclusive access then the other is allowed the same period of exclusive access.
- (b) On the CSS Semi-Final and Final race days this will be achieved by the Defender being granted its period of access inside the closed race course either immediately prior to or after races (and not in between races).
- (c) The Regatta Director may refuse access to the course under this Article 37.4 if, in his reasonable opinion, racing would be delayed, interrupted or cancelled as a result of allowing such access.
- (d) The Regatta Director, after consultation with the Jury, shall determine appropriate sanctions for any breach of this Article 37.4 by any Competitor.

## 38. Participation in other regattas

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Competitors and/or their respective sailing teams shall not participate, without the prior written approval of ACE (not to be unreasonably withheld), in any non-Event regatta for foiling monohull yachts that is presented in a way that is or could be perceived to be an ambush of any Event, or that is presented or held out to be part of any Event, or infringes the trademark rights of ACPI (and Competitors shall cooperate with ACPI in enforcing ACPI's rights on any non-Event regatta organiser).

## 39. Sports betting

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Competitors, their Team Members and all event officials engaged by or on behalf of ACE shall not participate (either directly or indirectly) at any time in any sports betting or related activity with respect to the whole or any part of AC37, including:

- (a) accepting a bribe or agreeing to improperly influence the result, progress, conduct or any other aspect of a race in any Event; and/or
- (b) placing, accepting, laying or otherwise entering into any bet (or soliciting, inducing and/or authorising another party to do so) with any other party in relation to the result, progress, conduct or any other aspect of any race in any Event.

## 40. Meteorological and Oceanographic Data

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### 40.1 Common weather programme

Subject to Article 19(b), COR/D will, as soon as practicable, implement a common programme for the collection of wind, sea state and associated data in the Racing Area of the Match. Such information shall be made available to all Competitors on a shared cost basis as set out in Article 19.

### 40.2 Restrictions on collection of data

As a consequence of the above and in order to save campaign costs, Competitors shall not (and will not procure others on their behalf to) collect weather, wind, sea state or sea current instrument data relevant to Match Venue after it has been announced, except:

- (a) as explicitly permitted in the Class Rules;
- (b) from personal observation from land or on the water, where personal observation excludes the use of any measurement equipment such as handheld anemometers, GPS or floating markers, and excludes timing or measuring drift;
- (c) for data that is publicly and readily available to all Competitors, the subscription to which costs less than US\$50 per month; or
- (d) from wind measuring equipment on a crane situated at or adjacent to a Competitor's Team Base.

### 40.3 Data used for forecasts and modelling

Competitors may only obtain forecasts, models and/or model generated data relating to weather, wind, sea state or sea current data relevant to any Racing Area provided that:

- (a) all measured data used is collected in compliance with this Article 40; and,
- (b) this Article 40 shall not restrict the Competitors' right to purchase and use historic data relating to the Match Venue that is commercially available to the public and collected prior to the date which is six (6) months before the first scheduled race of the Match.

## 41. Reconnaissance

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### 41.1 Joint Recon Programme

- (a) As a campaign cost reduction measure, COR/D has mutually agreed to cooperatively implement a centralised reconnaissance programme for all teams for the reconnaissance of all Competitors' AC75 Yachts, AC40 Yachts and LEQ12 yachts including both on-land and on-water imagery (the "**Joint Recon Programme**"). The operational conditions for the Joint Recon Programme are specified in the AC Technical Regulations.
- (b) The intent of the Joint Recon Programme is to reduce the costs that Competitors would otherwise be spending on their individual recon activities and to help grow the audience of the America's Cup in the lead up to and during the AC37 Events.
- (c) Such Joint Recon Programme shall be made available to all Competitors on a shared cost basis and each Competitor will be required to provide a suitable support boat (capable of keeping up with an AC75 Yacht) for use by the relevant recon team assigned to that relevant Competitor.
- (d) It is intended that such content will be made available to AC Media who will exploit such content in the manner set out in Part I of this Protocol in order to provide updates to the general public as to what developments each Competitor is pursuing. AC Media may also make requests for specific photographs, videos or interviews with Team Members.

### 41.2 Prohibited activities

Competitors are prohibited from engaging in any of the following in an attempt to gain information about another Competitor:

- (a) any on-water and on-land reconnaissance outside of the Joint Recon Programme, except as permitted under the AC Technical Regulations;
- (b) any illegal act;
- (c) the use of eavesdropping devices;
- (d) accessing correspondence, electronic communications or communication frequencies or channels allocated to other Competitors or used by other Competitors via a commercial service provider;
- (e) the unauthorised entry into any computer system;
- (f) interception of information emanating from telemetry, instruments, computers, etc.;
- (g) without the prior consent of the affected Competitor, use of satellites, drones, aircraft, and/or other means of flight to observe or record from above another Competitor's yacht;

- (h) the acceptance of any information from a third party that a Competitor is prohibited from obtaining directly; and
- (i) obtaining positional data about another Competitor's yacht via electronic means, other than from publicly available sources.

#### **41.3 Non-interference**

- (a) Except when participating in any Official Training, Official Practice or as part of any Event (or other permitted regatta), or with the prior consent of the affected Competitor, Competitors shall not intentionally, irresponsibly or unreasonably impede, disrupt or otherwise interfere with another Competitor's yacht when such yacht is sailing, whether or not for the purpose of observing it in an attempt to gain information about the affected (or any other) Competitor.
- (b) ACE, in consultation with the Regatta Director, shall issue a safety protocol governing the operation of all Competitors' support boats within a Racing Area. Such safety protocol will include a penalty regime which shall apply for any breaches of that protocol and will involve instant fines for minor infringements and the right for ACE to apply to the Arbitration Panel to seek a further penalty for more serious infringements, including points deductions where appropriate.

#### **41.4 Accredited media**

The terms of this Article 41 shall not restrict the lawful and permitted activities of any media organisation/representative accredited by AC Media, provided such media organisation/representative shall not, other than by way of public dissemination through a Media Organisation, provide to any Competitor any information that a Competitor is prohibited from obtaining directly.



## PART G: REGATTA OFFICIALS

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### 42. Appointment of Regatta Officials

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#### 42.1 Appointment of Regatta Director

COR/D shall jointly appoint (and may agree to remove and replace) an independent Regatta Director for AC37 (the “**Regatta Director**”). The Regatta Director shall be engaged by ACE on behalf of COR/D and will perform the functions set out in more detail in Article 0.

#### 42.2 Appointment of other Regatta Officials

Additional Regatta Officials for AC37 shall be jointly appointed by COR/D (who may agree to remove and replace such officials) and engaged by ACE on behalf of COR/D as follows:

- (a) a Measurement Committee, which shall include a chief measurer and not less than two (2) other members, as further described in Article 44.1;
- (b) a Rules Committee, which shall comprise three (3) members, as further described in Article 44.2;
- (c) Umpires (to be appointed in consultation with World Sailing) as may be reasonably required to umpire the races comprising each Event, including a chief Umpire, as further described in Article 45;
- (d) a World Sailing International Jury (to be appointed in consultation with World Sailing) comprised of Umpires who have been appointed under Article 42.2(c) above; and
- (e) such other regatta officials and/or staff requested by the Regatta Director as are reasonably necessary in meeting the purpose and intent set out in the Introduction of this Protocol.

#### 42.3 Terms of engagement for Regatta Officials

The structure and terms of engagement of the Regatta Officials shall be agreed between ACE and COR/D, taking into account the overriding principles of the qualification, experience and capability of each candidate, independence of the Regatta Officials, cost efficient management, reporting and compliance, and relevant jurisdictional issues. ACE shall enter into an agreement with the relevant Regatta Official, subject to any amendments requested by the Regatta Official and approved by COR/D.

#### 42.4 Neutral management

The Regatta Officials, while complying with the Rules shall not unreasonably favour the interests of any Competitor over another.

## 43. Regatta Director

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### 43.1 Role of the Regatta Director

The Regatta Director shall:

- (a) be responsible for the conduct of all racing at each Venue for each Event, including the management of the Racing Areas, course and Flag Areas;
- (b) be responsible for ensuring that all races at the Venue for each Event are conducted in a professional and timely manner pursuant the terms of the Rules;
- (c) be responsible for the co-ordination of the activities of the other Regatta Officials to run the races comprising each Event in a professional manner that is consistent with the purpose and intent of this Protocol and with the obligations and commercial requirements of ACE;
- (d) co-operate with ACE on all issues such as schedules for Events, management of the Racing Area, the course and/or the Flag Areas and other commercial requirements;
- (e) in consultation with COR/D, issue (and/or amend) the Sailing Instructions for the Preliminary Regattas, the CSS and the Match;
- (f) have the authority to publish regulations regarding the conduct of racing and the management of the Racing Area, the course and/or the Flag Areas, provided that such regulations are consistent with the terms of the Rules, which regulations shall be binding on Competitors in accordance with their terms;
- (g) be responsible for the management and monitoring of the permitted and prohibited sailing by Competitors referred to in Article 24.2 including the authority:
  - (i) in consultation with COR/D, to publish regulations including compliance guidelines, which shall be binding on Competitors and a schedule of fines for minor breaches of the published regulations; and
  - (ii) to apply to the Arbitration Panel to assess the penalty for a breach by a Competitor which the Regatta Director considers, in his sole discretion, to be more than minor; and
- (h) have all such other powers as may be necessary or appropriate to fulfil his responsibilities as prescribed in and/or contemplated by the Rules,

provided always that the Regatta Director shall have no authority and/or jurisdiction in respect of the separate responsibilities of ACE, the Measurement Committee, the Rules Committee, the Umpires, the Jury and/or the Arbitration Panel as prescribed in and/or contemplated by the Rules.

## 44. Measurement Committee and Rules Committee

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### 44.1 Role of the Measurement Committee

The Measurement Committee shall be solely and exclusively responsible for all matters relating to:

- (a) the measurement of AC75 Yachts under the AC75 Class Rule;

- (b) the issue or withdrawal of an AC75 class certificate for an AC75 Yacht in accordance with the requirement of the AC75 Class Rule following the procedures set out in the AC75 Class Rule;
- (c) the measurement of AC40 Yachts under the AC40 Class Rule;
- (d) the issue or withdrawal of an AC40 class certificate for an AC40 Yacht in accordance with the requirement of the AC40 Class Rule following the procedures set out in the AC40 Class Rule;
- (e) the certification of compliance with the construction in country requirement and issue the relevant Constructed in the Country Certificate; and
- (f) any other matter which it is given jurisdiction under this Protocol, the AC40 Class Rule and/or the AC75 Class Rule.

#### **44.2 Role of the Rules Committee**

The Rules Committee shall be solely and exclusively responsible for all matters relating to:

- (a) the interpretation of the Class Rules as applicable, according to the provisions of the relevant Class Rule;
- (b) the determination of whether or not any yacht constitutes a Surrogate Yacht, based on information provided by the Measurement Committee; and
- (c) to resolve any other matter which it is given jurisdiction under the Protocol and/or the Class Rules.

#### **44.3 Interpretations**

Unless otherwise stated in the Class Rules, the Rules Committee shall have no authority to amend any of the Rules but may issue interpretations of the Class Rules according to the procedures that will be detailed in the Class Rules.

#### **44.4 Delegation**

One or more measurers or rules officials may carry out measurement, inspection or other duties on behalf of the Measurement Committee or Rules Committee (as applicable).

#### **44.5 Costs**

Members of the Rules Committee and Measurement Committee shall be engaged by ACE on an agreed retainer basis. In addition, they shall be paid an agreed hourly rate for their services involving the interpretation of the Class Rules or other tasks requested by the Competitors. The retainer and hourly fees shall be agreed between ACE (on behalf of COR/D) and the relevant committee. The hourly fees incurred shall be recovered on a user pays basis from the Competitors, as ordered by the Rules Committee.

#### **44.6 Jurisdiction**

- (a) The Rules Committee and the Measurement Committee will, within their respective jurisdictions, both be responsible for determining whether a yacht meets the relevant Class Rule.

- (b) If there is any conflict between the Rules Committee and the Measurement Committee in relation to jurisdiction or otherwise it will be the sole responsibility of the Rules Committee to determine the matter.

