



ROYAL NEW ZEALAND YACHT SQUADRON



Circolo della Vela Sicilia



## **THE PROTOCOL OF THE XXXVI AMERICA'S CUP**

between

**ROYAL NEW ZEALAND YACHT SQUADRON**

and

**CIRCOLO DELLA VELA SICILIA**

This document is a conformed copy of the Protocol of the XXXVI America's Cup and incorporates the amendments made to the Protocol in accordance with Protocol Amendment 1, Protocol Amendment 2, Protocol Amendment 3, Protocol Amendment 4, Protocol Amendment 5, Protocol Amendment 6 and Protocol Amendment 7. No further amendments have been made to this document. This document is to be used for

**THE PROTOCOL GOVERNING THE  
THIRTY SIXTH AMERICA’S CUP**

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## THE PROTOCOL GOVERNING THE THIRTY SIXTH AMERICA'S CUP

### BACKGROUND.

- A. The **Royal New Zealand Yacht Squadron ("RNZYS")** believes that a form of protocol is a desirable way of mutually consenting to the various items that, in accordance with the Deed of Gift of the America's Cup dated 24 October 1887 ("**Deed of Gift**"), may be agreed between the yacht club holding the America's Cup and the yacht club challenging for that Cup.
- B. On the 26th of June 2017, immediately after the final race of the 35<sup>th</sup> America's Cup, the ("**Final Race 2017**"), RNZYS received and accepted a notice of challenge from **Circolo della Vela Sicilia ("CVS")** in accordance with the Deed of Gift. RNZYS and CVS now record in this Protocol ("**Protocol**") the arrangements they have mutually agreed in accordance with the Deed of Gift will apply to the Thirty Sixth America's Cup Match ("**Match**").
- C. This Background section and all appendixes form an integral part of this Protocol.

### ARTICLES.

#### 1. INITIAL CHALLENGER OF RECORD AND MUTUAL CONSENT.

- 1.1. CVS, having submitted the first valid notice of Challenge to RNZYS, is appointed by RNZYS as the Initial Challenger of Record ("**Initial Challenger of Record**" or "**COR**"). CVS shall be represented by the sailing team "Luna Rossa Challenge".
- 1.2. The Initial Challenger of Record shall represent all challengers whose notices of challenge are accepted, ("**Challenger**" or "**Challengers**") unless the Initial Challenger of Record relinquishes its position and a new Challenger of Record is appointed "**COR**".
- 1.3. The RNZYS and COR are jointly referred in this Protocol as "**COR/D**".
- 1.4. The RNZYS, the COR and the Challengers are indistinctively called competitors in this Protocol ("**Competitors**").
- 1.5. The challenge received by RNZYS from CVS, together The challenge received by RNZYS from CVS, together with the other items required by the Deed of Gift, specified the class of yacht

for the Match and contained the proposals for the location, the dates, the number of races, and the types of courses as set out below:

- a) the class of yacht shall be the AC75 Class featuring a high performance monohull as more particularly described in **Appendix 1**. An initial schematic concept of the yacht showing its main parameters and characteristics will be produced as soon as possible after the publication of this Protocol for consultation with relevant stakeholders and COR/D will publish the final AC75 Class Rule ( "**Class Rule**") by the 31<sup>st</sup> of March 2018;
- b) the location will be determined in accordance with Article 4.1 of this Protocol;
- c) the dates shall be as specified in this Protocol;
- d) the winner of each race in the Match scores one point, the loser scores no points, and the winner of the Match will be decided by the first yacht to score seven points;
- e) the course to be a windward-leeward configuration with an upwind start and may include one or more reaching legs as further specified by COR/D in the Conditions;
- f) In consultation with the Title Sponsor, COR/D may amend those matters set out in paragraphs (c), (d) and (e) of this Article.

## **2. AMERICA'S CUP PRELIMINARY REGATTAS.**

2.1. Except as specified in 2.5 below, **COR** shall organise and conduct the Preliminary Regattas, which are comprised of:

- a) the America's Cup World Series regattas ("**ACWS**"), which shall comprise of three events that will take place throughout 2020 as follows:
  - i. Cagliari, Italy during 23 – 26 April 2020;
  - ii. Portsmouth, United Kingdom during 4 – 7 June 2020; and
  - iii. Auckland, New Zealand during 17 – 20 December 2020 (incorporated within the same period of the Christmas Race);
- b) the America's Cup Christmas Race to be held at the Match venue within the same period of the Auckland ACWS regatta during 17 – 20 December 2020 ("**Christmas Race**");

The ACWS and the Christmas Race are jointly referred to as “**Preliminary Regattas**”.

**See Protocol Amendment 07.**

- 2.2. Each Competitor shall be required to enter and participate in all events of the ACWS. Any Challenger that does not meet this requirement will no longer be eligible to participate in either the Christmas Race or the Challenger Selection Series.
- 2.3. Each Competitor shall be required to enter and participate in the Christmas Race to be held at the venue of the Match between the 10th and 20th of December 2020 and no entry fees shall be due. Any Challenger not meeting this requirement shall no longer be eligible to participate in the Challenger Selection Series.
- 2.4. The Race Conditions, format, scoring and logistic rules for the Preliminary Regattas organised under this Article will be agreed by COR/D.
- 2.5. COR/D have jointly decided that the Defender shall be responsible for organising and conducting the ACWS regatta that will be held in Portsmouth, United Kingdom under Article 2.1 a) ii) above (the “**Portsmouth ACWS**”). COR will remain responsible for organising all other Preliminary Regattas. **See Protocol Amendment 07.**

### **3. CHALLENGER SELECTION SERIES.**

- 3.1. In January / February 2021, COR shall organise and conduct a Challenger Selection Series for all Challengers (“**CSS**”), at the venue of the Match and within the course areas of the Match, to be governed under the CSS Conditions. These dates may be amended by COR/D if the final Match venue is to be in the Northern Hemisphere. The winning Yacht Club and its winning yacht shall become the Challenger under the Deed of Gift for the Match.
- 3.2. The format of the CSS shall be a tournament ladder board with repêchage.
- 3.3. The seeding or ranking to determine the initial positions in the tournament ladder board shall be determined by the adjusted aggregated results of the Preliminary Regattas (“**Seeding**”). The tournament ladder will be determined by the following criteria which may be adjusted by COR in consultation with the Title Sponsor and taking into account in particular the number of Challengers:
  - a) For the purpose of the Seeding, the adjusted aggregated results will be drawn up by taking into account only the race results of the Challengers and therefore the finishing

position of the Defender shall be neutralized (i.e. all Challengers finishing behind the Defender shall be moved up by one position).

- b) In principle and where practicable (depending in particular on the number of Challengers), the Challenger finishing first in the adjusted aggregated results of the Preliminary Regattas will move directly to the second phase of the tournament ladder.
- c) The winner of each race of the CSS will score one point; the loser will score no point.
- d) For the first knock out series, the winner will be the yacht to first score 5 points in matches between pairs of Challengers selected as per the Seeding. The winners will qualify for the second phase of the tournament ladder.
- e) Repêchage: the losers of the first knock out series shall sail against each other in a single round robin series to determine the Competitor who will qualify for the second phase of the tournament ladder.
- f) For all the following phases of the CSS the winner will be the yacht to first score 5 points in matches between pairs of Challengers selected as per the ladder board, save for the final knock out of the CSS which will determine the final Challenger, and where the winner will be the yacht to first score 7 points.
- g) If the winning Yacht Club and its winning yacht are for any reason ineligible to be the final Challenger, then the Challenger Yacht Club and its yacht which gained the next highest place in the Series, and which are eligible, and so on, shall become the final Challenger.

COR shall have the right at any time prior to the commencement of any phase of the CSS, in consultation with the other Challengers and RNZYS, to alter the number of races for each phase depending upon the number of the then eligible Challengers and the time available for the competition.

The tournament ladder board shall be published by COR after the total number of Challengers has been determined.

- 3.4. Except during the racing hours in the Christmas Race, there shall be no restriction on access to the course area of the CSS and the Match. As from the first scheduled day of racing in the CSS - but except during the CSS racing hours - at the time of day when racing in the Match is scheduled the course area of the CSS and the Match shall be shared equally between the Challengers (50%) and the Defender (50%) as managed by the Regatta Director.

#### 4. THE MATCH.

- 4.1. The Match shall be held in the coastal waters of New Zealand in March 2021, or if RNZYS so elects (with the agreement of COR) in the coastal waters of the country of COR. The above date may be changed by COR/D if the Match venue is to be in the Northern Hemisphere and where required all other relevant dates in this Protocol shall be adjusted accordingly.
- 4.2. The selected venue and precise dates for the Match shall be announced by RNZYS by the 30th of August 2018.
- 4.3. The Racing Areas, Course Areas and the intended course configurations for the Match shall be announced by COR/D by the 30th of August 2018.

#### 5. EVENTS.

The Preliminary Regattas, the CSS and the Match are jointly or indistinctively referred to as the “**Event**” or “**Events**”, unless otherwise required by the context.

#### 6. ACCEPTANCE OF FURTHER CHALLENGES.

- 6.1. As from the 1st of January 2018 (“**Start of the Challenging Period**”) RNZYS shall accept every bona fide notice of challenge (as per the template in **Appendix**) for the CSS and the Match from an organised yacht club from a foreign country (“**Yacht Club**”) as more particularly required by the Deed of Gift, which is either:
  - a) Received by RNZYS no later than 17:00 hours NZT on the 30th of June 2018 (“**End of the Challenging Period**”), together with a declaration in writing by such Yacht Club that it accepts, and will be bound by, the Deed of Gift, this Protocol, the Rules and all subsequent decisions pertaining thereto including but not limited to insurance requirements set out in Appendix 3; or
  - b) Received by RNZYS, no later than 17:00 hours NZT on the 30th of November 2018 (“**Late Entry**”) provided RNZYS (i) is satisfied that the Deed of Gift, and the spirit and intent of this Protocol has been complied with by such Yacht Club until the date that the notice of challenge is received, and (ii) has received from such Yacht Club a declaration in writing that it has, from the Final Race 2017 until the date its notice of challenge is received, complied with the Deed of Gift, the spirit and intent of this Protocol and that it accepts, and will be bound by, this Protocol, the Rules and all

subsequent decisions pertaining thereto, including but not limited to insurance requirements set out in Appendix 3 .

- c) When submitting its challenge, each yacht club shall nominate a challenge representative who will be the sole person authorized to receive and issue official communications from and to COR/D for the entire duration of the 36<sup>th</sup> America's Cup 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.

6.2. RNZYS shall not accept a challenge from a Yacht Club that does not meet the requirements of the Deed of Gift such as it is incorporated and has its annual regatta and meets each of the following criteria by the Final Race 2017:

- a) it must have been in existence for a minimum of three years; **See Protocol Amendment 01.**
- b) it must maintain a membership of at least 200 members;
- c) it must be financially supported by a majority of its membership on a pro-rata basis;
- d) it must operate as a yacht club and have objectives consistent with the furtherance of yachting activities; and
- e) it must be a member of the National Sailing Authority of its country.

6.3. For the purposes of the Deed of Gift, all challenges accepted by RNZYS ("**Challenges**") shall be deemed to have been received by the RNZYS at the same time, being the time of the conclusion of the Final Race 2017.

6.4. The RNZYS will notify in writing the acceptance of the Notice of Challenge to each applicant Yacht Club and to COR, after having examined the documents presented together with the Notice of Challenge, or its refusal and reasons thereof.

6.5. Entry fees must be paid to RNZYS in cleared funds in US Dollars ("**USD**") and deposited into a bank account to be nominated by RNZYS, as specified in Article 7.

6.6. The Notice of Challenge Template is attached hereto as Appendix 4.

## 7. ENTRY FEES AND PERFORMANCE BOND.

7.1. In respect of an accepted notice of challenge, the challenging yacht club shall pay to the RNZYS the entry fees ("**Entry Fees**") as follows:

- a) within ten days of acceptance of the challenge, USD 1 million ("**First Payment**"), except for COR which has already made the First Payment;
- b) by 30<sup>th</sup> November 2018, a further USD 1 million ("**Second Payment**"); and
- c) in the case of a Late Entry accepted under Article 6.1 b), an additional Late Entry Fee of USD 1 million ("**Late Entry Fee Payment**") payable as follows:

(i) USD 250,000 by 1<sup>st</sup> April 2019;

(ii) USD 750,000 by 1<sup>st</sup> October 2019.

**See Protocol Amendment 03.**

7.2. a) Furthermore, each challenging yacht club shall provide by 30<sup>th</sup> of September 2018, a performance bond of USD 1 million (complying with wording supplied by COR/D and paid or secured by a bank of international standing to the satisfaction of COR/D) to assure the participation by the Competitor in the Preliminary Regattas, the CSS and the Match and compliance of this Protocol ("**Performance Bond**"). **See Protocol Amendment 02.** In the case of a Late Entry, the Performance Bond shall be provided no later than the 30<sup>th</sup> April 2019.

**See Protocol Amendment 03.**

b) If paid in cash the balance of a Challenging yacht club's performance bond shall be returned or if secured by a bank guarantee the guarantee released, not later than sixty days after the Challenging yacht club has discharged all its obligations in relation to AC36 to the reasonable satisfaction of COR/D. **See Protocol Amendment 02.**

7.3. All payments shall be made to the RNZYS, in a segregated America's Cup bank account.

7.4. A Challenger may elect to pay the Second Payment on a deferred basis (increased by 10%) as follows:

- a) by 30<sup>th</sup> November 2018, USD 275,000 (two hundred and seventy five thousand United States Dollars); ("**DP1**").
- b) by 28<sup>th</sup> February 2019, USD 275,000 (two hundred and seventy five thousand United States Dollars); ("**DP2**").

- c) by 31<sup>st</sup> May 2019, USD 275,000 (two hundred and seventy five thousand United States Dollars); (“**DP3**”).
- d) by 31<sup>st</sup> August 2019, USD 275,000 (two hundred and seventy five thousand United States Dollars); (“**DP4**”).

For the avoidance of doubt, this clause concerns the Second Payment only and shall not apply to the amount due under clause 7.1 c) (Late Entry Fee Payment).

7.5. The Entry Fees shall be non-refundable and their total amount shall be applied as follows:

- a) 73.75% of the entry fees shall be for use by the Challengers to be applied to the payment of any costs associated with the Preliminary Regattas and the CSS and shall be held by RNZYS in an ad hoc bank account (“**The Challengers Account**”), separate from its normal operating accounts, until written instructions regarding disposition of funds are received by RNZYS from the Initial Challenger of Record;
- b) 2.5% of the entry fees shall be held by RNZYS for defraying costs associated with maintenance of America’s Cup Properties, Inc. (“**ACPI**”), the holder of the America’s Cup trade marks (including the image and silhouette of the America’s Cup) worldwide, and the preservation of those marks, as deemed necessary and approved by ACPI, and RNZYS shall ensure that ACPI makes annual reports to the Challenger of Record regarding the disposition of those funds;
- c) 23.75% of the entry fees shall be for the use of the Defender applied towards the payment of any costs associated with the Match and held in an ad hoc bank account in the name of RNZYS (“**The Match Account**”), separate from its normal operating accounts.
- d) RNZYS shall, prior to the commencement of racing in the CSS, make a single payment of USD 100,000 as a contribution, to be held in the Match Account and shall be applied with the other funds held in that account.

7.6. In addition to the fees referred to above, the following payments will be required and are deemed to be part of the Entry Fees:

- a) except for the Portsmouth ACWS in respect of which Article 7.6 c) shall apply, (**See Protocol Amendment 07**) no later than 3 months before an ACWS Event, each Competitor shall pay to COR the sum of USD 300,000. Such amounts shall be paid into an ad hoc separate bank account in the name of the COR (“**The Preliminary Regattas Account**”) and shall be applied to the payment of any costs associated with the

Preliminary Regattas; in the event of a positive balance, the surplus shall be applied to the costs associated with the CSS;

- b) no later than 30<sup>th</sup> November 2018, each Competitor shall pay to COR/D a website contribution of USD 50,000 (fifty thousand United States Dollars) by wire transfer direct to an ad hoc bank account indicated by COR/D for such purposes, as a non-refundable contribution towards internet and digital and social media costs, in particular for the hosting and maintaining by COR/D of the Official AC36 Website, APP and other social platforms, which will include specific Competitors sections.
- c) no later than 3 months before the first race in the Portsmouth ACWS each Competitor shall pay to RNZYS the sum of USD 300,000. Such amounts shall be paid to the RNZYS Challenger account established for the receipt of entry fees and shall be applied to the payment of costs associated with the Portsmouth ACWS. **See Protocol Amendment 07.**

7.7. A Competitor shall pay the Entry Fees and provide the Performance Bond in full as a condition precedent to its eligibility and racing. Amounts referred to in Clauses 7.1 and 7.6 a) or 7.8 when applicable shall be applied inter alia (*pro rata*) to the payment of any fees which might be due to relevant sanctioning authorities.

If a Challenger is ineligible due to a default in the payment of any of the Entry Fees or the provision of a Performance Bond under this Article, then the following shall also apply:

- a) During the period the Challenger is in default, that Challenger may not exercise any of its Challenger rights granted under this Protocol and in particular, the AC75 Class Rule may be amended under Article 52.2 and AC75 Class Rule 33.1 (a) without the agreement of that Challenger;
- b) The Arbitration Panel is also given jurisdiction under Article 53.10 to impose such penalty it considers appropriate having regard to the nature and manner of the breach, including exclusion of the Challenger from further participation in AC36.

**See Protocol Amendment 04**

7.8. COR may require additional funds from each Challenger in the form of cash, a performance bond, or a letter of credit, for the purpose of ensuring Challengers' participation in the CSS. Those funds or financial instruments may be required at such time and in such amount as is determined by COR and approved by RNZYS.

- 7.9. As well as the amounts referred to in Clauses 7.5a) and 7.6a) the Challengers shall share equally all further costs of the Preliminary Regattas, the CSS and other activities of the Challengers as a group associated with the challenge for the 36<sup>th</sup> America's Cup. Such costs may be offset from money raised from commercial activities. Any calls on Challengers to contribute funds to assist with meeting such costs may be required at such time and in such amount as is determined by COR and approved by RNZYS (such approval not to be unreasonably withheld). **See Protocol Amendment 03.**

## 8. ELIGIBILITY OF YACHTS.

Only the yachts complying with the AC75 Class Rule are eligible to compete in the Preliminary Regattas, the CSS and the Match. However, COR/D may introduce alternative arrangements for one or more of the ACWS events depending upon the number of Competitors and the then number of AC 75 yachts available to compete at the time of the event.

## 9. CONSTRUCTED IN THE COUNTRY REQUIREMENT FOR YACHTS.

- 9.1. 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:

- a) 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;
- b) for the avoidance of doubt, the fabrication, acquisition or use of any component, materials or resources used to complete an AC75 Class 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
- c) the repair, modification or replacement of any part of an AC75 Class Yacht that has received the Constructed in the Country Certificate may be undertaken in any country.

## **10. CREW NATIONALITY.**

In an effort to better maintain the stipulation in the Deed of Gift that the America's Cup is for *"Friendly competition between foreign countries"* it is agreed as follows:

- 10.1. All Crew racing in the CSS and the Match shall have the nationality of the country of the yacht club that the competing yacht club represents ("**Nationality**").
- 10.2. The requirement of Nationality shall be satisfied:
  - a) if the person is a national of that country; or
  - b) if the person has his/her principal place of residence in that country; this is to say, if the person has been physically present in that country for at least three hundred and eighty [380] days during the two year period from 1st of September 2018 until 31st of August 2020 (or in the case of an accepted late entry during the two year period from the 1st of December 2018 to the 30th of November 2020) and has a permanent place of abode in that country where that person usually resides on a lasting rather than a temporary basis and is able to produce other supporting evidence of that country being his/her principal place of residence (such as economic ties, social ties, location of personal properties in that country, etc).
- 10.3. The number of Crew that qualify under 10.2 a) shall not be less than the closest natural number to 20% of the total Crew or three, whichever is the higher.
- 10.4. The above requirements shall not apply to designers or to any other team members who do not race as Crew on an AC75 Class yacht.
- 10.5. All disputes relating to the determination of the country which a crew member may represent in the 36<sup>th</sup> America's Cup shall be resolved by agreement between RNZYS and the Challenger of Record but failing such agreement the dispute shall immediately be referred to the Arbitration Panel for determination.