## 45. **Umpires and Jury**

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The Umpires and Jury shall be responsible for:

- (a) umpiring the racing in each of the Events, with primary responsibility to make the on-water decisions about infringements under the Racing Rules; and
- (b) interpreting the Racing Rules with any such interpretation requiring the agreement of the chief Umpire and two other Umpires.

## 46. **World Sailing**

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- (a) ACE shall conclude any necessary arrangements with World Sailing for the sanctioning of AC37, consistent with the purpose and intent of this Protocol. Costs of such sanctioning are included within the Entry Fees.
- (b) The terms of this Protocol shall prevail over the terms of any arrangements with World Sailing and, other than the Regatta Officials (if applicable), no staff and/or appointed representatives of ACE shall be subject to any present or future rules, regulations or other jurisdiction of World Sailing and/or its member national authorities for or in respect of the whole or any part of AC37.

## 47. **Rules and Decisions**

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### 47.1 **Rules**

The Regatta Director, Measurement Committee, Rules Committee, Umpires and the Jury shall comply with the Rules to the extent required for them to perform their respective obligations under this Protocol.

### 47.2 **Decisions**

All decisions of the Regatta Director, Measurement Committee, Rules Committee, Umpires and the Jury that are taken in good faith within their proper authority and/or jurisdiction as prescribed in and/or contemplated by the Rules in each case shall not be subject to any review or appeal unless otherwise expressly provided in this Protocol.

## PART H: COMMERCIAL RIGHTS

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### 48. Overview

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#### 48.1 Commercial rights of ACE

To allow ACE to raise funds to organise, deliver and manage AC37 and to reduce the financial risks on ACE, all commercial rights in and in relation to the whole and/or any part of AC37 on a worldwide basis and any revenues or other value-in-kind arising from the exploitation thereof shall be vested in ACE in accordance with the terms of this Protocol and shall be managed by ACE pursuant to Article 3.1 and this Part H. Such commercial rights shall include (without limitation):

- (a) sponsorship and other rights of association in connection with the whole and/or any part of AC37;
- (b) broadcast production and distribution and other media rights in connection with the Events (including still images, moving images, gaming, data, telemetry and animations in whatever medium or technology);
- (c) Event branding and advertising;
- (d) Event merchandising and brand licensing (in coordination with ACPI);
- (e) Event hospitality and related consumer and corporate experiences;
- (f) Event ticketing, entertainment (including public screenings, live performances and any concert series);
- (g) food and beverage concessions;
- (h) host venue rights in connection with the whole and/or any part of each Event (in conjunction with the Defender);
- (i) super yacht berthage and associated services; and
- (j) such other commercial rights and fundraising opportunities in connection with the whole and/or any part of AC37 as ACE may identify from time to time, including those commercial rights and opportunities in line with recent editions of the America's Cup.

Nothing in this Article 48.1 (or otherwise in this Protocol) shall affect the rights and/or obligations conferred or imposed by the constitution of ACPI.

#### 48.2 Granting of rights by Competitors

Each Competitor hereby transfers to the maximum extent allowed by law, the commercial rights related to their participation in the Events to ACE, in order to allow for the smooth and efficient exercise of the above commercial rights by ACE.

#### 48.3 Commercial rights of Competitors

Each Competitor shall have the right to exploit any and all commercial rights, on a worldwide basis and any revenues or other value-in-kind arising from or in respect of its participation as

a Competitor on and subject to the terms of the Rules. This does not include the commercial rights pursuant to Article 48.1. Such commercial rights shall include (without limitation):

- (a) sponsorship and other rights of association in connection with the whole and/or any part of the Competitor;
- (b) media rights in connection with the Competitor's campaign for AC37 (including still images, moving images, audio files, electronic print, data and animations in whatever medium or technology), but not (unless approved by ACE in writing in advance acting reasonably) in connection with the Events or otherwise in conflict with Event-related activities;
- (c) the Competitor's branded merchandising and brand licensing;
- (d) the Competitor's hospitality and related consumer and corporate experiences;
- (e) the Competitor's promotional and public relations events which do not conflict with or otherwise undermine Event-related activities;
- (f) the Competitor's public entertainment activities which do not conflict with or otherwise undermine Event-related activities; and
- (g) such other commercial rights and fundraising opportunities in connection with the whole and/or any part of the Competitor's team activities as may be identified from time to time;

in each case being on and subject to the terms of the Rules.

#### 48.4 **Event title sponsor conflicts**

In order to avoid any conflict of interest, no Competitor shall be entitled to engage as a sponsor, or advertise or promote an association with, a title/naming sponsor of any of the AC37 Events (for example by the inclusion of such sponsor's name in the name of a team, yacht or other similar promotion) without the prior approval in writing of ACE. The giving of any such approval shall be at the sole discretion of ACE, having taken into account whatever matters it thinks fit, and may include conditions to ensure that the title/naming sponsor's association with an individual Competitor does not either conflict with the contractual rights and responsibilities of its event sponsorship or in any way affect the fairness of competition or the promotion of the event for all other Competitors.

### 49. **Branding and Advertising**

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#### 49.1 **Title/presenting sponsors**

In the event that ACE announces a title or presenting sponsor for the whole or any part or parts of any Event, Competitors (and their Team Members) and Regatta Officials shall always use and reference the proper official title and official logo in each case as prescribed by ACE.

#### 49.2 **Brand Manual**

- (a) Branding and Advertising, for the whole or any part of any Event, including, without limitation, on Competitors and their Team Members, Regatta Officials, AC75 Yachts, AC40 Yachts, support boats, official boats, Team Bases and clothing, shall always comply and respect the brand manual (the "**Brand Manual**") which will be published as soon as practical but no later than 31 December 2022 by ACE.

- (b) Such Brand Manual may be updated by ACE from time to time in consultation with the Competitor Forum.

### 49.3 **Branding on Yachts**

Subject to Article 49.4 below, Competitors may display Advertising or other branding anywhere on their AC75 Yachts and/or AC40 Yachts, except:

- (a) in the areas reserved for the official logo of the AC37 Events or title sponsor of the Events, marked "ACE area" as prescribed in the Class Rules and confirmed in the Brand Manual;
- (b) in the areas on the mainsail marked "country flag of Competitor" in the Brand Manual, where each Competitor shall display the national flag of the country of the yacht club that the Competitor represents, to be included on both sides of the mainsail, in such form as prescribed in the Class Rules and confirmed in the Brand Manual; and
- (c) that no AC75 Yacht shall have a name that constitutes Advertising, unless such name is approved by ACE in advance.

### 49.4 **Branding restrictions**

No Competitor may display as Advertising or other branding anywhere on its yachts, on the clothing of its Team Members and/or otherwise in any Venue:

- (a) any name, logo, brand, products and/or services relating to the tobacco industry;
- (b) any name, logo, brand, products and/or services of a Media Organisation (unless otherwise with the prior approval of ACE not to be unreasonably withheld); and/or
- (c) any offensive, obscene, abusive, defamatory and/ or illegal image or other content.

Additionally, should the advertising of a specific product category significantly limit and/or jeopardize the TV and media coverage of the Events - or be in breach with local applicable regulations - then ACE shall have the authority at its sole discretion to require the relevant Competitor(s) to remove such advertising.

### 49.5 **Team Member clothing**

- (a) Subject always to the terms of Article 49.4 and save in respect of the Youth and Women's AC Regattas for which Article 49.5(b) below shall apply, each Competitor may display Advertising on the clothing of its Team Members and shall display on one (1) sleeve of all Team Member clothing a Challenger or Defender patch with the Event logo for AC37 and with the national flag and burgee of the challenging yacht club in the form and with free space around the patch as shall be prescribed in the Brand Manual;
- (b) The team clothing (including crew helmets and caps) of each Competitor for the Youth and Women's AC Regattas (and any branding, colour, design scheme and the display of an Event patch and/or Advertising thereon) shall comply with specifications prescribed in the Brand Manual.

## 50. Special Events

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### 50.1 Organisation of Special Events

ACE has the exclusive right to organise and manage the following Special Events:

- (a) formal presentation of the Competitors' yachts and crew at the beginning of each Event;
- (b) public display of Competitors' yachts at specific locations and times during each Event;
- (c) opening and closing ceremonies for each Event;
- (d) press conferences comprising more than one (1) Competitor during each Event;
- (e) Event-related social events;
- (f) Event-related prize giving ceremonies; and
- (g) other Event-related special events as may reasonably be advised by ACE,

unless otherwise agreed by ACE. ACE may delegate by agreement the organisation and management of Special Events to third parties, including Competitors, sponsors and other commercial partners.

### 50.2 Mandatory participation

All Competitors are required to participate in Special Events as prescribed by ACE with at least three (3) days prior notice, with the number and identity of their Team Members to be reasonably specified by ACE in consultation with the Competitor Forum. If for any reason the three (3) days prior notice is unable to be given, then Competitors shall only be expected to use reasonable efforts to participate in that particular Special Event.

### 50.3 Calendar of Special Events

- (a) To prevent conflicts, ACE will publish and keep updated a calendar of Special Events. Competitors shall advise ACE of any significant event they intend to host, and shall not schedule any events that will conflict with any Special Events.
- (b) Competitors shall only be required to use reasonable efforts to attend events which are added to the calendar of Special Events on less than three (3) clear days' notice.

## 51. Team Bases

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### 51.1 Overview

Each Competitor shall occupy a Team Base in a temporary space allocated by ACE, from which each Competitor shall conduct its sailing operations at the Venue of each Event for the duration of each Event (dates as prescribed by ACE). Team Bases may not be of equal size or prominence, and some facilities may be required to be shared.



## 51.2 Allocation

Team Bases shall be allocated for each Venue in the following order of priority:

- (a) the Defender;
- (b) the Challenger of Record; and
- (c) one base for each of the remaining Challengers in the order in which their challenges were accepted by the Defender in accordance with the list published pursuant to Article 13.4.

## 51.3 Lease and/or Licence

- (a) Where required by ACE, a Competitor shall enter into a lease and/or licence agreement with ACE or the relevant Host City prior to taking possession of the temporary space allocated for its Team Base in any Venue. Such lease and/or licence will set out the terms and conditions under which each Competitor will occupy their Team Base, including any fee to be paid by each Competitor.
- (b) If practical, ACE shall use reasonable endeavours to procure that applicable rental payments or licence fees to be paid by Competitors are secured at a discounted rate, based on the prevailing market rate applicable to the relevant site before any development by the Competitors.

## 51.4 Construction

Unless otherwise agreed by ACE in writing, Competitors shall be responsible to organise, manage and meet all costs of construction of their facilities, as follows:

- (a) all Team Bases shall comply with the architectural guidelines to be advised by ACE or the Host City, including guidelines regarding height, construction materials, impact on surrounding areas and overall exterior appearance, and the positioning of piles and floating docks on any water space;
- (b) unless otherwise provided under the relevant lease or licence agreement specified in Article 51.3, each Competitor shall dismantle all improvements and/or installations made by or on behalf of the Competitor in the location of its Team Base or otherwise within any Venue within of the later of ninety (90) days after the last race of the Match and the relevant date for such action in the relevant lease or licence agreement; and
- (c) each Competitor shall restore the area to the state and condition it was in prior to any improvements and/or installations made by or on behalf of that Competitor.

## 51.5 Occupation through the Match

Until the conclusion of the last race of the Match, all Competitors shall:

- (a) continue to occupy and operate their Team Base in the Match Venue; and
- (b) not disassemble, dismantle or pack up their Team Base, AC75 Class Yacht, support vessels and/or other assets and equipment in any area visible to the public.

## 52. Signage

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### 52.1 Team Base brand guidelines

All branding / signage on or within Team Bases shall comply with the Brand Manual.

### 52.2 Flags on Team Bases

Each Competitor shall display at their Team Base throughout each Event the national flag of the country of their challenging yacht club in accordance with the Brand Manual.

### 52.3 Flags on support boats

Each Competitor shall display throughout each Event on each of their support boats and spectator boats the national flag of the country of their challenging yacht club in accordance with the Brand Manual.

## 53. Merchandising

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### 53.1 Venue merchandising

- (a) Only ACE's approved retailers and concessionaires are authorised to carry on any retailing or merchandising activities at any Venue.
- (b) ACE shall ensure that the facility selling team merchandise of Competitors shall be afforded a prominent location and presence within each Venue.
- (c) ACE's appointed retailers and concessionaires shall be entitled to sell team merchandise for each Competitor and Competitors shall ensure that they or their merchandising suppliers sell their team merchandise to ACE's appointed retailers and concessionaires at favourable prices and terms to be agreed between the parties.
- (d) Competitors shall use reasonable endeavours to ensure sufficient quantities of its team merchandise are produced to meet ACE's retailers' reasonable requirements.
- (e) ACE's appointed retailers and concessionaires shall endeavour to stock a representative selection of each Competitor's team merchandise.

### 53.2 Intellectual property

Competitors shall give consent and shall procure written consent from the owners of all trademarks and other intellectual property used in or depicted on their team merchandising so as to permit the sale by ACE and its appointed retailers and concessionaires of such merchandising.

### 53.3 Promotions

Competitors shall not distribute promotional products or samples in any Venue without the prior written approval of ACE (not to be unreasonably withheld).

### 53.4 Restrictions

No Competitor shall use in its merchandising any image taken of racing during any Event which depicts any other Competitor unless with the prior written approval of ACE, except

where such use is incidental and is less than twenty per cent (20%) of the total content of the product.

## **54. Entertainment**

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ACE shall have the exclusive right to organise and manage all public entertainment at each Venue. ACE may exercise this right in any manner at its sole discretion, including by contracting the organisation, management and provision of public entertainment at the Venues to third parties.

## **55. Security**

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Subject to and in full compliance with the laws and/or other lawful directives of the competent (relevant) government authorities, Competitors (and their respective Team Members (as applicable)) and all Regatta Officials shall comply with security measures adopted by ACE for or in respect of the whole or any part or parts of AC37. Competitors shall assist security personnel appointed by ACE and/or provided by the Host City. Competitors shall be responsible for the security of their Team Bases, their competing yachts, support boats, spectator boats and all other equipment and assets of the Competitor and their respective Team Members (as applicable).

## **56. Air Space**

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Subject to and in full compliance with the laws and/or other lawful directives of the competent (relevant) government authorities, all air space above each Venue during each Event shall be under the control and direction of ACE. Competitors and their sponsors or other commercial partners or authorised agents shall not contest or use the air space for any purpose without the prior approval of ACE.

## **57. Water Space**

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### **57.1 Control of water space**

Subject to and in full compliance with the laws and/or other lawful directives of the competent (relevant) government authorities, the Racing Area at each Event shall be under the control and direction of ACE. ACE shall delegate its control of the Racing Area to the Regatta Director.

### **57.2 Spectator vessels**

ACE shall optimize the opportunities for accredited spectator vessels in the Racing Area during Events, with priority to a limited number of nominated Competitor supporters, ACE and its commercial partners and then the competing Competitors. Without the prior approval of ACE, Competitors shall not provide spectator vessel services to the general public at any Venue during any Event.

## **58. Team Information**

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Each Competitor shall timely provide ACE with such information regarding the Competitor and its Team Members as ACE may reasonably request.

## 59. Anti-ambush obligations

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- (a) A Competitor (and each of their Team Members) must not engage in any form of unauthorised promotional, advertising or commercial activity ("**Ambush Marketing**") which:
  - (i) associates a commercial brand with the Events (as opposed to the Competitor's participation in the Events); or
  - (ii) has the effect, in the reasonable opinion of ACE, of conferring the status of a commercial partner of the Events on a person who is not a commercial partner of the Events.
  
- (b) Each Competitor agrees that in participating in AC37:
  - (i) it will use reasonable endeavours to eliminate or neutralise any Ambush Marketing, including in respect of any brands or logos of a third party that is not a commercial partner of the Events or any Competitor and is displayed during the Events; and
  - (ii) when it becomes aware of any Ambush Marketing, it will consult with and provide reasonable assistance to ACE in taking all necessary steps to eliminate or neutralise such Ambush Marketing.

## PART I: MEDIA RIGHTS

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### 60. ACE Media Rights

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#### 60.1 Event-related media rights

- (a) Pursuant to Article 3.2(b)(iii) of this Protocol, ACE will be responsible for the development, protection, management and exploitation of the media rights related to AC37 and the Events.
- (b) Accordingly, all rights in and to any audio, visual and/or digital content and data collected by or on behalf of ACE during the course of or in connection with the whole or any part or parts of the Events or the lead up to the Events (including any still and moving, virtual or digital images and any content generated by other technologies) shall vest solely and exclusively in ACE which shall, at its sole discretion, be entitled to use, assign, transfer, licence and/or otherwise exploit any such rights in and to the applicable content and data.
- (c) ACE will establish a media division consisting of independent contractors appointed by ACE ("**AC Media**") who will be responsible for exercising ACE's media rights and responsibilities under this Protocol, including the delivery of the broadcast and media production (including the race management system), social media and other media related activities for AC37, and having the responsibility to deal with each Competitor on media matters in an independent and confidential manner vis a vis all other Competitors and ACE itself.
- (d) As at the date of this Protocol, it is intended that AC Media shall exploit such media rights through the production of global broadcast feeds, magazine programmes, preview and review shows, behind the scenes documentary programmes, clips and features, digital and social media content and news content. AC Media may appoint one or more production and distribution partners to assist with its delivery of such AC37 media coverage.
- (e) To assist AC Media with the production of the broadcast and media coverage of AC37, Competitors shall:
  - (i) provide access as reasonably required by AC Media, following consultation with the Competitor, for AC Media and/or its licensees or authorised agents to take or record still and/or moving images of Competitors, including (but not limited to) its representative team training and sailing, and conducting interviews with its Team Members, during or outside the periods of Events; and
  - (ii) carry and allow the unhindered operation of the television and technical equipment on board their AC75 Yachts, AC40 Yachts, support vessels and crew as specified in Article 32.
- (f) In addition, AC Media and its appointed production and distribution partners shall be given priority choice of location at all open media events and mixed zones organised by or hosted by any Competitor.

## 60.2 Releases

### (a) Broadcasting and digital

- (i) All Competitors acknowledge, and shall (subject to applicable data privacy laws) obtain written acknowledgements and releases from all of their Team Members, sponsors, licensees and other commercial partners, that AC Media, its licensees and its authorised agents, including its authorised broadcasters and other content providers, shall be entitled, without payment of fees to any Person including Competitors or any of their Team Members, sponsors, licensees or other commercial partners, to reproduce, broadcast, transmit, print, publish and/or disseminate worldwide in any medium the names, logos, images, likenesses, voices and any data of Competitors, their yachts and other vessels, their Team Members, sponsors, licensees or other commercial partners and/or burgee for the purposes of broadcasting or otherwise transmitting the whole or any part or parts of any Event or Events in any medium, live or by way of delayed coverage, and in the distribution, exploitation, advertising and promotion of such coverage of the Event(s).
- (ii) AC Media may also include the names and/or logos of ACE's sponsors, licensees and/or other commercial partners within any Event-related broadcast or transmission.

### (b) Promotion and advertising

- (i) All Competitors acknowledge, and shall obtain written acknowledgements and releases from all of their Team Members, sponsors, licensees and other commercial partners, that ACE and its authorised agents, sponsors, licensees, other commercial partners and any Host City, shall be entitled, without payment of fees to any Person including Competitors or any of their Team Members, sponsors, licensees and other commercial partners to reproduce, print, publish or disseminate worldwide in any medium the names, logos, images, likenesses and voices of Competitors, their yachts and other vessels, their Team Members, sponsors, licensees and other commercial partners and/or burgee within audio and/ or visual (still and/ or moving) images for the purposes of promoting and advertising the Event(s) and the official merchandising activities of ACE (and/or its appointed retailers, licensees and/or concessionaires) in connection with the whole or any part or parts of AC37, provided that neither ACE nor its authorised agents, sponsors, licensees, other commercial partners or Host Cities place an undue prominence on any single Competitor in connection therewith (except with the approval of such Competitor).
- (ii) ACE may also include the names and/or logos of ACE's sponsors, licensees and/or other commercial partners in any of its promotion, advertising and merchandising.

### (c) Biometric Data

- (i) Competitors shall own all biometric data recorded in relation to sailing team performance. Subject to compliance with applicable data privacy laws, Competitors shall make selected biometric performance data available free of charge to AC Media for use in global broadcast feeds, magazine programmes, preview and review shows, behind the scenes documentary programmes, clips and features, digital and social media content and news content.
- (ii) Competitors, ACE and AC Media shall enter into separate data sharing agreements governing the use and processing of Team Member personal data.

### 60.3 **Media access restrictions**

Except with the prior approval of AC Media in any case (which AC Media may grant or withhold at its sole discretion), a Competitor:

- (a) shall not exclude any accredited media from any media event related to the whole or any part or parts of AC37;
- (b) may not enter into any exclusive arrangement with any Media Organisation that has the effect of preventing access by any media authorised by AC Media;
- (c) shall not provide or permit any media access (excluding AC Media and its appointed production partners) to its competing yacht (being a yacht participating in any given race day of an Event) and/or any of its crew and/or any of its other yachts, tenders and/or chase boats, during the period commencing thirty (30) minutes before the first scheduled race of each race day and ending thirty (30) minutes after the final scheduled race of that race day during any Event;
- (d) shall not undertake any media activities that creates any scheduling or other conflict with any of AC Media's media, commercial and/or promotional activities; and
- (e) shall not provide or permit media access to telemetry information of or related to its competing yacht or the competing yachts of any other Competitors on any race day during any Event.

### 60.4 **Media Accreditation**

AC Media will publish the procedures and conditions governing media access during the Events (the "**Media Accreditation Conditions**") by no later than the date that is three (3) months before the date of the first race of each AC37 Event.

### 60.5 **Post-AC37**

- (a) Upon the date that is ninety (90) days following the final race of AC37, all such rights and related intellectual property that remain vested in, and are capable of being assigned by, AC Media (on behalf of ACE) at that time (including both physical and digital copies of any content), shall be assigned by AC Media (on behalf of ACE) to ACPI and shall subsequently form part of the property of the America's Cup to be held in trust for the benefit of all future trustees.
- (b) Subject to Article 60.5(a), after a period of one month following the conclusion of the Match, each Competitor shall retain the right to use still and moving images of their participation in those events, provided such use is in a historical context only.

### 60.6 **Obligations of AC Media**

- (a) AC Media shall act as neutral custodians of the America's Cup media channels and build awareness and exposure for all Competitors, partners and sponsors for the continued growth of the event and the sport of sailing.
- (b) AC Media shall continue to cover all aspects of the Event, both on and off the water in a fair, accurate and balanced way.
- (c) In performing activities pursuant to this Protocol, ACE shall procure that AC Media uses all reasonable efforts to ensure such activities do not:

- (i) hinder, interrupt or prevent Competitors, ACE, Regatta Officials and/or the Arbitration Panel in relation to their participation in AC37;
- (ii) damage the reputation of any Competitor (or its commercial partners), Team Members, ACE (or its commercial partners), Regatta Officials and/or the Arbitration Panel or otherwise; and/or
- (iii) disclose or publish any Competitor information the disclosure or publication of which damages, or might reasonably be considered likely to damage, the competitive position of any Competitor in AC37. This restriction shall not apply to any information published as authorised by the Joint Recon Programme under Article 41.

## 61. Competitor Media Rights

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### 61.1 Use by Competitors and their sponsors of still and/or moving images

- (a) Competitors and their sponsors may use still and/or moving images of their own yachts and crews taken or recorded by them at any time, on and subject to the terms of this Protocol, in particular the restrictions contained in Article 61.2 below.
- (b) Where any other Competitor or its yacht or Team Member also appear in such images, they shall first obtain the written approval of any other Competitor depicted, except where such appearance is incidental and is less than twenty per cent (20%) of the total image. Such approval is intended to also be the approval of all sponsors and suppliers of the relevant Competitor depicted in the approved image.
- (c) Each Competitor may also submit requests to AC Media for the prior written approval by AC Media pursuant to Article 60.1 for any specific use by the Competitor on its own official Competitor platforms, on a royalty-free basis, of up to one hundred and twenty (120) seconds per day of still and/or moving images of its yacht and crew that have been recorded by or on behalf of AC Media. Prior to granting any approval AC Media may amend such terms and conditions of such use at its sole discretion.