## **11. COST CONTAINMENT AND LIMITATIONS.**

In order to attract the number of quality entries for the Event to be the world's premier sailing event, meaningful and material cost containment measures to ensure campaigns are commercially viable, shall apply:

### **11.1. limitation on the number of yachts:**

- a) Each Competitor shall be entitled to build a maximum of two hulls, which may be different between them;
- b) Each Competitor may only modify the exterior shape of each of its hulls as determined when the respective hull was launched (“**Original Hull Surface**”) by a maximum of 12.5% of its area (the method for monitoring this restriction will be specified in the Class Rule); **See Protocol Amendment 02.**
- c) Each Competitor shall always be entitled to alter the structure of the hull and to repair such hull, including bringing it back to its Original Hull Surface after unintended damage;
- d) No Competitor shall acquire, sail or test any Surrogate Yacht as defined in this Protocol and the AC75 Class Rule;
- e) The interpretation, calculation and enforcement of the above limitations on the modification of the Original Hull Surface and the determination as to whether a yacht is a Surrogate Yacht or not 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; and **See Protocol Amendment 02.**
- f) Each Competitor shall only sail one of its yachts at a time except the Defender who will be entitled to sail two yachts from the time of the first scheduled race in the CSS.

11.2. 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 11.1(d).

## **12. LAUNCH DATES.**

12.1. No Competitor shall launch either of its respective AC75 Class yachts before the following dates:

- a) 31st of March 2019 for its first yacht;
- b) 15th of February 2020 for its second yacht.

**13. CLASS LIMITATIONS. See Protocol Amendment 02.**

- 13.1. The Class Rule details all limitations which may include the incorporation of one design and/or standard single manufacturer elements; restrictions on materials, components and equipment; restrictions on construction techniques; tightly controlled sail restriction rule (Limitations).
- 13.2. The interpretation, calculation and enforcement of the above 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.
- 13.3. In the event of non-compliance by a Competitor the Rules Committee shall report to the Arbitration Panel which is hereby given the jurisdiction under Article 53.4 i) to determine the penalty (if any) for such non-compliance.

**14. SHROUDING OF YACHTS. See Protocol Amendment 06.**

Competitors' yachts shall not be shrouded at any time except for:

- a) use of protective wrapping during shipment;
- b) placing a yacht in a building or shelter with a solid floor for storage or to carry out maintenance or modifications;
- c) use of protective covers while sanding or painting;
- d) use of removable sun blankets that cover only the foil arms.

**15. SAILING WITH OTHER COMPETITORS.**

- 15.1. There shall be no sailing or testing of AC75 Class Yachts in a coordinated manner with other Competitors except:
- a) when participating in official Events; or
  - b) when participating in official practice and/or regattas organised during specific periods at nominated venues as mutually agreed by COR/D, and monitored by the Regatta Director.

## 16. RULES.

16.1. The conduct of the Event shall be governed by:

- a) the Deed of Gift, and the decisions of the Arbitration Panel;
- b) this Protocol;
- c) the AC75 Class Rule;
- d) the relevant Race Conditions as agreed and adopted by COR/D which will include the applicable Sailing Instructions;
- e) the racing rules as agreed and adopted by COR/D in consultation with World Sailing and administered by a Jury and Umpires appointed by COR/D in consultation with World Sailing,

together the “**Rules**”.

16.2. Unless otherwise provided, the documents referred to in this Article 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.

16.3. All Officials including the Regatta Director, the Rules and Measurement Committees, the Umpires and the Jury shall comply with the Rules and always discharge their duties with honour, independence, impartially and in good faith. **See Protocol Amendment 02.**

## 17. MATCH CONDITIONS.

17.1. RNZYS and COR shall agree upon and finalise the Notice of Race and Conditions governing the Races for the Match (“**Match Conditions**”) by the 20th of December 2019 (“**Match Conditions Date**”). RNZYS and the COR shall endeavour to resolve any differences between them as to the terms of the Match Conditions through amicable negotiation.

17.2. The Sailing Instructions for the Match and the CSS shall be issued by the Regatta Director in consultation with COR/D by 1 November 2020 and not later than one month before the first race in each of the Preliminary Regattas.

## **18. CSS CONDITIONS.**

- 18.1. The Match Conditions, with such modifications deemed necessary to accommodate in particular such matters as dates, times, and the number and series of races, shall also govern the races for the Challenger Selection Series (together, the “**CSS Conditions**”). Any such modifications shall be subject to the approval of RNZYS, which shall ensure that they are equitable to all Challengers.
- 18.2. The CSS Conditions shall be finalised by COR by 30<sup>th</sup> of June 2020 (“**CSS Conditions Date**”).
- 18.3. The Match Conditions and the CSS Conditions are jointly or indistinctively referred to as the “**Race Conditions**”.
- 18.4. The Match Conditions Date and the CSS Conditions Date are jointly or indistinctively referred to as “**Race Conditions Date(s)**”.

## **19. DISPUTE RESOLUTION FOR THE CONDITIONS.**

- 19.1. If on or before the respective Conditions Date negotiations have been unsuccessful and the respective Race Conditions have not been finalised, then the America’s Cup Arbitration Panel (“**Arbitration Panel**”) shall commence mediation of all such differences at the request of RNZYS and/or COR. If that mediation is unsuccessful then the Arbitration Panel shall, no later than three months after the respective Conditions Date, decide the unresolved issues on which RNZYS and the COR differ and the Race Conditions shall be finalised accordingly.
- 19.2. Each Competitor, either within four weeks after agreement has been reached by the COR and RNZYS, or within four weeks after the date the Arbitration Panel has determined any unresolved issues, whichever is the later, shall sign the Race Conditions and acknowledge that those conditions shall govern the races in the Challenger Selection Series and the Match.

## **20. REGATTA DIRECTOR.**

- 20.1. An independent Regatta Director, appointed by COR/D, shall undertake the role described in this Article. The Regatta Director may also be replaced at any time by COR/D.
- 20.2. The Regatta Director shall:
  - a) be responsible for the conduct of all racing in all the Events;

- b) be responsible for ensuring that all races are conducted in a professional and timely manner pursuant the terms of the Rules;
- c) be responsible for the coordination of the other Regatta Officials to run all racing in a manner that is consistent with the provisions of the objectives of this Protocol and with the obligations and commercial requirements;
- d) co-operate with COR and/or RNZYS, as applicable, on all issues such as schedules for Events, course area management and all other commercial priorities;
- e) prepare the budgets for all racing for approval by COR and/or RNZYS, as applicable, and professionally manage them;
- f) in consultation with COR/D issue (and/or amend) Sailing Instructions for the Match, the CSS and the Preliminary Regattas;
- g) have the authority to publish, in agreement with COR/D, regulations regarding the conduct of racing and the management of the Racing Area, the Course Areas and/or the Restricted Areas, provided that such regulations are consistent with the terms of the Rules, which regulations shall be binding on Competitors;
- 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 the Rules and Measurement Committees, the Jury and Umpires and/or the Arbitration Panel as per the Rules. **See Protocol Amendment 02.**

## **21. MEASUREMENT COMMITTEE.**

21.1. COR/D shall jointly appoint the Rules Committee and the Measurement Committee whose responsibilities are defined in this Article. Decisions of the Rules Committee and the Measurement Committee within their respective jurisdictions will be final and binding.

21.2. The Rules Committee shall be responsible:

- a) for the interpretation of the Class Rules;
- b) to determine whether a yacht is considered a Surrogate Yacht or not;

- c) with the assistance of the Measurement Committee to determine the extension and percentage of the modification of the Original Hull Surface of an AC75 Class yacht;
- d) to resolve any other matter which it is given jurisdiction under the Protocol and/or AC75 Class Rule.

21.3. The Measurement Committee will be responsible:

- a) for the measurement of yachts in accordance with the requirements of the AC75 Class Rule;
- b) to issue or withdraw the AC75 class certificate for a yacht in accordance with the requirement of the AC75 Class Rule after seeking the advice of the Rules Committee where appropriate under AC75 Class Rule;
- c) to certify the compliance of the construction in the country requirement and issue the relevant Constructed in the Country Certificate;
- d) to undertake any required measurements to enable the Rules Committee to determine the extension and the percentage of the modification of the Original Hull Surface of an AC75 Class Yacht;
- e) for any other matter which it is given jurisdiction under this Protocol and/or the AC75 Class Rule.

21.4. The Rules Committee and the Measurement Committee will, within their respective jurisdictions, both be responsible for determining whether a yacht meets the AC75 Class Rule.

21.5. 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.

21.6. The Rules Committee members shall be engaged 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 the Rules Committee and COR/D. The hourly fees incurred shall be recovered on a user pay basis from the parties, as ordered by the Rules Committee. **See Protocol Amendment 02.**

## **22. RESPECTIVE COMMERCIAL RIGHTS OF COR AND THE DEFENDER.**

- 22.1. All commercial and media rights, including but not limited to sponsorship, licensing, image, digital and broadcasting, that are associated with the Preliminary Regattas and the CSS are vested in COR, which is hereby acknowledged and agreed by the Defender and the Challengers.
- 22.2. All commercial and media rights, including but not limited to sponsorship, licensing, image, digital and broadcasting that are associated with the America's Cup Match are vested in the Defender, which is hereby acknowledged and agreed by COR and the Challengers.
- 22.3. COR, the Challengers and the Defender shall only exercise such commercial rights in accordance with this Protocol and the terms and conditions of the Contract as hereinafter defined.
- 22.4. Such commercial rights of COR and the Defender shall include:
- a) Event sponsorship and other rights of association with the 36<sup>th</sup> America's Cup;
  - 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 as well as the operational rights pertaining to media centres);
  - c) Event branding and advertising;
  - d) Event merchandising and brand licensing;
  - e) Event hospitality and related consumer and corporate experiences;
  - f) Event ticketing, entertainment, food and beverage concessions within any COR and or Defender controlled areas;
  - g) host venue rights for any particular Event;
  - h) such other commercial rights and fundraising opportunities in connection with the whole and/or any part of the 36<sup>th</sup> America's Cup which COR and/or the Defender may identify from time to time.
  - i) identification and logos on competing yachts and team uniforms in line with recent editions of the America's Cup competition as will be defined in the Brand Manual.

j) other duties, public relation activities and similar rights of Competitors in line with recent editions of the America's Cup competition.