### 61.2 Use of moving images recorded during the Racing Window

- (a) In addition to AC Media and its authorised licensees, only a Competitor's internal media team ("**Competitor's Media Team**") may record moving images of their own yachts and crew racing during the time period commencing thirty (30) minutes before the first scheduled race and ending thirty (30) minutes after the final scheduled race of each race day during any Event (the "**Racing Window**").
- (b) Except with the prior approval of AC Media, each Competitor shall ensure that all other media personnel that are contracted by or on behalf of or affiliated to any Competitor and/or their sponsors or other commercial partners shall not record any moving images during the Race Window.
- (c) Competitors, their sponsors and other commercial partners may not without AC Media's prior written approval, sell, broadcast, stream or otherwise publicly distribute (or allow to be distributed) any moving images of any Competitor's yachts or crew recorded by the Competitor during the Racing Window.
- (d) Each Competitor agrees to make available to AC Media (for use by AC Media and/or its broadcaster partners) any moving images of its or any other Competitor's yachts and/or crew recorded by the Competitor's Media Team during the Racing Window.



### 61.3 **Not create misleading impression of status**

All Competitors shall ensure their own use and the use by any of their sponsors or other commercial partners of any image does not create a misleading impression as to a sponsorship or association with any Event or Events. In particular, to prevent any misleading impression as to the status of the sponsor or other commercial partner, any Competitor's sponsor or commercial partner using Event-related images shall always include a clear statement as to its designation as sponsor or commercial partner of a particular Competitor.

### 61.4 **Competitors' photographers**

- (a) Photographers contracted to provide photographic services to Competitors and/or their sponsors or other commercial partners must obtain accreditation from AC Media (on and subject to the Media Accreditation Conditions imposed by AC Media under Article 60.4) and will be bound at all times and comply with the provisions of such Media Accreditation Conditions.
- (b) AC Media may withdraw the accreditation of a Competitor's photographer for failure to comply with the Media Accreditation Conditions imposed by AC Media, in which case such photographer shall not be further engaged by a Competitor at any Venue or in respect of any Event for the remainder of AC37.

### 61.5 **Competitors' media units**

- (a) Except with the prior approval of AC Media, each Competitor shall ensure that both its own Competitor Media Team and all other media personnel contracted by or on behalf of or affiliated to any Competitor and/or their sponsors or other commercial partners:
  - (i) shall obtain accreditation from AC Media (on and subject to the Media Accreditation Conditions imposed by AC Media under Article 60.4);
  - (ii) shall not record any moving images of any racing during any Event from the air; and/or
  - (iii) shall not record moving images anywhere within any Venue, except for:
    - (A) images of its yachts and/or any of its crew and/or any of its other tenders and/or chase boats whilst afloat within the Venue on any day in which such yachts are not participating in an Event and/or at any time on an Event race day other than as is restricted pursuant to Article 61.2 above;
    - (B) within the Team Base of the Competitor for the purposes of its own team media and promotions; and/or
    - (C) within such designated areas of the Venue and at such times as may be permitted pursuant to the Media Accreditation Conditions imposed by AC Media (including, without limitation, at official press conferences and within the designated media mixed zone);

provided always that such media activities shall not create any scheduling or other conflict with any of AC Media's media, commercial and/or promotional activities.

- (b) AC Media may withdraw the accreditation of any media personnel contracted by or on behalf of or affiliated to any Competitor and/or their sponsors or other commercial partners for failure by such party to comply with the above conditions or the Media Accreditation Conditions imposed by AC Media, in which case such media personnel shall not be further engaged by a Competitor or their respective sponsors or other

commercial partners at any Venue or in respect of any Event for the remainder of AC37.

## 62. Media commitments and public appearances

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### 62.1 Crew comments for broadcast

Competitors shall ensure that prior to and after racing in all Events, crew on their competing yachts shall be available to provide brief comments for the broadcast and other AC Media programming.

### 62.2 Penalty for profanity

In the event that a Team Member of a Competitor swears or undertakes any profane conduct that is captured on any live broadcast by AC Media's licensed broadcasters, AC Media will be entitled to seek reimbursement from that Competitor of up to one hundred per cent (100%) of any financial penalty imposed on AC Media by any of AC Media's licensed broadcaster(s) or other commercial partner. The amount shall be payable to AC Media and, if not timely paid, the Competitor shall forfeit the amount from its Performance Bond.

### 62.3 Media commitments and public appearances

- (a) Competitors will be required to provide Team Members to attend certain Event related media commitments and public appearances at each AC37 Event. Such commitments may include pre and post-race public appearances within the Venue, official post-race press conferences and interviews with media at the media mixed zone.
- (b) The precise media and public appearance requirements for each AC37 Event will be discussed by COR/D and published by ACE at the same time that the calendar of Special Events is issued under Article 50.3.
- (c) AC Media may require specific Team Members from each Competitor to attend such public and media commitments, including sailing personnel who will be on-board each competing yacht that day or other personnel requested by the host broadcaster.
- (d) Each Competitor will not make available in advance to the media any Team Members who will be attending a press conference arranged by AC Media on that day, unless approved by AC Media.

## 63. Official Documentary

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- (a) In order to broaden the reach and appeal of both the America's Cup and the sport of sailing, AC Media intends to produce a documentary programme and/or series and/or film(s) that will document the preparation and participation of each Competitor in the lead up to and during the AC37 Events (the "**Official Documentary**"). It is intended that the Official Documentary will provide audiences with behind the scenes access to each Competitor and allow the public to gain a better understanding of what goes into an America's Cup campaign.
- (b) In order to provide for the production and distribution of the Official Documentary, each Competitor agrees that AC Media and its production partners, licensees and other commercial partners may use still and moving images of the whole or any part or parts of any Event and any other images taken by or on behalf of AC Media, its authorised broadcaster(s) and other media as well as the name, logo and yacht branding of any Competitor to compile, produce, market, sell and distribute the Official Documentary without restriction, except that it is understood that the Official

Documentary shall be packaged and marketed as an AC37 and/or Event-specific product, either as an individual product or as a series.

- (c) In the event that AC Media proceeds with the Official Documentary, it will appoint one or more third party production partners to implement the production and distribution of the Official Documentary. Such third parties will remain editorially neutral viz a viz AC Media and each Competitor, and the relevant agreements with such third parties will include customary protections to maintain the confidential information of each Competitor.
- (d) AC Media shall in, consultation with COR/D, develop the terms and conditions under which its production partners shall be provided access to the Team Bases, Team Members and team equipment of each Competitor to enable AC Media, its production partners, licensees and other commercial partners to create and capture content that will be included in the Official Documentary. Such terms and conditions shall be contained within a Competitors Notice to be issued by COR/D by 30 September 2022 or such other date agreed by COR/D. It is also intended that content generated as part of the Joint Recon Programme may be included in the Official Documentary.
- (e) AC Media shall retain final editorial control over the Official Documentary. Prior to completing the final edit of the Official Documentary, AC Media shall consult with each Competitor as to the use of such footage filmed through access granted by that Competitor.
- (f) To protect the exclusivity of the Official Documentary, each Competitor agrees that it will not release or publish a similar 'behind the scenes' style documentary project until at least three (3) months following the last race of the Match, except with the prior written approval of AC Media.

## 64. **Electronic Games and Board Games**

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- (a) All Competitors acknowledge and agree, that AC Media and its authorised agents, licensees and other commercial partners, shall be entitled, without payment of fees to any Person including Competitors or any of their Team Members, sponsors, licensees and other commercial partners, to reproduce, publish or disseminate worldwide the names, logos, images, likenesses and voices of Competitors, their yachts and other vessels, their Team Members, sponsors, licensees and other commercial partners and/or burgee within audio and/or visual (still and/or moving) images in order to produce, market, sell and distribute any digital, electronic, fantasy and/or board games of the America's Cup without restriction, provided that all such electronic or board games shall be packaged and marketed as an AC37 and/or Event-specific product, either as an individual product or as a series.
- (b) Each Competitor agrees that it will not produce its own digital, electronic, fantasy and/or board game in connection with its involvement in AC37, except with the prior written approval of AC Media.
- (c) In the Event that AC Media decides to produce any electronic or board game under Article 64(a), AC Media may reasonably require that each Competitor provides specific Team Members to participate in activations and promotions relating to the game (subject to payment of associated reasonable expenses).

## 65. Digital Media – Websites, Social Media and Applications

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### 65.1 Intent of this Article

The intent of this Article 65 is to lay the framework for substantially growing the digital media audience of the Events and the Competitors for the benefit of:

- (a) AC37 and the Events, including by ensuring better content for both the Official AC Website, the Official AC Social Media Channels and the Official AC App (together the “**AC Digital Channels**”);
- (b) the Competitors, including by increasing exposure for their own team content and enabling them and their commercial partners to connect with fans through customised digital campaigns on their own Official Competitor Websites; and
- (c) future editions of the America’s Cup and the sport of sailing.

To achieve the intentions outlined in this Article 65.1, AC Media will act as the neutral custodian of the AC Digital Channels during AC37 in a similar manner to how the channels were operated during AC36.

### 65.2 Official America’s Cup Website

All Competitors acknowledge and agree that the sole and exclusive official website of AC37 shall be produced and hosted by or on behalf of AC Media under the domain [www.americascup.com](http://www.americascup.com) (the **Official AC Website**).

### 65.3 Official Competitor Websites

- (a) Within three (3) months following the close of the Entry Period (or as reasonably required by AC Media in respect of any Late Challenger), each Competitor and its Team Members shall use an official Competitor website (each, an “**Official Competitor Website**”) built and hosted by or on behalf of AC Media under the domain of the Official AC Website as their sole and exclusive digital presence.
- (b) For the purposes of Article 65.3(a), “sole and exclusive digital presence” means any internet website (including blogs and online stores) and/or application software and/or any other digital technology platform, other than any presence on third party branded and operated social media platforms (such as Facebook, Twitter, Instagram, Flickr, Pinterest, TikTok, Snapchat and YouTube).
- (c) Each Official Competitor Website will be operated as follows:
  - (i) **URL access:** Each Official Competitor Website may also be initially accessed via an automatic redirection from the Competitor’s own domain name, URL or proxy.
  - (ii) **Blogs:** Each Official Competitor Website may have a blog or blog pages set up as sub-site(s) of its official website such that each sub-site is also hosted by and linked as a sub-site of the Official AC Website.
  - (iii) **Merchandise store:** Each Official Competitor Website may have an online merchandise store set up as sub-site of its official website such that the sub-site is also hosted by and linked as a sub-site of the Official AC Website.
  - (iv) **Content updates:** Each Competitor is responsible for timely updating all content on its Official Competitor Website via the content management system

designated by AC Media, such that AC Media may elect to use and exploit (and reformat, where necessary) such content, including on the Official AC Website.

- (v) **Space on americascup.com:** AC Media shall timely provide each Competitor with as much space within the Official AC Website as the Competitor reasonably requires for its Official Competitor Website.
- (vi) **Branding and content:** Subject always to the terms of the Rules, each Competitor shall have exclusive control of both the branding and 'look and feel' of, and all content within, its Official Competitor Website within the Official AC Website.
- (vii) **Analytics:** AC Media shall share analytics and relevant visitor / user data for each Official Competitor Website with that (but not with any other) Competitor in each case.
- (viii) **Contribution to hosting and maintenance costs:** Each Competitor shall pay the website contribution fee to AC Media in accordance with Article 15.3(b).