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

22.6. **Copyright of the Class rule:** The "AC75 Class Rule" is the copyright of COR/D and the name "AC75 Class" is owned by COR/D. **See Protocol Amendment 02.**

22.7. **Portsmouth ACWS:** In respect of the Portsmouth ACWS only, COR has assigned the rights listed in Articles 22.1 and 22.4 to the Defender in recognition of its responsibility to organise and conduct this regatta in accordance with the terms and conditions that have been agreed between COR and the Defender (**Portsmouth Terms and Conditions**). COR's rights and obligations set out in the Protocol in connection with the Portsmouth ACWS are therefore assigned by COR to the Defender pursuant to the Portsmouth Terms and Conditions. **See Protocol Amendment 07.**

### **23. TITLE SPONSOR FOR THE EVENTS.**

23.1. RNZYS and the COR have granted to a third party ("**Title Sponsor**") the right to be the exclusive naming and presenting sponsor of all events comprising the 36th America's Cup including all the Preliminary Regattas, the CSS and the Match and to act as co-host and co-organizer of all the regattas (including but not limited to any official presentations, social events, ceremonies and practice or preparatory and post-race phases) and the long form contract shall reflect the terms and conditions set out in the document attached as Appendix 2 (the "**Contract**"). The fee payable by the Title Sponsor shall be equally split between COR and the Defender.

23.2. All the Competitors shall at all times be bound by and comply with the terms and conditions of the Contract.

23.3. COR/D shall ensure that adequate office space is reserved for the Title Sponsor free of costs in the headquarters of the event organisers at each regatta venue.

23.4. All decisions regarding Media, Commercial, Marketing, Entertainment and any other PR activity, including but not limited to Broadcasting, Events, Special Events, Concerts, and the like, shall be undertaken only with the prior approval of the Title Sponsor.

23.5. A separate agreement between COR/D and PRADA will set out the terms and conditions for the assignment of certain rights of PRADA to the Defender in order for a separate Title Sponsor to be appointed for the Portsmouth ACWS. **See Protocol Amendment 07.**

#### **24. TITLE SPONSOR LIAISON GROUP (“TSLG”).**

24.1 In order to enhance the cooperation between COR/D and the Title Sponsor and to address matters including day-to-day operations arising from the Contract, a working party named the Title Sponsor Liaison Group (“TSLG”) shall meet regularly and whenever required, including by telephone or other media conference call.

24.2 TSLG will comprise nominated representatives of COR, the Defender and the Title Sponsor, who may change from time to time taking into account the nature of the matters being dealt with at each meeting; it will be chaired according to a rotation between COR, the Defender and the Title Sponsor.

24.3 TSLG may also serve as the *contact group* to exchange with regard to respective commercial activities of the Defender and COR, in liaison with the Title Sponsor, so as to produce the desired synergies and collaboration for the best success of the Events from the Preliminary Regattas to the Match.

#### **25. GRANTING OF RIGHTS BY COMPETITORS.**

25.1. Each Competitor hereby transfers to the maximum extent allowed by law, the commercial rights related to their participation in the Event to COR or the Defender, as the case may be, in order to allow for the smooth and most efficient exercise of the above commercial rights by COR and the Defender.

#### **26. COMMERCIAL RIGHTS OF COMPETITORS.**

26.1. Each Competitor shall have the right - subject always to the provisions of this Protocol - 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. Such commercial rights of the Competitor 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 Challenge (including still images, moving images, audio files, electronic print, data and animations in whatever medium or technology), but not (unless approved by COR/D in writing in advance in its sole discretion) 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.

## **27. GUEST RACER.**

Each Competitor shall have the right to invite a guest racer on board its AC75 Class Yacht racing in any race forming part of any Event. The guest racer shall not contribute in any manner whatsoever to the racing. The Regatta Director may, at his sole discretion, suspend this right in consideration of the sea and wind conditions for a given regatta.

## **28. RESPECTIVE OBLIGATIONS OF COR AND THE DEFENDER.**

- 28.1. COR has the obligation to organise and to meet the costs for the Preliminary Regattas and the CSS including the production of the TV feed.
- 28.2. The Defender has the obligation to organise and to meet the costs for the America's Cup Match, including the production of the TV feed.

## **29. FINANCIAL OBLIGATIONS OF COR AND THE DEFENDER.**

- 29.1. The Preliminary Regattas and the CSS globally on one side and the Match on the other side, shall financially operate independently from each other, with separate financial accounting

and each respective party shall be responsible for the costs and the receipt of all revenues for each Event (including the Entry Fees payable under this Protocol), the payment of all expenses (including the funding of Regatta Director, Jury, Rules and Measurement Committees, Umpires and other race officials) for each Event. **See Protocol Amendment 02.**

29.2. Any final surplus resulting from the Preliminary Regattas and the CSS shall be equitably distributed according to the following criteria:

- a) two thirds of the surplus, if any, amongst the Challengers based on their performance in the CSS;
- b) the balance to the three top scoring Competitors at the end of ACWS, based on the position achieved.

29.3. Any funding shortfalls in each Event shall be met as follows:

- a) in respect to the Preliminary Regattas by all the Challengers equally;
- b) in respect of the Challenger Selection Series by all the Challengers equally;
- c) in respect of the Match by RNZYS.

### **30. TELEVISION AND TECHNICAL EQUIPMENT.**

30.1. During racing in the Events, television, audio and other electronic equipment shall be carried on yachts and/or crew as required by COR/D. The amount and manner of placement of such television, audio and other electronic equipment on yachts and crew shall be consistent for all Competitors and equalised by the Measurement Committee.

30.2. 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 shall be the property of COR for the Preliminary Regattas and the CSS and shall be the property of the Defender for the Match.

30.3. COR/D shall ensure that adequate measures are put in place so that performance information of individual yachts is not available to any other Competitor, other than such information that is available to the public.

### **31. BRANDING AND ADVERTISING.**

Advertisement and visibility for the Title Sponsor shall be as provided for in the Contract. For the whole or any part or parts of any Event, including the preparation thereof, branding and advertising, including, without limitation, on Competitors and their Team Members, Regatta Officials, AC75 Class Yachts, support boats, official boats, bases, clothing, etc. shall always respect the brand manual (the “**Brand Manual**”) which will be published no later than the 31st of March 2019 by COR/D in agreement with the Title Sponsor and as updated by such parties from time to time.

### **32. ADVERTISING.**

32.1. There will be no constraints on advertising except as specified in this Protocol and in the Brand Manual. However 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 COR/D shall have the authority at their sole discretion to require the relevant Competitor(s) to remove such advertising.

32.2. From the time of acceptance of a Challenger (or appointment of the Defender by RNZYS), advertising of, or other reference to, tobacco products by such Challenger or Defender is prohibited anywhere in the world. This prohibition shall apply in all Competitors' compounds, on their boats, sails and equipment, crew clothing, and any advertising material for all printed, electronic media and any other form of digital communication.

32.3. The term advertising of tobacco products as used in Article 32.2 includes, but is not limited to:

- a) the use or display of the name of any tobacco company and/or product;
- b) the use or display of the name of any company or other entity where such name is also, in whole or in part, the name under which a tobacco product is produced, sold, or otherwise distributed; and
- c) the use or display of a logo, trade mark, device or design that is commonly used or can be confused with those of tobacco products.

32.4. Advertising or any other graphic work shall, from the time of acceptance of a Challenger or appointment of the Defender, always comply with generally accepted moral and ethical standards and will not include any reference to political or ideological movements.

### **33. NAME OF YACHTS.**

- 33.1. Competitors shall not name their yachts with a commercial name or brand.
- 33.2. If a Challenger proposes to name its yacht, the proposed name must first be submitted to COR/D for approval. COR/D shall not approve any name of a yacht if in its opinion that name constitutes advertising. The decision of COR/D shall be final and conclusive.
- 33.3. If a yacht does not have a name that has been approved by COR/D she will, for all the purposes of the Event, including the engraving on the America's Cup trophy, be called by her allocated sail number. For the avoidance of doubt: (a) a name that has not been approved by COR/D shall not be engraved on the America's Cup trophy; and (b) a name which is derived solely from activity in America's Cup competition shall not be considered a commercial name or brand under this Article 33.

### **34. ANTI-AMBUSH OBLIGATIONS.**

- 34.1. **Anti-ambush Advertising** - A Competitor shall not place on its yacht or any of its support vessels the name of or any advertising of any Media Organisation or related entity unless prior approved by COR/D in writing.
- 34.2. **Media Ambush** - A Competitor, or any of its employees, contractors, or agents, shall not grant access to any Event, including official interview areas, to any Media Organisation without the prior written consent of COR/D. Such access shall also be prohibited, during a period 30 minutes before the Attention Signal for each race and up to 30 minutes after each race of any Event regatta, to the Competitors' yachts, tenders and chase boats, and to the receipt of telemetry information by any third party not authorised by COR/D.
- 34.3. **Ambush Regatta** - A Competitor shall not participate, without the prior written approval of COR/D, in any non-Event regatta 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 COR/D in enforcing this provision on any non-Event regatta organizer).

### **35. SPORTS BETTING.**

- 35.1. **Competitors and their Team Members** - as well as any person referred to in Article 16.3 - shall not participate (either directly or indirectly, such as through family, friends, etc.) at

any time in any sports betting or related activity with respect to the whole or any part of the Events, 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 authorizing 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.

### **36. SPECIAL EVENTS.**

36.1. COR/D, in cooperation with the Title Sponsor, which shall act as co-host and co-organizer, has the exclusive right to organize and manage the following Special Events worldwide:

- a) formal presentations and/or press conferences of all Events;
- b) formal presentations of the Competitors' yachts and crew at the beginning of each Event;
- c) public display of Competitors' yachts at specific locations and times during each Event;
- d) opening and closing ceremonies for each Event;
- e) press conferences comprising more than one (1) Competitor during each Event;
- f) Event related parties and balls;
- g) Event related prize giving ceremonies;
- h) any other Event related special events as may reasonably be advised by COR/D in cooperation with the Title Sponsor, including promotional and sponsorship events organised by authorized third parties.

36.2. **Calendar of Special Events** - COR/D will publish from time to time and keep updated a calendar of Special Events. Competitors and their sponsors and partners shall not schedule any event that may conflict with any Special Events and shall advise COR/D of any significant event they intend to host.

36.3. **Mandatory participation** - All Competitors are required to participate in Special Events. COR/D will indicate from time to time, to each Competitor, the number and identity of its Team Members whose participation is required.

### **37. AMERICA'S CUP TRADE MARKS AND LICENSE AGREEMENT.**

37.1. At the time of signing the Conditions, or by such later time as RNZYS requires, each Challenger shall execute a license agreement with ACPI relating to the America's Cup trade marks in such form as ACPI may reasonably require. Any dispute as to the terms of that agreement shall be subject to a mediation by COR/D, failing which it shall be determined by the Arbitration Panel.

37.2. **Use of America's Cup trademarks** - No Competitor may use any America's Cup trademarks unless and until the Competitor has executed a license agreement with ACPI authorizing the use of America's Cup trade marks in such form as ACPI may reasonably require.

37.3. **Control of ACPI** - A Challenger 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.

### **38. MEDIA.**

38.1. Event-related media rights:

- a) all rights in and to any audio and/or visual content and data collected by or on behalf of COR during the course of or in connection with the whole or any part or parts of the Events forming part of the Preliminary Regattas and the CSS (including virtual or digital images and any content generated by other technologies) shall vest solely and exclusively in COR which shall, subject always to the Contract, be entitled at its sole discretion to assign, transfer, license and/or otherwise exploit any such rights in and to the applicable content and data;
- b) all rights in and to any audio and/or visual content and data collected by or on behalf of the Defender during the course of or in connection with the whole or any part or parts of the Match (including virtual or digital images and any content generated by other technologies) shall vest solely and exclusively in the Defender which shall, subject always to the Contract, be entitled at its sole discretion, to

assign, transfer, license and/or otherwise exploit any such rights in and to the applicable content and data;

- c) notwithstanding the above and subject to Article 38.8, after a period of one month following the conclusion of the Match, the competing Challengers in the Preliminary Regattas and the CSS and the competing Challenger in the Match shall retain the right to use images of their participation in those events, but in a historical context only.

38.2. **Post 36<sup>th</sup> America's Cup** - Upon the date that is ninety (90) days following the final race of AC36, all such rights and related intellectual property that remain vested in, and are capable of being assigned by, COR/D at that time shall be assigned by COR/D to the then current trustee of the America's Cup 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.

38.3. **Broadcasting** - All Competitors acknowledge, and shall obtain written acknowledgements and releases from all of their Team Members, sponsors, licensees and other commercial partners, that COR/D, the Title Sponsor, and their licensees and authorized agents, including the authorized 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 and voices 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). COR/D may also include, with the prior agreement of the Title Sponsor which shall not unreasonably withheld, the names and/or logos of COR/D's sponsors, licensees and/or other commercial partners within any Event related broadcast or transmission.

38.4. **Host broadcasters** - The host broadcaster for each Event shall be given priority choice of positioning at all open media events and mixed zones organized by or hosted by any Competitor.

38.5. **Promotion and advertising** - All Competitors acknowledge, and shall obtain written acknowledgements and releases from all of their Team Members, sponsors, licensees and other commercial partners, that COR/D, the Title Sponsor and their authorized 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 COR/D and the Title Sponsor - and/or any officially appointed retailers, licensees and/or concessionaires - in connection with the whole or any part or parts of the Events, provided that neither COR/D, the Title Sponsor nor the authorized 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). COR/D may also include with the prior agreement of the Title Sponsor which shall not be unreasonably withheld, the names and/or logos of COR/D's sponsors, licensees and/or other commercial partners in any of its promotion, advertising and merchandising.

- 38.6. **Competitors' media arrangements** - Competitors may not enter into any exclusive arrangement with any Media Organization that has the effect of preventing access by any media authorized by COR/D, except with the prior written approval of COR/D, which may be granted only in agreement with the Title Sponsor. Each Competitor may provide still and/or moving images of its representative team (including its yachts and other vessels, Team Members, sponsors, licensees and other commercial partners and/or burgee) to any media provided that it has not done so on an exclusive basis so as to prevent or limit COR/D's authorized broadcasters or media from using any such still and/or moving images of the team.
- 38.7. **Access to Competitors** - Competitors shall provide access as required by COR/D, following consultation with the Competitor, for COR/D, the Title Sponsor and/or their official licensees or authorized agents to take or record still and/or moving images of its representative team training and sailing, and to conduct interviews with its Team Members, during or outside the periods of Events.
- 38.8. **Media Access Restriction** - A Competitor shall not exclude any accredited media from any media event related to the whole or any part or parts of the Events except with the prior approval of COR/D in consultation with the Title Sponsor. Such approval will be granted only for proven and serious breaches of the professional deontology of the relevant media and/or its representative(s).
- 38.9. **Media Accreditation**- COR/D will publish the Media Accreditation procedures and guidelines (the "**Media Accreditation Conditions**") for all the Events no later than the 31st of March 2020. **See Protocol Amendment 04.**

### 39. IMAGE RIGHTS.

- 39.1. 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. Where any other Competitor or its yacht or Team Member also appear in such images, they shall first obtain the written approval of the relevant moving or still pictures by any of the other Competitor(s) depicted. Such approval is intended to be also the approval of all sponsors of the relevant Competitor depicted on the approved image. In the case of moving images, Competitors and their Team Members, sponsors, licensees and other commercial partners may not without COR/D's prior written approval, in agreement with the Title Sponsor, sell, broadcast, stream or otherwise publicly distribute any moving images of any Competitor's yachts or crew recorded 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. Each Competitor may also submit requests to COR/D for the prior written approval by COR/D 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 in each instance of still and/or moving images of its yacht and crew that have been recorded by or on behalf of COR/D.
- 39.2. All Competitors shall ensure that their own use and the use by any of their sponsors or other commercial partners of any image do not create a misleading impression as to a sponsorship or association with any Event. 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 such relevant Competitor. Prior to authorizing any use of Event-related images depicting another Competitor, a Competitor shall obtain due written undertakings from their sponsors and other commercial partners.
- 39.3. **Competitors' photographers** - Photographers contracted to provide photographic services to Competitors and/or their sponsors or other commercial partners must obtain accreditation from COR/D following the procedures published by COR/D and will be bound at all times and comply with the provisions of the Media Accreditation Conditions.
- 39.4. **Competitors' media units** - All media personnel contracted by or on behalf of or affiliated to any Competitor and/or their sponsors or other commercial partners shall obtain media accreditation from COR/D following the procedures published by COR/D and will be bound at all times and comply with the provisions of the Media Accreditation Conditions.
- 39.5. Use of Event-related still images by COR/D: COR/D, the Title Sponsor and COR/D authorized agents, sponsors, licensees, other commercial partners and the Host City of any Event may

use Event-related still images taken at any time, which may include images of Competitors, their yachts, support vessels, Team Members, sponsors, licensees, other commercial partners and/or burgees, provided that COR/D shall not use such images to create an endorsement, direct or indirect, by or from a Competitor or any person, sponsor, product or service associated with a Competitor, without the prior consent of the Competitor. The use of such images shall not constitute an endorsement in any of the following non-exclusive circumstances:

- a) when image(s) taken during racing of any competing yacht are used show more than one Competitor;
- b) for Event merchandising, advertising and promotion, when the image(s) representing Competitors do not amount to more than twenty (20%) of the total image(s) used;
- c) when image(s) of any docking, prize giving ceremony or any other characteristic Event moments are used, such image(s) show at least three (3) persons of a Competitor (or at least three (3) persons from different Competitors) depicted with similar prominence;
- d) when image(s) showing only one Competitor's vessel do not show a complete name or logo of that Competitor and there is no apparent intent to create an endorsement;
- e) when image(s) of individual Team Members depicts at least three (3) persons with similar prominence and there is no apparent intent to create an endorsement; and/or
- f) when the Competitor provides a written acknowledgement to COR/D that use of the image(s) for any specific purpose does not create an endorsement.

In all other instances, whether or not an endorsement has been created shall be determined on a case-by-case basis based on the totality of the facts and circumstances surrounding COR/D's and/or the Title Sponsor's use of Event-related still images.

#### **40. OFFICIAL DVD AND DIGITAL MEDIA CONTENT.**

Notwithstanding the restrictions contained elsewhere in this Protocol, COR/D, the Title Sponsor and COR/D's sponsors, licensees and other commercial partners may use still images and moving images of the whole or any part or parts of any Event and any other

images taken by or on behalf of COR/D, its authorized broadcaster(s) and other media as well as the name, logo and yacht branding of any Competitor to compile, produce, market, sell and distribute official video/DVDs, social media broadcasts, and/or such other digital media content as COR/D deems appropriate, of AC36 and/or any Event without restriction, except that it is understood that all such video/DVD(s) and digital media content shall be packaged and marketed as an AC36 and/or Event-specific product, either as an individual product or as a series, and shall not place an undue prominence on any single Competitor in connection therewith (without the approval of any such Competitor).

#### **41. ELECTRONIC GAMES AND BOARD GAMES.**

Notwithstanding the restrictions contained elsewhere in this Protocol, COR/D, the Title Sponsor and COR/D's sponsors, licensees and other commercial partners may use still and moving images of the whole or any part or parts of any Event as well as the name, logo and yacht branding of any Competitor to produce, market, sell and distribute any digital, electronic, fantasy and/or board games of the America's Cup without restriction, except that it is understood that all such electronic or board games shall be packaged and marketed as an AC36 and/or Event-specific product, either as an individual product or as a series, and shall not place an undue prominence on any single Competitor in connection therewith (without the approval of any such Competitor).