#### 65.4 Official America's Cup Social Media Channels

- (a) All Competitors acknowledge and agree that the official social media channels for AC37 (the "**Official AC Social Media Channels**") shall be produced and hosted by or on behalf of AC Media on the following platforms: Facebook, YouTube, Instagram, Twitter, LinkedIn, TikTok and may include any other platforms not currently being utilised or not currently created.
- (b) AC Media may (but will not be required) at its sole discretion share, post, publish or otherwise distribute any story, photo, video, news item or other digital media content about a Competitor, their Team Members, sponsors or other commercial partners that have appeared on a Competitors social media channel or online in any form such as a blog, vlog or news bulletin. For the avoidance of doubt, this Article will not require AC Media to share or post all content produced by or on behalf of a Competitor.
- (c) AC Media will work with Competitors on a case by case basis to provide exposure for each Competitor's commercial partners on the Official AC Social Media Channels. Each Competitor acknowledges that AC Media will retain ultimate control as to what content is shared or posted and that whether a piece of content is shared or posted will depend on its relevance, authenticity and greater value to the America's Cup community and whether there is any conflict with any AC Media commercial partner.
- (d) Competitors agree to provide AC Media with a high level content and production rollout plan on a monthly basis to ensure that the social media content plan for AC37 is as full and robust as possible and to help with resources and production if required.

#### 65.5 Official America's Cup App

Each Competitor acknowledges and agrees that AC Media will have the right to produce and host the sole and exclusive official digital application of AC37 and the Events (the "**Official AC App**").

#### 65.6 Competitor produced content requirements

- (a) Within three (3) months following the close of the Entry Period (or as reasonably required by AC Media in respect of any Late Challenger), each Competitor will be required to produce a minimum amount of AC37 related content per month for its own digital channels. This requirement is for a minimum amount of content and is not meant to be onerous for each Competitor. The intention with these requirements is to

ensure that each Competitor's digital channels and the AC Digital Channels as a whole can continue to grow and engage fans in the lead up to AC37.

- (b) The minimum amount of content that each Competitor will be required to produce is as follows:
  - (i) a minimum of two (2) minutes of video per month, either as a single two (2) minute video or multiple shorter videos that add up to two minutes in aggregate; and
  - (ii) a minimum of one (1) written article per month (between roughly 500 – 1000 words in length.
- (c) The content above shall be produced in consultation with AC Media's Social Media and Digital Manager and may be shared on the AC Digital Channels in accordance with Article 65.
- (d) The focus of the content above should be in line with the major calendar/campaign moments at the point in time they are created, such as crew training/selection, boat launches, first sailing, event preparations and race day countdowns.

#### **65.7 Non-America's Cup content**

The terms of this Article 65 do not apply to content that is not related in any way to the America's Cup, such as content from or related to other, non-America's Cup events in which a Competitor and/or its Team Members may be participating in accordance with the Rules.

#### **65.8 AC Digital Channels post AC37**

Upon the date that is ninety (90) days following the final race of AC37, all rights and content related to the AC Digital Channels that are capable of being assigned by ACE at that time (including passwords, content and followers, subject to applicable law), shall be assigned by ACE to ACPI and shall subsequently form part of the property of the America's Cup to be held in trust for the benefit of all future trustees.

## **PART J: AMERICA'S CUP PROPERTIES INCORPORATED**

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### **66. America's Cup intellectual property**

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#### **66.1 Responsibility**

ACPI shall continue to have the sole responsibility for exploiting and managing the intellectual property owned by the America's Cup, as set out in more detail in this Part J. Such responsibilities shall include (without limitation):

- (a) holding and maintaining the intellectual property vested in the America's Cup;
- (b) exploiting and licensing out the America's Cup intellectual property; and
- (c) protecting and enforcing the America's Cup intellectual property on a worldwide basis.

#### **66.2 ACPI contribution**

As set out in Article 15.3(a), each Competitor shall pay the sum of US\$25,000 (twenty-five thousand United States Dollars) to ACPI as a non-refundable contribution towards ACPI's costs associated with the maintenance of ACPI and the creation and maintenance of America's Cup trademarks and other intellectual property held or to be held by ACPI. Such contribution does not create any rights in ACPI or constitute a licence or right to use any trademark or other intellectual property except as separately provided in Article 66.3.

#### **66.3 ACPI Licence Agreement**

Each Competitor shall execute a licence agreement with ACPI relating to the America's Cup trademarks in such form as ACPI may reasonably require. Any dispute as to the terms of that agreement shall be subject to resolution by the Arbitration Panel.

#### **66.4 Use of America's Cup trademarks**

No Competitor may use any America's Cup trademarks unless / until the Competitor has executed a licence agreement with ACPI authorising the use of America's Cup trademarks as set out in Article 66.3 above.

#### **66.5 Removal of America's Cup trademarks**

Competitors shall remove any America's Cup trademark or other intellectual property owned by ACPI that is affixed to its yacht or equipment prior to selling, leasing or otherwise parting with such yacht or equipment to any Person that is not a Competitor, or otherwise promptly following the end of AC37.

#### **66.6 Control of ACPI**

A Competitor winning the America's Cup in the Match shall take control of ACPI in accordance with the terms of the Pre-incorporation Agreement dated October 1, 1986 and the constitution of ACPI.

## PART K: GENERAL PROVISIONS

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### 67. Arbitration Panel

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#### 67.1 Constitution and chairman

An America's Cup Arbitration Panel ("**Arbitration Panel**") made up of three (3) members shall be established to adjudicate disputes under this Protocol.

The three members of the Arbitration Panel shall be appointed as follows:

- (a) The Defender and the Challenger of Record shall each nominate one member (and his or her deputy if at any time this is considered necessary due to the unavailability of the nominated member).
- (b) The third member, who shall be the Chairman of the Arbitration Panel, shall be appointed by the mutual agreement of COR/D, or failing such agreement, by the two members initially nominated under Article 67.1(a) above. If at any time it is considered necessary to appoint a deputy due to the unavailability of the Chairman, such appointment shall also be by the mutual agreement of COR/D or failing such agreement, by the two members initially nominated under Article 67.1(a) above.
- (c) When a nominated member or the Chairman is not available to sit, he or she will be replaced by his or her deputy.

#### 67.2 Criteria for selection

Criteria for selection of all members of the Arbitration Panel shall include:

- (a) they may be a resident or citizen of any country (including those participating in AC37) whether or not the country has a significant interest in the dispute or issue;
- (b) they shall possess knowledge of America's Cup history and the Deed of Gift;
- (c) they shall possess good general knowledge of yacht racing and yacht clubs; and
- (d) they shall possess a judicial temperament with good judgement and be known to be fair-minded.

#### 67.3 Jurisdiction and penalties

Subject always to the terms of Articles 47.2 and 67.5, the Arbitration Panel shall have the following powers:

- (a) to resolve all matters of interpretation of the Protocol and Rules (excluding the Racing Rules or the Class Rules) except where expressly excluded in the provisions of such documents and Rules and including, where necessary, the determination of the facts relevant to the matter of interpretation;
- (b) to resolve disputes (other than those concerning the Racing Rules or the Class Rules) between the Defender and the Challenger of Record;
- (c) to resolve disputes (other than those concerning the Racing Rules or the Class Rules) between the Defender and an individual Challenger when the Challenger of Record



expresses in writing to the Defender its agreement that the issue be resolved by the Arbitration Panel;

- (d) to resolve disputes (other than those concerning the Racing Rules or the Class Rules) between individual Challengers when one of those Challengers so requests, or between an individual Challenger and the Challenger of Record;
- (e) to resolve disputes between ACE and a Competitor;
- (f) to resolve any disagreement between the Defender and the Challenger of Record in respect to the Race Conditions under Article 34;
- (g) to determine the appropriate penalty under Reconnaissance;
- (h) to resolve disputes under an ACPI licence agreement;
- (i) to impose penalties in support of decisions made by ACE and/or the Regatta Director when it reasonably considers such penalties to be necessary to enforce the relevant Rules;
- (j) to resolve any other matters which it is given jurisdiction to determine by agreement of COR/D;
- (k) to impose penalties as considered necessary by the Arbitration Panel; and/or
- (l) to mediate at the request of the parties (or at its own instigation) any dispute it considers appropriate for mediation. Such mediation to be undertaken by a single member of the Arbitration Panel who will be chosen by the Arbitration Panel at its sole discretion. The member chosen to mediate shall thereafter not be precluded or excluded from further involvement in the dispute should the mediation be unsuccessful and therefore followed by a regular dispute.

#### **67.4 Penalties**

Subject always to the terms of Articles 47.2 and 67.5, the Arbitration Panel shall have the following powers:

- (a) to impose penalties in respect of such matter that the Arbitration Panel believes to be just and equitable having regard to the nature and manner and effect of the circumstances, including any one (1) or more of the following:
  - (i) censure and/or retraction;
  - (ii) fine, not to exceed US\$1,000,000 (one million United States Dollars) in any case unless otherwise prescribed in this Protocol;
  - (iii) order a partial or full forfeiture of a Challenger's Performance Bond;
  - (iv) order a loss of existing or future points, scores or races;
  - (v) award points or races to another Competitor;
  - (vi) disqualify a Competitor from any race, series, Event or Events;
  - (vii) order a reduction in the number of sails permitted to be used by a Competitor in any Event or Events;

- (viii) order the suspension or expulsion of any Team Member from AC37 or from any Event or Events; and/or
  - (ix) such other action as the Arbitration Panel may deem appropriate in the circumstances.
- (b) to fix or determine the fee payable in relation to any application made to the Arbitration Panel; and
- (c) to fix or determine the costs in respect of any application payable by an applicant or a party directed to be served with an application, including the imposing of costs as a penalty for frivolous or vexatious claims or imposing the costs to the losing party.

### **67.5 No jurisdiction**

Unless otherwise agreed by the parties to the dispute (on terms that the Arbitration Panel shall approve), the Arbitration Panel shall not have any jurisdiction to resolve disputes between:

- (a) RNZYS and TNZL;
- (b) RYS and ARL/INEOS Britannia
- (c) any other Competitor and its sailing team;
- (d) RNZYS and ACE;
- (e) ACE and any of its staff or other appointed representatives concerning their employment or other contractual relationship with ACE;
- (f) any Competitor and any of its Team Members; and/or
- (g) any of:
  - (i) on the one hand, any Competitor, ACE and/or any Regatta Official; and
  - (ii) on the other hand, any Person that is not bound by this Protocol, such as (but not limited to) any Host City, Venue Authority, sponsors, broadcasters, suppliers and/or other commercial partners.

### **67.6 Quorum and meetings**

The quorum for meetings of the Arbitration Panel shall be all three (3) members for all matters. Meetings of the Arbitration Panel may be held in person, by telephone or other audio/visual link-up or by email. Each Arbitration Panel member shall be entitled to one (1) vote. Decisions shall be made by a majority of votes.

### **67.7 Engagement**

The members of the Arbitration Panel shall be paid a retainer plus an agreed hourly rate for their services as approved by ACE and be reimbursed for their approved travel and out of pocket expenses. The costs so incurred shall be recovered on a user pays basis from the parties involved, as ordered by the Panel.

## 67.8 Replacement

- (a) The Defender and/or the Challenger of Record shall have the right at any time to replace their respective Arbitration Panel members (and/or their deputies, if any), in the event of death, illness, loss of mental faculties, resignation or any other reason which, in the view of the respective entity which appointed the particular member, makes them unable or unwilling to exercise their powers and/or functions under this Article.
- (b) COR/D or, failing mutual agreement between COR/D, the two members of the Arbitration Panel appointed by the Defender and the initial Challenger of Record, shall have the power to replace the third member of the Arbitration Panel (and/or their deputy, if any) mutually appointed by them at any time in the event of death, illness, loss of mental faculties, resignation, or for any other reason which, in the view of those two members who appointed that third member, makes that third member (and/or their deputy, if any) unable or unwilling to exercise their powers and/or functions under this Article.

## 67.9 Presence at Events

The Arbitration Panel shall not be required to be present at the Youth and Women's AC Regattas or the Preliminary Regattas, but they may be present at the Venue at times during the CSS and the Match in a manner to be agreed with COR/D.

## 67.10 Application time limits

An application to the Arbitration Panel shall be filed within ten (10) days from when the applicant was or could reasonably have been aware of the circumstances justifying the application, unless:

- (a) a shorter time limit is specified in the applicable Rules; or
- (b) the Arbitration Panel extends this time limit when it is satisfied that there is good reason to do so, taking into account the desire to expedite disputes and to avoid parties from storing up potential applications.

## 67.11 Application fee

Application fees shall be as specified in the Rules of Procedure issued by the Arbitration Panel under Article 67.14.

## 67.12 Confidentiality

- (a) As a matter of principle, the proceedings before the Arbitration Panel shall be transparent with all the decisions of the Arbitration Panel to be published. The Arbitration Panel may however decide otherwise in its discretion if exceptional circumstances so justify.
- (b) Despite Article 67.12(a), all proceedings before the Arbitration Panel shall be confidential from the time of the filing of an application until the time of the publication of a decision by the Arbitration Panel and Competitors shall not disclose or disseminate information in relation to the proceedings beyond that contained in the decision of the Arbitration Panel.
- (c) The Arbitration Panel may issue or withdraw an order for confidentiality as it considers just and equitable. The Arbitration Panel will only grant such an order in exceptional circumstances. If, following an application for confidentiality, the Arbitration Panel decides that it will not grant such an order, the Arbitration Panel will advise the

relevant Party, who may elect to withdraw any evidence or submission (in such a case, the withdrawal shall occur within not more than 48 hours, unless the Arbitration Panel decides otherwise) or to proceed without confidentiality.

### 67.13 Award of costs

The Arbitration Panel may award costs to be paid by one or more parties as the Arbitration Panel considers just and equitable. These may include the costs and expenses of the Arbitration Panel and/or the costs and expenses of any other parties.

### 67.14 Rules of procedure and Arbitration Panel Fast Track Process

- (a) Promptly following its appointment (and prior to taking jurisdiction or authority over any matter), the Arbitration Panel, in consultation with COR/D, shall establish and publish its rules of procedure consistent with the rules of natural justice and due process (and consistent with the Rules) ("**Rules of Procedure**") which shall apply to all proceedings of the Arbitration Panel.
- (b) As part of its Rules of Procedure, the Arbitration Panel shall establish the Arbitration Panel Fast Track Process based on the following principles:
  - (i) the first stage of any Arbitration Panel proceedings shall be the Arbitration Panel Fast Track Process;
  - (ii) when submitting any matter to the Arbitration Panel, a party ("**the Applicant**") shall:
    - (A) submit the matter by way of a dedicated email address established by the Arbitration Panel for that purpose;
    - (B) include a reasonably detailed summary of the basis for its submission and any requested remedy or ruling; and
    - (C) provide electronic copies of its submission to ACE and all other Competitors (in each case to email addresses nominated by the Competitors and ACE for such purpose);
  - (iii) ACE and any other Competitors may submit observations regarding the matter to the Arbitration Panel (using the email address referred to in Article 67.14(b)(ii)(A) above) within three (3) days of receiving the Applicant's submissions;
  - (iv) the Arbitration Panel shall use all reasonable endeavours to reach a decision on the matter, based on submissions received, within five (5) working days of the end of the period referred to in 67.14(b)(iii) above; and
  - (v) such decision is final and binding in accordance with Article 67.18 and will be notified to the Competitors and ACE promptly by way of their nominated email addresses.
- (c) If the Arbitration Panel reasonably considers that:
  - (i) additional information, further submissions, expert advice or oral evidence is required in order to resolve the Applicant's matter, and/or
  - (ii) that such matter is not suitable for resolution by the Arbitration Panel Fast Track Process;

it may give notice (via the email addresses referred to in Article 67.14(b)(ii)(C)) to ACE and the Competitors that such matter will proceed to a full Arbitration Panel meeting in accordance with the procedure referred to in Article 67.14(a).

#### **67.15 Counsel and experts**

The Arbitration Panel may, other than as part of Arbitration Panel Fast Track Process, seek expert assistance, engage independent counsel and/or technical experts to assist the Arbitration Panel and to provide legal and/or technical advice from time to time. Costs of engagement shall be agreed with the proposed counsel and approved by ACE and the Arbitration Panel.

#### **67.16 Previous decisions**

The Arbitration Panel shall not be bound by decisions from any previous America's Cup but may take into account such decisions when making any determination.

#### **67.17 Purpose and intent**

In making its decisions, the Arbitration Panel shall always give effect to the purpose and intent of this Protocol as set out in Recital G of the Introduction.

#### **67.18 Decisions final and binding**

All decisions and/or awards of the Arbitration Panel taken in good faith within their proper authority and/or jurisdiction as prescribed in and/or contemplated by the Rules shall be final and binding on all parties and shall not be subject to any review or appeal. Neither ACE nor any Regatta Official shall have any jurisdiction over any decision, ruling, interpretation and/or other act of the Arbitration Panel taken in good faith within the Arbitration Panel's proper authority and/or jurisdiction as prescribed in and/or contemplated by the Rules.

#### **67.19 Language**

All proceedings of the Arbitration Panel shall be in English.

#### **67.20 Arbitration agreement**

- (a) The Arbitration Panel shall act as an arbitration body.
- (b) The legal seat of the Arbitration Panel is Auckland, New Zealand. However, the Arbitration Panel may carry out actions that fall within its jurisdiction at any Venue, or other places that it deems appropriate, or by correspondence, e-mail or other means of communication at a distance, including but not limited to ECAF (Arbitration Panel Electronic Case Facility) or other similar electronic device.
- (c) Proceedings of the Arbitration Panel shall be governed by the laws governing arbitration proceedings at the seat of the Arbitration Panel, the Rules of Procedure to be drafted under Article 67.14 and by the New York Convention of 1958 on the Recognition and Enforcement of Arbitral Awards.
- (d) When permitted by the laws governing arbitration proceedings at the seat of the Arbitration Panel, the Rules of Procedure shall prevail. The Arbitration Panel shall act fairly and impartially and shall provide equal treatment and a fair opportunity to be heard given the circumstances in which the decision must be made.

## 67.21 Resort to courts prohibited

A Competitor shall not resort to any court or other tribunal where the Arbitration Panel has jurisdiction, except that nothing in this Article 67.21 or otherwise in this Protocol shall in any way limit the right of any Competitor to initiate proceedings or suit in relation to:

- (a) any proceedings against a third party that is not a Competitor, ACPI, and/or ACE (or any of ACE's staff or appointed representatives, including any Regatta Official);
- (b) any loss or damage to physical property or person;
- (c) any person who is alleged to be in breach of any confidentiality undertaking or restrictive covenant entered into with any Competitor; or
- (d) the enforcement of contractual or property or other rights not based on or derived from any of the Rules.

A Competitor that breaches this Article 67.21 shall cease to be eligible for the whole or any part or parts of AC37 and for any entitlements under the Rules.

## 67.22 Consent to exclusive jurisdiction

If resort to a court of competent jurisdiction is permitted to resolve any dispute and/or issue arising out of this Protocol, each Competitor, including each of its Team Members, submits and each of the Indemnified Parties submits any such proceedings to the exclusive jurisdiction of any New Zealand court and agrees to any such proceedings being brought there. The laws of New Zealand, without giving effect to its principles of conflicts of law, shall be applied to resolve any such proceedings.

## 68. Protocol Amendments

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- (a) This Protocol may be amended at any time with the agreement of both the Defender and the Challenger of Record, including where the Protocol is required to be amended in order to meet the requirements of any authority having jurisdiction over the Deed of Gift. As an exception to this provision, Article 22.1(c) and this Article 68(a) shall not be amended.
- (b) If for any reason, including force majeure, the CSS or the Match is postponed or cancelled under Article 11, the Defender and Challenger of Record will agree to amend the Protocol to provide alternative arrangements for such cancelled or postponed event(s). If the Defender and Challenger of Record are unable to agree upon such alternative arrangements, the matter shall be referred to the Arbitration Panel for resolution.
- (c) If this Protocol is changed pursuant to Article 68(a) after a challenge for AC37 has been received by the Defender but before the Defender has accepted or rejected such challenge, the Prospective Challenger may withdraw its challenge by written notice to the Defender within two (2) calendar days of being notified of the Protocol change, in which case all monies paid by the Prospective Challenger with its challenge shall be refunded in full. If the Prospective Challenger does not withdraw its challenge within the two (2) calendar days, its challenge for AC37 shall be considered to have been made under the revised Protocol.

## 69. **Compliance with Applicable Laws and Regulations**

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Competitors shall comply with all applicable laws and legally binding regulations of any city, state, national or other governmental authority having jurisdiction over the whole or any relevant part of AC37.

## 70. **Costs and Expenses to compete**

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Unless otherwise provided under the Rules, each Competitor's costs and expenses for competing in the Event shall be its sole and exclusive responsibility.

## 71. **Liability and Indemnity**

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### 71.1 **Structural testing**

For and on behalf of itself and its Team Members, a Competitor understands, acknowledges and agrees that:

- (a) it is solely and wholly responsible for assessing the structural integrity and safety of its AC75 Yacht and any of its test yachts other than its AC40 Yacht (and their components), whether or not in compliance with its applicable Class Rule or the AC Technical Regulations in any case;
- (b) following delivery of its AC40 Yacht, it is solely and wholly responsible for assessing the maintenance requirements of its AC40 Yacht (and its components) and for determining whether it is in a proper and safe condition to sail; and
- (c) none of RNZYS, TNZL, RYS, ARL, INEOS Britannia, ACE, ACPI, any Regatta Official and/or the Venue Authorities (the "**Indemnified Parties**") warrants or guarantees the safety in general, or the structural integrity in particular, of the whole or any part of any of the Competitor's yachts (and their components), including any AC75 Yacht and/or AC40 Yacht, whether or not the yacht complies with its applicable Class Rule or the AC Technical Regulations in any case.

### 71.2 **Competitor responsibility for own safety**

A Competitor, for itself and on behalf of its Team Members, expressly understands and agrees that safety is of paramount importance while testing, training, sailing and/or racing any of a Competitor's boats or yachts (including, but not limited to, any AC75 Yacht and/or AC40 Yacht).

### 71.3 **Participation at own risk**

Consistent with the principle articulated at Articles 71.1 and 71.2, a Competitor has sole discretion to determine whether or not it is safe to test, train, sail, and/or race on any given day. Therefore, each Competitor, for itself and on behalf of its Team Members, also expressly understands and agrees that in taking part in the whole or any part of AC37 it does so at its own risk and responsibility and further agrees to the detailed exculpation and indemnity provisions in Article 71.4.

### 71.4 **Exculpation and indemnity**

- (a) To the fullest extent permitted by law, a Competitor hereby waives and releases any and all Claims against each and all of the Indemnified Parties, and agrees to protect,

indemnify and hold harmless the Indemnified Parties from and against any and all Claims, in each case arising directly or indirectly out of or in any way connected with:

- (i) the acceptance of the Competitor's entry to participate in the whole or any part of AC37;
  - (ii) the Competitor's participation in the whole or any part of AC37, which includes attendance and participation in Events and/or designing, constructing, testing, sailing and/or racing any yacht (including an AC75 Yacht and/or AC40 Yacht), whether or not pursuant to the terms of the Rules in each case; and/or
  - (iii) any failure by the Competitor and/or any of its Team Members in the observance or performance of any of the terms, covenants or conditions of the Rules.
- (b) The terms of this Article 71.4 shall be enforceable regardless of the joint or concurrent, active or passive, negligence of any of the Indemnified Parties, regardless of whether liability without fault is imposed or sought to be imposed on any of the Indemnified Parties, and except to the extent that the whole or any part of it is void or otherwise unenforceable under applicable law in effect or, or validly retroactive to, the date of this Protocol. The Competitor's indemnification obligation hereunder shall begin from the first notice that any Claim is or may be made.
- (c) The terms of these exculpation and indemnity provisions in this Article 71.4 shall not apply to any proceedings relating to the Rules and decisions that fall under the Jurisdiction of the Arbitration Panel and detailed above in Article 67.

#### **71.5 Defence**

A Competitor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from Claims that actually or potentially fall within the scope of the provisions of Article 71.4, even if the allegations are or may be groundless, false or fraudulent. The Competitor's obligation to defend shall arise at the time any Claim is tendered to the Competitor by any of the Indemnified Parties and shall continue at all times thereafter.

#### **71.6 No liability for postponement / cancellation**

None of the Indemnified Parties shall be liable for any losses, damages, injury, loss of profits, loss of prospective profits, consequential damages, penalties or inconvenience, whether direct or indirect, however arising, as a result of the postponement or cancellation of the whole or any part of AC37 due to any event, occurrence or circumstances whatsoever, including acts of God, terrorism, war, government intervention or regulation, public health (including for the avoidance of doubt the COVID-19 pandemic), environmental conditions, strikes, lock-outs, other industrial acts, lack of funding or support, or any other force majeure circumstance.