#### **42. WEBSITES – DIGITAL MEDIA – SOCIAL MEDIA AND DIGITAL APPLICATIONS (ALSO “APP(S)”)**

In order to substantially grow the digital media audience of the Events, the Competitors, their commercial partners and the Title Sponsor by ensuring better content for both the Official AC36 Website and the Official America's Cup App, and all digital and social media operations, the following shall apply:

- a) **Official AC36 Website** - All Competitors acknowledge and agree that the sole and exclusive official website of AC36 shall be produced and hosted by or on behalf of COR/D, in cooperation with the Title Sponsor, under the domain [www.americascup.com](http://www.americascup.com) (the “**Official AC36 Website**”) and the Title Sponsor shall have adequate visibility from the home page onward. The Official AC36 Website shall be also accessible through a domain name belonging to the Title Sponsor and including its brand.

- b) **Official Competitor Websites** – An Official Competitor Websites Guidelines document shall be published by COR/D by the 30th of June 2018 and, subject to its terms and provisions, within three (3) months following the close of the Entry Period (or as reasonably required by the COR/D in respect of any Late Entry), 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 COR/D under the domain of the Official AC36 Website as their sole and exclusive digital presence. For the purposes of this Article 42, “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:
  - i. any Official Competitor App that a Competitor may have pursuant to Article 42 d) below; and/or
  - ii. presence on the third party branded and operated social media platforms presently known as Facebook, Twitter, Instagram, Flickr, Pinterest and YouTube and any others as may be designated by COR/D from time to time.
- c) **Official America’s Cup App** - Each Competitor acknowledges and agrees that the sole and exclusive official digital application of AC36 and the Events (the “**Official America’s Cup App**”) shall be produced and hosted by or on behalf of COR/D. A ‘page’ or ‘tag’ outlining details, profiles and relevant content pertaining to each competition in AC36 will be included on the Official America’s Cup App.
- d) **Official Competitor Apps** - Without prejudice to this Article 42, each Competitor may produce an official digital application (an “**Official Competitor App**”) in relation to its status as a Competitor in AC36, on and subject to the terms of the Official Competitor Apps Guidelines document which shall be published by COR/D no later than 30th of June 2018.
- e) **Content** - The terms of this Article 42 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.

#### **43. AC36 TEAM BASES.**

- 43.1. For the AC Christmas Cup, the CSS and the Match all Competitors shall conduct their sailing operation at the Venue of the above mentioned Events in an area selected by COR/D in consultation with the Title Sponsor.

For an adequate period of time, prior during and after each Event, RNZYS shall allocate, at a reasonable commercial fee, a temporary space to each Challenger on which they will build at their own expenses their Team Bases.

During the same periods of time, RNZYS shall also grant to COR, free of charge, adequate temporary space on which COR shall build at its own expenses its offices for the purposes of fulfilling its duties as Challenger of Record, other than sailing operations.

43.2. **Team Bases Allocation** - Team Bases shall be allocated applying the following order of priority:

- a) the Defender;
- b) the Challenger of Record;
- c) all the remaining Challengers in the order in which their challenges were accepted by RNZYS.

43.3. **Team Bases Governing Principles** - All Challengers must respect at all times the Governing Principles which will be set out in the Team Bases Licence Agreement and will be bound to comply with the terms and conditions set out in such agreement.

Each Competitor shall enter into a Team Bases Licence Agreement with COR/D prior to taking possession of the temporary space allocated for its Team Base in any Venue.

#### 44. **ACWS TEAM BASES.**

Competitors shall carry out their sailing operations at each Venue of the ACWS Events in the area selected by COR in consultation with the Defender and the Title Sponsor, where they shall install their temporary Team Bases.

The construction specifications, logistics, timing and other provisions regarding the ACWS Team Bases will be indicated by COR for each Venue after the finalization of the ACWS Calendar and COR may require each Competitor to enter into a specific ACWS Team Bases Licence Agreement.

#### 45. **MERCHANDISING.**

45.1. **Preliminary Regattas and CSS Venue merchandising** - Only COR appointed retailers and concessionaires and the Title Sponsor are authorized to carry on any retailing or merchandising activities at any Preliminary Regatta and CSS Venue. COR shall ensure that the Title Sponsor's and Competitors' facilities selling their merchandise or team

merchandise shall be afforded a prominent location and presence within each above mentioned Venues.

- 45.2. **Match Venue merchandising** - Only the Defender and the final Challenger appointed retailers and concessionaires and the Title Sponsor are authorized to carry on any retailing or merchandising activities at the Match Venue. The Defender shall ensure that the Title Sponsor's and Competitors' facilities selling their merchandise or team merchandise shall be afforded a prominent location and presence within each above mentioned Venue.
- 45.3. **Promotions** - Competitors shall not distribute promotional products or samples in any Venue without the prior written approval of COR for the Preliminary Regattas and of the Defender for the Match.
- 45.4. **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 COR/D, except where such use is incidental and is less than twenty per cent (20%) of the total content of the product. For the avoidance of doubt, the approval of the other Competitor is always required.
- 45.5. **Use of Official Event Logo on Competitors uniforms and on team replica apparel merchandising.**

45.5.1 – The Official Event Logo designated by the Title Sponsor shall be displayed at all times during AC 36 on the sailing uniform/gear and other team member clothing (whether sailing crew or onshore personnel) of each Challenger, as prescribed in the Brand Manual (“**Event Patch**”). For avoidance of doubt, this requirement is mandatory for the Challengers only, but if the Defender elects to display the Event Patch on any of its sailing uniform/gear or other team member clothing, any such display shall always comply with the Brand Manual.

45.5.2 – Competitors may also display the Event Patch on team replica apparel merchandising, provided that if a Competitor elects to do so, then that Competitor is required to pay a fee to the Title Sponsor for each single use of the Event Patch at a level and in the manner communicated by the Title Sponsor (such a fee to be the same amount for all Competitors). For the avoidance of doubt, such a display is optional only and not a mandatory requirement for any of the Competitors. Any use of the Official Event Logo on Competitors merchandise shall always be in compliance with the Contract and the Brand Manual.

**See Protocol Amendment 05.**

#### **46. ENTERTAINMENT.**

- 46.1. For the Preliminary Regattas and CSS, COR and the Title Sponsor shall have the exclusive right to organize and manage all public entertainment at each Venue. COR and the Title Sponsor may exercise this right in any manner at their sole discretion, including by contracting the organization, management and provision of public entertainment at the Venues to third parties.
- 46.2. For the Match the Defender and the Title Sponsor, in liaison with the final Challenger, shall have the exclusive right to organize and manage all public entertainment at the venue of the Match. The Defender and the Title Sponsor may exercise this right in any manner at their sole discretion, including by contracting the organization, management and provision of public entertainment at the Venues to third parties.

#### **47. SECURITY.**

Subject to and in full compliance with the laws and/or other lawful directives of the competent government authorities, Competitors and their respective Team Members (as applicable) and all Regatta Officials shall comply with security measures adopted by COR/D or their authorized agents from time to time, in respect of the whole or any part or parts of AC36. Competitors shall assist security personnel appointed by COR, for the Preliminary Regattas and the CSS, or the Defender, for the Match, and/or provided by the Host City and competent public authorities. 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).

#### **48. AIR SPACE.**

Subject to and in full compliance with the laws and/or other lawful directives of the competent government authorities, all air space above each Venue during each Event shall be under the control and direction of COR for the Preliminary Regattas and the CSS and of the Defender for the Match. Competitors and their sponsors or other commercial partners or authorized agents shall not contest or use the air space for any purpose, including but not limited to the use of satellites, drones, aircraft (fixed or rotary winged), hang-gliders, without prior approval by COR or the Defender, as applicable.

#### **49. WATER SPACE.**

- 49.1. **Control of water space** - Subject to and in full compliance with the laws and/or other lawful directives of the competent government authorities, the Racing Area at each Event shall be under the control and direction of COR for the Preliminary Regattas and the CSS and of the Defender for the Match. COR and the Defender shall delegate - to the extent necessary - their respective control of the Racing Area to the Regatta Director for each of the Events of the Preliminary Regattas and CSS or the Match, respectively.
- 49.2. **Preliminary Regattas and CSS Spectator vessels** - COR shall optimize the opportunities for accredited spectator vessels in the Racing Area during the Events of the Preliminary Regattas and CSS, with priority to the Title Sponsor, COR's commercial partners and then the competing Competitors. Without the prior approval of COR, Competitors shall not provide spectator vessel services to the general public at any Venue during any Event of the Preliminary Regattas and CSS.
- 49.3. **Match Spectator vessels** - The Defender shall optimize the opportunities for accredited spectator vessels in the Racing Area during the Events of the Match with priority to the Title Sponsor, Defender's commercial partners and then the final Challenger and its commercial partners. Without the prior approval of the Defender, Competitors shall not provide spectator vessel services to the general public at the Venue during the Match.

#### **50. PROVISION FOR THE APPOINTMENT OF A NEW CHALLENGER OF RECORD.**

- 50.1. If at any time the Initial Challenger of Record wishes to relinquish its position as Initial Challenger of Record, the following provisions shall apply:
- a) The Initial Challenger of Record shall forthwith notify the RNZYS and the other Challengers of its decision and the RNZYS shall either:
    - i. appoint within (20) days from the receipt of the notice by the Initial Challenger of Record, a new Challenger of Record which shall be then confirmed by a majority vote of the Challengers at a Challengers Meeting of all of the then Challengers, to take place within (60) days after such appointment; or
    - ii. convene within (20) days from the receipt of the notice by the Initial Challenger of Record, a meeting of all of the then Challengers to elect by a majority vote the new Challenger of Record amongst the candidates. The RNZYS shall have a veto right on such election to be exercised immediately after the election at the Challengers

Meeting; in such case the Challengers shall immediately proceed with a new election, the RNZYS maintaining its veto right.

- b) The RNZYS will chair without voting right the above-mentioned Challenger Meeting(s) which may also be attended by the Initial Challenger of Record with full voting rights, unless it has confirmed that he will not continue to compete as a Challenger.
- c) In the event of the above procedure(s) not being successful, the RNZYS shall appoint the new Challenger of Record, which will only need to be confirmed by the Arbitration Panel within (20) days of its appointment.
- d) Upon the final appointment of the new Challenger of Record, the Initial Challenger of Record shall relinquish its position as the Initial Challenger of Record, but shall retain the status of a Challenger under this Protocol if and only if its yacht continues to compete in the AC36.
- e) All Challengers present or voting by proxy at the Challengers Meeting or any other duly convened meeting of Challengers shall be entitled to one vote each. If a Challenger is unable to be represented in person at any meeting of Challengers, that Challenger may appoint in writing another Challenger to vote as its proxy. No Challenger can hold more than one proxy and all matters shall be determined by a majority of votes.
- f) The Initial Challenger of Record shall transfer forthwith to the new Challenger of Record all the funds that it retains as Challenger of Record and all relevant accounting and contractual documents.