#### **71.7 Legal advice**

By signing this Protocol in the case of the Defender and the Challenger of Record, or by submitting a Notice of Challenge in the case of any other Challenger, each Competitor specifically acknowledges and confirms that it was represented by counsel who explained the consequences of the terms of this Article 71, or that Competitor had ample opportunity to consult with counsel, but declined to do so.

#### **71.8 Survival**

The terms of this Article 71 shall survive the expiration or earlier termination of this Protocol.



## 71.9 Enforcement

The Arbitration Panel shall not have jurisdiction to interpret and/or enforce the terms of this Article 71. The enforcement of any of the provisions of, and the resolution of any disputes regarding, this Article 71 shall be determined by a court of competent jurisdiction in accordance with Article 67.22.

## 72. Applicability

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This Protocol applies throughout the world from the time it is published until the completion of the last race of the Match provided that the sailing restrictions set out in Article 24.2 shall be retrospectively applied as from the 17 March 2021.

## 73. Insurance Requirements

---

### 73.1 Insurances required of Competitors

Subject to the remainder of this Article 73, each Competitor shall, at its expense, obtain and maintain in full force and effect from a date to be agreed by COR/D through the remainder of its participation in the whole or any part of AC37 the following minimum required levels of insurance coverage:

- (a) Protection and Indemnity Insurance, with a primary limit of not less than US\$1,000,000 (one million United States Dollars) per occurrence, covering property damage, personal injury and excess collision/towers liability coverage caused by or occurring on any and all of its yachts/vessels (including operated, owned, chartered and borrowed/loaned). Such protection and indemnity coverage shall also provide first party liability of transportation, wages, maintenance and cure for all Team Members regardless of nationality or country of registration of the yachts/vessels;
- (b) Marine Comprehensive General Liability Insurance, with a primary limit of not less than US\$1,000,000 (one million United States Dollars) per occurrence, including coverage for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts. This policy must further cover non-owned vessel liability, charter legal liability, and wharfingers legal liability (these particular coverages may also be obtained through a mono-line insurance product with the same liability limits);
- (c) Business Automobile Liability Insurance, with limits not less than US\$1,000,000 (one million United States Dollars) per occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable;
- (d) Bumpershoot Excess Liability Coverage, of US\$10,000,000 (ten million United States Dollars) excess to each of the:
  - (i) Protection and Indemnity coverage required pursuant to Article 73.1(a);
  - (ii) Marine Comprehensive General Liability required pursuant to Article 73.1(b); and
  - (iii) Business Automobile Liability coverage required pursuant to Article 73.1(c);

- (e) Pollution Liability Insurance, either by endorsement to the appropriate insurances listed above in this Article 73.1, or by separate insurance, in the amount of not less than US\$5,000,000 (five million United States Dollars), as provided for under any other state law or municipal law that may be applicable at each Venue;
- (f) Medical, personal accident, death or dismemberment coverage, including emergency medical treatment, for all of its Team Members in amounts and of a type appropriate for the country in which the particular Team Member is located from time to time whilst working for the Competitor; and
- (g) any other insurance coverage, that may be required by applicable laws in the jurisdiction in which any Event takes place.

ACE may by written notice to Competitors alter these requirements to meet the applicable laws and regulations in the country of each Venue where an Event is being conducted.

### **73.2 Claims-made policies**

Should any of the insurances required pursuant to Article 73.1 be provided under a claims-made form, the Competitor shall maintain such coverage continuously throughout AC37 and, without lapse, for three (3) years beyond the end of the last Event, to the effect that, should occurrences during the term of AC37 give rise to claims made after the end of AC37, such claims shall be covered by such claims-made policies.

### **73.3 Annual aggregate limit**

Should any of the insurances required pursuant to Article 73.1 be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defence costs be included in such aggregate limit, such annual aggregate limit shall be not less than double the applicable occurrence limits specified in Article 73.1.

### **73.4 Additional insureds**

Each of the liability policies required pursuant to Article 73.1 shall include a waiver of subrogation in favour of, and shall be endorsed to name as additional insureds, each of RNZYS, TNZL, RYS, ARL, ACE, any Regatta Official, and/or the Venue Authorities and/or their respective directors, officers, employees, elected and appointed officials, representatives, agents advisors and/or contractors in each case (as applicable). These additional insured and waiver of subrogation requirements may be met by a blanket endorsement or other endorsement(s) at least as broad as ISO 2010 combined with ISO 2037, providing coverage to the additional insureds for both ongoing and completed operations.

### **73.5 Primary and non-contributory**

All insurance policies required pursuant to Article 73.1 shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insureds with respect to claims covered under the policy and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

### **73.6 Insurance rating**

All insurance policies required pursuant to Article 73.1 shall be issued by an insurance company or companies, each with a general policy rating of not less than A- and a financial class of VIII or better, as determined by the latest edition of the Best's Insurance Guide published by A.M. Best Company Inc. or its equivalent.

**73.7 Proof of insurance**

Upon request by ACE, each Competitor shall promptly provide reasonably acceptable evidence that policies complying with the requirements of this Article 73 have been issued or renewed and are in force, with payment in full of all premiums.

**73.8 Other**


Neither RNZYS, TNZL, RYS, ARL, INEOS Britannia nor ACE shall have any obligation or liability to provide or maintain any insurance coverage (including health care or workers' compensation coverage) for any Competitor or its Team Members.

## Execution

**Executed** as an agreement.

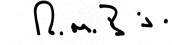
Dated this 15th day of November 2021

### THE ROYAL NEW ZEALAND YACHT SQUADRON INCORPORATED

DocuSigned by:  
  
5991C64BA0CB4B9...

by Aaron Young, Commodore

### ROYAL YACHT SQUADRON LIMITED

DocuSigned by:  
  
559C46785AD642E

by Robert M. Bicket, Chairman

## Schedule 1: Definitions

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In the interpretation of this Protocol, defined terms used herein shall have the following meanings for all purposes:

**AC36** means the 36th America's Cup;

**AC37** means the 37th America's Cup;

**AC37 Events** means the regattas that will determine the next holder of the America's Cup, being the Preliminary Regattas, the CSS and the Match;

**AC38** means the 38th America's Cup;

**AC40 Class Rule** means the class rule for the AC40 Yachts to be used in the Initial Preliminary Regattas and the Youth and Women's AC Regattas, including all amendments to, interpretations of and rulings regarding such class rule and the relevant sections of the AC Technical Regulations;

**AC40 Yacht** means the one-design yachts that will be supplied by ACE (or its nominated manufacturer) under Article 22.2 and that will compete in the Initial Preliminary Regattas and the Youth and Women's AC Regattas;

**AC75 Class Rule** means the version of the class rule for the AC75 Yachts published by COR/D in accordance with Article 22.1(a), to be used in the Final Preliminary Regatta, the CSS, the Match and/or in any other regattas sailed in AC75 Yachts (if any), including all amendments to, interpretations of and rulings regarding such class rule and the relevant sections of the AC Technical Regulations;

**AC75 Yacht** means a yacht that complies with or could comply with the AC75 Class Rule, and shall include for the avoidance of doubt any Version 1 AC75 Yacht;

**AC Media** means the division of ACE consisting of contractors appointed by ACE to be responsible for the delivery of the broadcast and media production (including the race management system), accreditation, social media and other media related activities for AC37, and having the responsibility to deal with each Competitor in an independent and confidential manner vis a vis all other Competitors and ACE itself;

**AC Technical Regulations** means the technical regulations agreed and published by COR/D under Article 22.3.

**ACE** means AC37 Event Limited being the entity incorporated pursuant to Article 3.1 and includes any subsidiary or entity nominated by ACE to perform ACE's obligations under this Protocol;

**ACE Account** means the bank account administered on behalf of ACE to fund the event organisation and management operations of ACE under this Protocol;

**ACPI** means America's Cup Properties Incorporated, a company incorporated in the State of New York, United States of America, the holder of America's Cup trade mark registrations and the licensor of those marks;

**Additional Challenge** means any challenge for AC37 submitted by any yacht club during or after the Entry Period;

**Additional Challenger** means any a yacht club that submits an Additional Challenge;

**Additional Entry Fees** has the meaning given to that term in Article 15.3;

**Advertising** means the display of, and/or reference to, a name, design, logo, symbol, slogan, description and/or depiction (or a variation or distortion thereof in any case), or any other feature, in each case that promotes, endorses or otherwise identifies a company, organisation, product, service, brand or idea, except that the following do not constitute **Advertising** for the purposes of this definition:

- (a) the name and/or national flag of the country of the yacht club that the Competitor represents;
- (b) the name and/or burgee of the yacht club that the Competitor represents;
- (c) the number of the yacht;
- (d) the name of the skipper of the yacht; and/or
- (e) the name and/or logo of a Competitor, provided such logo is the sole and exclusive property of the Competitor or a closely related person or entity and does not incorporate or closely resemble another trade mark that is used commercially other than a mark licensed for use by that Competitor by ACPI;

**Arbitration Panel** means the panel appointed pursuant to Article 67.1, as further described in Article 67;

**Arbitration Panel Fast Track Process** means the fast track process referred to in Article 67.14;

**Arbitrator** means a member of the Arbitration Panel;

**ARL** means Athena Racing Limited, competing as INEOS Britannia, being the sailing team that represents RYS in AC37;

**Brand Manual** has the meaning given to that term in Article 49.2;

**Challenge Representative** means the person nominated in accordance with Article 14.3;

**Challenger** means a yacht club whose challenge for AC37 has been accepted by the Defender, and the sailing team that represents such yacht club in AC37. For the avoidance of doubt, **Challenger** includes the Challenger of Record;

**Challenger of Record** means RYS and INEOS Britannia, the sailing team that represents RYS in AC37;

**Claims** means any and all liabilities, losses, injuries, losses, costs, claims, proceedings, judgments, settlements, damages, liens, fines, penalties, expenses, lawyer's fees, consultant's fees, court costs and investigation and remediation costs whatsoever, including direct and vicarious liability of any kind;

**Class Rules** means the AC75 Class Rule, the AC40 Class Rule and the AC Technical Regulations;

**Competitor** means the Defender and/or a Challenger, as the context requires;

**Competitor Forum** means a forum of Competitors that may meet from time to time in accordance with Article 4;

**Constructed in the Country Certificate** has the meaning given to that term in Article 26(a)(i);

**COR/D** means the Challenger of Record and the Defender when acting together;

**CSS** means the America's Cup Challenger Selection Series, being the series of races to determine the Challenger that will compete against the Defender in the Match;

**CSS Conditions** means the conditions governing the races of the CSS, as referred to in Article 34.2;

**CSS Racing Period:** means the period allowed for completion of the CSS as referred to in Article 7.6;

**Deed of Gift** means the deed dated October 24, 1887 between George L. Schuyler and the New York Yacht Club regarding a silver cup won by the schooner yacht 'America' at Cowes, England on August 22, 1851;

**Deed of Participation** means the deed referred to in Article 23.2 which shall be signed by each Competitor and submitted to the Defender;

**Defender** means RNZYS and TNZL;

**Emerging Nation** means a country which:

- (a) has never had a yacht club be the holder of the America's Cup Trophy;
- (b) has not submitted one or more challenges for the America's Cup since the final race of the 30<sup>th</sup> America's Cup Match; or

is otherwise considered by COR/D to be an Emerging Nation for the purpose of Article 30.3;

**Entry Fees** means the Initial Entry Fees, the Additional Entry Fees and the Preliminary Regatta Fees;

**Entry Period** has the meaning given to it in Article 13.1;

**Events** means all of the regattas that form part of AC37, being the AC37 Events, the Youth and Women's AC Regattas and all other regattas held by or on behalf of ACE as part of AC37;

**Final Preliminary Regatta** means the Preliminary Regatta that shall be held at the Match Venue prior to the CSS;

**First Instalment** has the meaning given to it in Article 15.1(a);

**Flag Area** means the area or areas adjacent to the course as prescribed by ACE and managed by the Regatta Director for the exclusive use by vessels with accreditation flags;