## **51. ACCEPTANCE OF PROTOCOL AND PROHIBITION ON PROCEEDINGS.**

- 51.1. As a condition of entry as a Challenger in the Thirty Sixth America's Cup and in addition to all other requirements under the Deed of Gift, all Challengers are required under Article 6, for their notice of challenge to be accepted by RNZYS to agree that they accept and will be bound by the Rules, all of the provisions of this Protocol, its Appendixes and Schedules, and in particular all the provisions included in the Contract. Such acceptance includes an acknowledgement that all decisions rendered by the Arbitration Panel will be binding on all Challengers and RNZYS and shall not be subject to appeal or be referred to any court or other tribunal for review in any manner.
- 51.2. Any Challenger who resorts to any court or tribunal, other than the Arbitration Panel or any other dispute resolution body agreed by COR/D will be in breach of this Protocol and will accordingly be ineligible to participate in any Event and thus be the Challenger for the Match.

51.3. Each Competitor by agreeing to be bound by this Protocol, is deemed to have undertaken on its own behalf and on behalf of each of its officers, members, employees, agents and contractors, that they will not, at any time, in relation to any matter governed by this Protocol, or in relation to any other matter concerning the Thirty Sixth America's Cup, issue proceedings or suit in any court or other tribunal against all or any of the following:

- a) RNZYS or any of its officers, members, employees, agents or contractors;
- b) ACPI or any of its officers, members, employees, agents or contractors;
- c) the Challenger of Record any other Challenger, COR/D, the Defender or any of their respective officers, members, employees, agents or contractors;
- d) the Title Sponsor in its capacity as co-host and co-organizer of the Events;
- e) any race official involved in a Selection Series or the Match;
- f) the Rules and Measurement Committees or any of its members; or **See Protocol Amendment 02.**
- g) the Arbitration Panel or any other dispute resolution body agreed by RNZYS and the Challenger of Record or any members of such entities.

51.4. The preceding provisions of this Article 51 do not limit the right of any Challenger or the Defender or any of their respective officers, members, employees, agents or contractors, to issue proceedings or suit in relation to:

- a) any loss or damage in respect of usual marine risks and in respect of which claims would ordinarily be the subject of Hull, War Risk and P&I cover;
- b) any loss or damage to any other property used in connection with a Challenge or the Defence;
- c) any injury, loss or damage to a person, boats or other property as a result of wilful or negligent acts; or
- d) any person who is allegedly in breach of any confidentiality undertaking or restrictive covenant entered into with any Challenger or the Defender.

## **52. PROTOCOL AND CLASS RULE AMENDMENTS.**

- 52.1. This Protocol may be amended at any time by mutual agreement of RNZYS and the Challenger of Record.
- 52.2. Once published, the AC75 Class Rule cannot be replaced. For a period of three months after the date of publication it may be amended for any reason by COR/D but thereafter (except as specified in Article 7.7), it can only be amended by unanimous agreement of Competitors whose entries have been officially accepted at such time or when specifically allowed and in accordance with the provisions contained in the AC75 Class Rule which do not require Competitors agreement or consent. **See Protocol Amendment 04.**
- 52.3. If this Protocol is amended pursuant to Article 52 after a challenge for AC36 has been received by RNZYS but before RNZYS has accepted or rejected such challenge, the applicant may withdraw its challenge by written notice to RNZYS within two (2) calendar days of being notified of the Protocol change, in which case all monies paid by the applicant with its challenge shall be refunded in full. If the applicant does not withdraw its challenge within the two (2) calendar days, its challenge for AC36 shall be considered to have been made under the revised Protocol.

## **53. AMERICA'S CUP ARBITRATION PANEL AND DISPUTE RESOLUTION.**

- 53.1. An America's Cup Arbitration Panel ("**Arbitration Panel**") made up of 3 members shall be established whereby the RNZYS, as holder of the Cup, and the Initial Challenger of Record, shall each nominate one member, and his deputy. The third member, shall be selected by agreement of the two titular members already nominated and shall be the Chairman of the Arbitration Panel. Similarly the two titular members will select the Deputy Chairman. When a titular member, or the chairman, is not able to sit, they will be replaced by their respective deputy(ies).
- 53.2. Criteria for selection of all members shall include:
- a) they may be a resident or citizen of any country including those participating in the Thirty Sixth America's Cup competition or trials whether or not they have 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 be known to be fair-minded and possess good judgement.

53.3 The Members of the Arbitration Panel shall be paid an agreed hourly rate for their services as approved by COR/D and be reimbursed for their approved travel and out of pocket expenses. The costs so incurred shall be recovered on a user pay basis from the parties involved, as ordered by the Panel.

53.4 The Arbitration Panel shall be empowered as follows:

- a) to resolve all matters of interpretation of the Protocol and 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 rule) between RNZYS and the Challenger of Record;
- c) to resolve disputes (other than those concerning the racing rules or the class rule) between RNZYS and an individual Challenger when the Challenger of Record express in writing to RNZYS 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 rule) between individual Challengers when one of those Challengers so requests, or between an individual Challenger and the Challenger of Record;
- e) to resolve any disagreement between RNZYS and the Challenger of Record and in particular in respect to the Race Conditions or Rules;
- f) to determine matters of Nationality;
- g) to determine the appropriate penalty under Reconnaissance;
- h) to resolve disputes under ACPI licence agreement; and
- i) to resolve any other matters which it is given jurisdiction to determine;
- j) to fix or determine the fee payable in relation to any application made to the Arbitration Panel;
- k) 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 claims or imposing the costs to the losing party;

- l) to determine the penalty for failure to make any payment fixed or determined by the Panel;
- m) to mediate at the request of the parties any dispute it considers appropriate for mediation. Such mediation to be undertaken by the Chairman, or the Deputy Chairman if the former is not available, who shall thereafter not be precluded or excluded should that mediation be unsuccessful and therefore followed by a regular dispute.

53.5 When considering disputes involving an issue of a technical nature the Arbitration Panel shall consult with the Rules Committee and/or the Measurement Committee or other appropriate technical experts and shall be bound by the advice received when delivering their decision, except in the case of manifest error or manifest breach of article 16.3 of this Protocol. **See Protocol Amendment 02.**

53.6 Similarly, when considering disputes involving an issue of commercial, media or similar nature, the Arbitration Panel shall consult with COR/D and the Arbitration Panel shall follow in principle the advice received when delivering their decision.

53.7 The Initial Challenger of Record and RNZYS shall have the right at any time to replace one or both of their respective Arbitration Panel members (and/or their deputies) , 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. Likewise the two members of the Panel appointed by the Initial Challenger of Record and RNZYS shall have the power to replace the third member of the Panel (and/or his deputy) 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 his deputy) unable or unwilling to exercise their powers and/or functions under this Article.

53.8 Meetings of the Arbitration Panel may be held by video, telephone conference or other electronic communication means. A quorum for meetings of the Arbitration Panel shall at all times be three, and each member shall be entitled to one vote. Decisions shall be made by a majority of votes. The Arbitration Panel shall draft its own procedural rules for approval by COR/D.

53.9 The net operating costs of the Arbitration Panel (in excess of application fees and costs received or imposed) will be met by COR/D.

- 53.10 Where no penalty is specifically provided for a breach of any of the provisions of this Protocol, the Conditions, the Deed of Gift or previous decisions of the Arbitration Panel, the Panel shall determine and impose such penalty as it considers appropriate having regard to the nature and manner of the particular breach.
- 53.11 The Jury shall not interpret this Protocol unless expressly provided for herein.
- 53.12 **Legal seat of the Arbitration Panel:** The legal seat of the Arbitration Panel is Auckland, New Zealand. However, the Arbitration Panel may carry out all the actions which fall within its jurisdiction at any Event or Venue or its Preliminary Regattas or in any other place 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. **See Protocol Amendment 02.**
- 53.13 **Applicable Law:** The Arbitration Panel proceedings shall be governed by laws governing arbitration proceedings at the seat of the Arbitration Panel, the rules of procedure to be drafted as set out under Article 53.8 of the Protocol, and the New York Convention of 1958 on the Recognition and Enforcement of Arbitral Awards. When permitted by the laws governing arbitration proceedings at the seat of the Arbitration Panel, the Rules of Procedure shall prevail. **See Protocol Amendment 02.**
- 53.14 The Arbitration Panel shall rule on each matter placed before it in accordance with the Deed of Gift and the Protocol using the merits, general principles of law and the rules of law the application of which it deems appropriate. **See Protocol Amendment 02.**
- 53.15 In all instances, 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. The Arbitration Panel will use its best endeavours to act in a time and cost-efficient manner on all matters. **See Protocol Amendment 02.**

#### **54. RESTRICTIONS ON OFFICIALS.**

No person who has been a member of the Arbitration Panel, a member of the Rules and Measurement Committees, Umpires and Jury or other race official during any part of the 36th America's Cup, shall thereafter crew on any yacht of, or work as a designer or in any other capacity for any Challenger or the Defender and vice-versa. **See Protocol Amendment 02.**

## 55. RECONNAISSANCE.

55.1. **Application** - This Article applies throughout the world from the time this Protocol is published until the completion of the last race of the Match.

55.2. **Prohibited activities** - The Competitors are prohibited from engaging in any of the following in an attempt to gain information about another Competitor:

- a) any illegal act;
- b) the use of eavesdropping devices;
- c) accessing correspondence, electronic communications or communication frequencies or channels allocated to other Competitors or used by other Competitors via a commercial service provider;
- d) the unauthorized entry into any servers or computer system;
- e) interception of information emanating from telemetry, instruments, computers, etc.;
- f) without the prior consent of the affected Competitor, use of satellites, aircraft, drones, and/or other means of flight to observe or record from above another Competitor's yacht;
- g) the acceptance of any information from a third party that a Competitor is prohibited from obtaining directly; and
- h) obtaining positional data about another Competitor's yacht via electronic means, other than from publicly available sources.