**Host City** means the city hosting any Event or Events as announced by ACE in each case;

**HSV** has the meaning given to it in Article 31(b);

**Hull** shall have the meaning ascribed in the AC75 Class Rule;

**Indemnified Parties** means RNZYS, TNZL, RYS, ARL, INEOS Britannia, ACE, ACPI, any Regatta Official and/or the Venue Authorities and/ or their respective directors, officers, employees and/or contractors in each case (as applicable);

**Initial Entry Fees** has the meaning given to that term in Article 15.1;

**Initial Preliminary Regattas** means the first two Preliminary Regattas that may be held during AC37 that will be contested in AC40 Yachts;

**Joint Recon Programme** has the meaning given to that term in Article 41.1;

**Jury** means a World Sailing International Jury that has been appointed under Article 42.2(c), as further described in Article 45;

**Late Challenger** means a yacht club which submits an Additional Challenge after the Entry Period and **Late Challenge** shall refer to all such late Additional Challenges;

**LEQ12 yacht** has the meaning given to it in the AC Technical Regulations;

**Limitations** has the meaning given to that term in Article 24.5(a);

**LOA** means the length of the vessel overall, measured parallel to the waterline, including all fittings that will be used when sailing in the Events such as rudder struts and bowsprits and with the rudder at zero (0) degrees yaw angle;

**Match** means the series of races for the 37th America's Cup between the Defender and the qualifying Challenger resulting from the CSS;

**Match Conditions** means the conditions governing the races of the Match as referred to in Article 34.1;

**Match Racing Period:** means the period allowed for completion of the Match as referred to in Article 8.1;

**Match Venue** means the Venue at which the Match will take place;

**Measurement Committee** means the committee appointed pursuant to Article 42.2(a), as further described in Article 44;

**Media Organisation** means an organisation whose business, in whole or in part, is the dissemination of information to the public (or to any section of the public) in any form by any means;

**New Competitor** means a Competitor which has its status as such approved by ACE in consultation with COR/D. In determining whether to give such approval, ACE will consider the extent to which the yacht club and/or its representative team and/or any of its key personnel (sailors or otherwise) participated in any capacity with a team in AC36;

**Notice of Challenge** means a Notice of Challenge submitted in accordance with Article 14 by Additional Challengers and Late Challengers in the form set out in Schedule 2;

**NZT** means New Zealand Time;

**Official AC Website** has the meaning given to it Article 65.2;

**Official Competitor Website** has the meaning given to it in Article 65.3;

**Official Noticeboard** means the official noticeboard established as a separate section on the Official AC Website;

**Official Practice** means practice racing designated under Article 24.2(h) which is conducted on a course at a Venue under the supervision of the Regatta Director immediately prior to an AC37 Event or one of its stages;

**Official Training** means practice racing (but not testing) designated under Article 24.2(h) which is conducted by the teams laying their own marks on courses identical in configuration to official AC37 Event race courses;

**Performance Bond** means the performance bond to be provided and maintained by each Competitor pursuant to Article 15.3(c) and Article 17;



**Person** means any natural person, corporation (including any business trust), limited liability entity, partnership, joint venture or any other entity or association, or governmental or other political subdivision or agency;

**Preliminary Regattas** means the America's Cup Preliminary Regattas, being the series of preliminary regattas to be held as part of AC37 as referred to and further described in Article 6;

**Preliminary Regatta Conditions** means the conditions governing the races of the Preliminary Regattas as referred to in Article 34.3;

**Preliminary Regatta Fees** has the meaning given to that term in Article 16;

**Preliminary Regatta Racing Period** means the period scheduled for completion of each Preliminary Regatta as published by ACE under Article 6(b);

**Prospective Challenger** has the meaning given to that term in Article 30.3(a);

**Protocol** means this Protocol Governing the 37th America's Cup and all attachments, schedules and appendices hereto, including as the same may be amended from time to time in accordance with its terms;

**Race Conditions** means the Match Conditions, the CSS Conditions and the Preliminary Regatta Conditions;

**Racing Area** means the area within which courses will be set for any Event or Events as determined by ACE;

**Racing Rules** means the Racing Rules of Sailing America's Cup Edition to be used for AC37, as agreed and adopted by COR/D in consultation with World Sailing to be administered and enforced by the Umpires and the Jury, as developed and published pursuant to Article 33.1;

**Regatta Director** means the person appointed pursuant to Article 42.1, as further described in Article 0;

**Regatta Officials** means:

- (a) the Regatta Director;
- (b) the Measurement Committee;
- (c) the Rules Committee;
- (d) the Umpires and Jury;
- (e) the Arbitration Panel; and
- (f) any other regatta officials and/ or other staff appointed pursuant to Article 42.2(e);

**Retrospective Shared Costs** has the meaning given to that term in Article 19(d);

**RNZYS** means the Royal New Zealand Yacht Squadron Incorporated;

**Rules** means those rules governing AC37 listed in Article 33.1;

**Rules Committee** means the committee appointed pursuant to Article 42.2(b), as further described in Article 44;

**Rules of Procedure** has the meaning given to it in Article 67.14(a);

**RYS** means Royal Yacht Squadron Limited;

**Sailing Day** means a day on which a Competitor's AC75 Yacht is launched and sailed or towed.

**Sailing Instructions** means those instructions issued by the Regatta Director in accordance with Article 35;

**Second Instalment** has the meaning given to it in Article 15.1(b);

**Shared Costs** has the meaning given to that term in Article 19(a);

**Special Event** means any event described or contemplated in Article 50.1;

**Surrogate Yacht** means:

- (a) any yacht which exceeds 12 metres LOA that is capable of producing design or performance information for use either directly or indirectly in the design, construction or sailing of an AC75 Yacht; or
- (b) any foiling monohull design, or derivative of a design, which is either created with an intention of establishing a class or circuit for the design, or is promoted as such, the first example of which has been or will be launched after 17 March 2021,

but excluding:

- (c) AC40 Yachts acquired by a Competitor under Article 22.2 (including any modifications to such AC40 Yachts as permitted by AC Technical Regulations); and
- (d) yachts of classes existing as at 17 March 2021 (such as TP 52s), provided they are used only for participation in and preparation for their in-class racing.

**Team Base** means facilities in a Venue occupied by a Competitor during an Event, as further described in Article 51.1;

**Team Members** means, in respect of any Competitor, all of its sailors, senior management and other staff who are team members from time to time;

**TNZL** means Team New Zealand Limited, the sailing team that represents RNZYS in AC37;

**Umpires** means the umpires appointed pursuant to Article 42.2(c), as further described in Article 45;

**Venue** means the venue for any Event in the applicable Host City, comprising the Team Bases, public areas, all berthage areas, water space, airspace, Racing Areas and all other areas:

- (a) controlled by or on behalf of ACE pursuant to its arrangements with the Venue Authorities for the Event; and/or
- (b) designated as part of the venue for the Event pursuant to ACE's arrangements with the Venue Authorities for the Event (whether or not controlled by or on behalf of ACE);

**Venue Authorities** means the Host Cities and other Persons with which ACE contracts for the availability and use of the Venues for the Events;

**Version 1 AC75 Yacht** means an AC75 Yacht that was constructed and launched prior to 17 March 2021 for the purposes of AC36;

**Week** means a period of seven (7) calendar days starting on a Monday and ending on the following Sunday.

**Youth and Women's AC Agreement** means the agreement referred to in Article 9.1(c) setting out the conditions under which the Youth and Women's AC Regattas shall be held and which shall be signed by all Competitors as a condition of eligibility to compete in AC37 Events in accordance with Article 9.1(e) and by any third party wishing to enter the Youth and Women's AC Regattas under Article 9.1(d).

**Youth and Women's AC Regattas** means the series of races referred to in Article 9 to be arranged in accordance with the terms of the Youth and Women's AC Agreement.

## Schedule 2: Notice of Challenge

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### Challenger Form per Article 14.1

**TO: The Royal New Zealand Yacht Squadron**  
181 Westhaven Drive  
Westhaven Marina  
Auckland 1011  
New Zealand

**Attention: The Commodore**

**By hard copy, and email to:** [russell.green@emiratesteamnz.com](mailto:russell.green@emiratesteamnz.com), with a copy to [ayoung@rmzys.org.nz](mailto:ayoung@rmzys.org.nz)

1. I, [insert Full Name] am the [Commodore or state office with authority] of the [insert name of yacht club] of [insert country] (the **Challenger**) and I am duly authorised as a representative of such yacht club to deliver this Notice of Challenge to you for and on behalf of the Challenger.
2. The Challenger by this Notice hereby challenges for the 37th America's Cup (including its constituent events) in accordance with the Protocol Governing the 37th America's Cup dated 15 November 2021 (the **Protocol**). The Challenger hereby agrees to be bound by and undertakes to comply with, and hereby agrees to procure that all of its Team Members (as such term is defined in the Protocol) shall comply with, the terms of the Protocol and all other rules referred to therein.
3. The Challenger is a qualified yacht club under the terms of the Deed of Gift of the America's Cup dated 24 October 1887 to challenge for the 37th America's Cup.
4. Attached to this Notice of Challenge is:
  - (a) a copy of the Challenger's certificate of incorporation, patent or license or other document evidencing the incorporation, patent or license of the Challenger.
  - (b) details of the Challenger's annual regatta on the sea or arm of the sea demonstrating the Challenger meets the obligations in the Deed of Gift.
  - (c) a certificate duly issued by the authorised representative of the yacht club in which it is affirmed that the yacht club:
    - (i) has been in existence for a minimum of three years;
    - (ii) maintains a membership of at least 200 members;
    - (iii) is financially supported by a majority of its membership on a pro-rata basis;
    - (iv) operates as a yacht club and has objectives consistent with the furtherance of yachting activities; and
    - (v) is a member of the national sailing authority of its country.
  - (d) a certificate by the national sailing authority of the country of the yacht club affirming that the yacht club is a member of such national sailing authority.
5. On behalf of the Challenger, I hereby declare that the Challenger:
  - (a) accepts that it will be bound by the terms of the Deed of Gift, the Protocol (including in particular, but without limitation, the express terms of Articles 48.4 (Event title sponsor

conflicts), 71 (Liability and Indemnity) and 73 (Insurance Requirements) thereof) and all other rules referred to in the Protocol;

- (b) accepts that it will be bound by the terms of the Deed of Participation;
- (c) for and on behalf of its Team Members (as such term is defined in the Protocol), accepts that its Team Members will be bound by the terms of the Protocol and all other rules referred to therein;
- (d) has complied with, and will at all times comply with the terms of the Deed of Gift, the Protocol and all other rules referred to in the Protocol;
- (e) shall procure that its Team Members (as such term is defined in the Protocol) will at all times comply with the terms of the Protocol and all other rules referred to therein;
- (f) agrees to submit solely and exclusively to the respective jurisdictions of ACE and the Regatta Officials, in each case as prescribed in the Protocol;
- (g) shall procure that its Team Members (as such term is defined in the Protocol) will submit solely and exclusively to the respective jurisdictions of ACE and the Regatta Officials, in each case as prescribed in the Protocol;
- (h) has complied, and will continue to comply, with the sailing limitations specified in Article 24.2; and
- (i) acknowledges and agrees (for and on behalf of itself and its Team Members) that no decisions or actions of ACE and the Regatta Officials, in each case, shall be subject to appeal or be referred to any court, tribunal or other authority or body for review in any manner except as may be expressly permitted by the terms of the Protocol.

6. The Challenger will be represented by [insert name of representative sailing team] in AC37.

7. All communications and notices are to be sent to:

[Insert the Address, email and telephone details of both the yacht club and the representative sailing team with the names of contact persons]

DATED this [insert date of notice] at [insert location]

Signed for and on behalf of the **Challenger**  
By [insert name and title]

\_\_\_\_\_  
Signature

Accompanying checklist:

- Copy of the Challenger's certificate of incorporation, patent or license referred to at paragraph 4(a) above.
- Details of the Challenger's annual regatta on the sea or an arm of the sea referred to at paragraph 4(b) above.
- Certificate of compliance issued by the Challenger referred to at paragraph 4(c) above.
- Certificate issued by the national sailing authority of the Challenger's referred to at paragraph 4(d) above;
- Duly signed Deed of Participation.