55.3. **Non-interference** - Except when participating in any official racing or practice racing 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 or towing, whether or not for the purpose of observing it in an attempt to gain information about the affected (or any other) Competitor.

55.4. **Accredited media** - The terms of this Article shall not restrict the lawful and permitted activities of any accredited media organization/representative, provided such media organization/representative shall not, other than by way of public dissemination through a

Media Organization, provide to any Competitor any information that a Competitor is prohibited from obtaining directly.

## **56. METEOROLOGICAL AND OCEANOGRAPHIC DATA**

56.1 COR/D will implement a common programme for the collection of weather, 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. In addition, data relevant to any venue obtained by or on behalf of COR/D as part of its assessment of such venues which is not already publicly available will be made available to all Competitors at no cost within seven (7) days of the relevant Venue announcement.

56.2 The Regatta Director may also approve other data as available to all Competitors on a reasonable commercial basis and immediately publish all such approvals on the Official AC36 website as they are approved.

56.3 **Restrictions on collection of data in Auckland:** As a consequence of the above and in order to save campaign costs for all Competitors the following restrictions shall apply within the Greater Auckland Area:

Competitors shall not otherwise collect weather, wind, sea state or sea current instrument data except:

- a) from wind measuring devices that measure wind within one (1) metre of the device on an AC75 Class Yacht or on a test sailing yacht which is not a Surrogate, provided that, at any one time, only either an AC75 yacht or one (1) such test yacht can be equipped with such a device (however for the avoidance of doubt, during Defender sailing permitted by Article 11.1 f) each participating AC 75 yacht can be equipped with such a device);
- b) from two (2) wind measuring devices that measure wind within one (1) metre of the device and/or current measuring devices from two (2) permitted support vessels, provided that any device may only be operated while its AC75 Class Yacht or test yacht is sailing at the time in the Greater Auckland Area;
- c) from personal observation from land or on the water;
- d) for data that is publicly and readily available to all Competitors, the subscription to which costs less than US\$50 per month;
- e) from wind measuring equipment on a crane situated at or adjacent to a Competitor's base.

**See Protocol Amendment 06.**

56.4. **Data used for Forecasts and Modeling:** 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 all measured data used is collected in compliance with this Article 56.

**57. INSURANCE.**

Each Competitor shall, at its expense, obtain and maintain in full force and effect throughout its participation in the whole or any part of AC36 the minimum required levels of insurance coverage specified in Appendix 3 and comply with all the terms and conditions of that Appendix.

**58. LIABILITY AND INDEMNITY – PARTICIPATION AT OWN RISK.**

58.1 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 meeting or exceeding the structural and safety specifications in the AC75 Class Rule or any other Yacht;
- b) it is solely and wholly responsible for assessing the structural and integrity and safety of its yachts, including any AC75 Yacht, any supplied and/or specified component of the AC75 Yacht or any other Yacht (and their components), whether or not in compliance with its applicable class rule in any case; and
- c) none of RNZYS, CVS, COR/D, Team New Zealand, Luna Rossa, ACE, COR36, the Venue Authorities, World Sailing and/or any Officials (**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 their components (including the supplied and/or specified components under the AC75 Class Rule), whether or not the yacht complies with its applicable class rule in any case.

58.2 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 its components including those supplied and/or specified components under the AC75 Class Rule).

- 58.3 Consistent with the principle articulated in Articles 58.1 and 58.2, of the Protocol and in the racing rules to be agreed under Articles 16.1. (e), 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 AC36 it does so at its own risk and responsibility.
- 58.4 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:
- a) the acceptance of the Competitor's entry to participate in the whole or any part of AC36;
  - b) the Competitor's participation in the whole or any part of AC36, which includes attendance and participation in Events and/or designing, constructing, testing, sailing and/or racing any yacht (including an AC75 Yacht and its components (including supplied and/or specified under the AC75 Class Rule, and/or any other Yacht), whether or not pursuant to the terms of the Rules in each case; and/or
  - c) 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.
- 58.5 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 AC36 due to any event, occurrence or circumstances whatsoever, including acts of God, terrorism, war, government intervention or regulation, public health, environmental conditions, strikes, lock-outs, other industrial acts, lack of funding or support, or any other force majeure circumstance.
- 58.6 The terms of this Article 58 shall survive the expiration or earlier termination of this Protocol.

**See Protocol Amendment 02.**

## 59. INTERPRETATION.

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

All references to “**RNZYS**”, where the context so permits, includes any syndicate or other entity or entities which undertake the defence of the Cup on its behalf;

The term “**Challenger**”, except where inconsistent with the context, names a Yacht Club whose challenge has been accepted by RNZYS and includes any syndicate or other entity which undertakes that Yacht Club’s challenge as its representative;

Unless another Challenger of Record is appointed all references to the Challenger of Record shall be read as references to the Initial Challenger of Record;

**AC36** means the 36th America’s Cup, including in particular each of the Events that form part of the 36th America’s Cup as contemplated by this Protocol;

**AC36 Team Base and ACWS Team Base** means facilities in a Venue occupied by a Competitor during an Event, as further described in Articles 43 and 44;

**AC75 Class Rule** means the rule governing the yachts to be used in the America’s Cup World Series, the Christmas Cup, the America’s Cup Challenger Selection Series and 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;

**AC75 Class Yacht** means a yacht that complies with or could comply with the AC75 Class Rule;

**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;

**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, organization, product, service, brand or idea, except that the following do not constitute “Advertising” for the purposes of this definition:

- the name and/or national flag of the country of the yacht club that the Competitor represents;
- the name and/or burgee of the yacht club that the Competitor represents;
- the sail number of the yacht;
- the name of the skipper of the yacht; and/or
- 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;

**America's Cup World Series** or **ACWS** means a series of regattas with that title to be held in 2019 and 2020 as further described in Article 2;

**Arbitration Panel** means the panel appointed as further described in Article 53;

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

**Challenger** means a yacht club whose challenge for AC36 has been accepted by RNZYS in accordance with this Protocol, and the sailing team that represents such yacht club in AC36. For the avoidance of doubt, "Challenger" includes the Challenger of Record;

**Challenger of Record** means Circolo della Vela Sicilia (CVS) and includes its representative team, the Luna Rossa Challenge;

**Challenger Selection Series** or **CSS** means the series of races referred to in Article 3;

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

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

**COR/D:** means the Challenger of Record and the Defender jointly;

**Course Area** means one or more areas within the Racing Area on which courses for a given race are set;

**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, as amended by orders of the Supreme Court of the State of New York on the 17<sup>th</sup> day of December 1956 and the 5<sup>th</sup> day of April 1985;

**Defender** means RNZYS and the sailing team that represents RNZYS in AC36;

**Entry Fees** means the entry fees payable by each Competitor pursuant to Article 7;

**Entry Period** has the meaning given to it in Article 6;

**Events** means the regattas that form part of AC36, including the America’s Cup World Series, the Christmas Cup, the America’s Cup Challenger Selection Series and the Match (including, in each case, any Special Events related thereto), each an **Event**;

**Greater Auckland Area** means the area within a circle having a radius of 20 nautical miles from the Sky Tower, located on the corner of Federal St and Victoria St West, Auckland 1010; **See Protocol Amendment 06.**

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

**Hull** shall have the same meaning as described in the AC75 Class Rule;

**Indemnified Parties** means RNZYS, CVS, the Challenger of Record and its representative team Luna Rossa Challenge, Luna Rossa Challenge Srl, COR/D, Emirates Team New Zealand, Team New Zealand Limited, the Title Sponsor, any Regatta Official and/or the Venue Authorities and/ or their respective directors, officers, employees and/or contractors in each case (as applicable);

**Launch** means when a Hull is first floated in water for any reason;

**Match** means the series of races for the America’s Cup between the Defender and the qualifying final Challenger resulting from the Challenger Selection Series;

**Media Organization** means an organization 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;

**NZT**, means New Zealand standard time. Unless otherwise specified, all times in this Protocol are NZT. For the ACWS the official time shall be the official civil time of the respective venue;

**Officials** include the Regatta Director; the members of the Rules and Measurement Committees; the Umpires; the Jury; the Arbitration Panel; any other regatta officials and/or staff; **See Protocol Amendment 02.**

**Official AC36 Website** has the meaning given to it Article 42;

**Official America's Cup App** has the meaning given to it Article 42;

**Official Competitor App** has the meaning given to it Article 42;

**Official Competitor Website** has the meaning given to it in Article 42;

**Original Hull Surface** means the surface of a Hull at launch and as may be specified in the AC75 Class Rule; **See Protocol Amendment 02.**

**Performance Bond** means the performance bond in the amount of USD 1,000,000 (one million United States Dollars) to be provided and maintained by each Competitor pursuant to Article 7;

**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 Event being part of the ACWS and the Christmas Race;

**Protocol** means this Protocol Governing the 36<sup>th</sup> 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;

**Racing Area** means the area within which Course Areas will be set for any Event or Events;

**Racing Rules** means the racing rules to be used for AC36, as developed and published pursuant to Article 16.1 e);

**Regatta Director** means the person appointed pursuant to Article 20;

**Restricted Area** means the area or areas adjacent to the Course Area as prescribed by COR/D and managed by the Regatta Director for the exclusive use by vessels with accreditation flags;

**RNZYS** means the Royal New Zealand Yacht Squadron and its representative team, Emirates Team New Zealand;

**Rules** means those rules governing AC36 listed in Article 16;

**Rules Committee and Measurement Committee** mean the committees appointed pursuant to Article 21; **See Protocol Amendment 02.**

**Special Event** means any event described or contemplated in Article 36;

**Surrogate Yacht** means any yacht exceeding 12m LOA which is capable of producing meaningful design or performance information for use either directly or indirectly in the design, construction or sailing of an AC75 yacht and as further provided in the AC75 Class Rule, but excluding existing class yachts such as TP 52s used only for the participation in and preparation for their class or other official regattas; **See Protocol Amendment 01.**

**Team Members** means, in respect of any Competitor, all of its sailors, management or other staff, appointed representatives or team members from time to time;

**The Challengers Account** means the bank account(s) administered on behalf of the Competitors to fund the activities detailed in Article 7.5 and managed pursuant to Article 29;

**Title Sponsor** means the Company, with all the logos and other identifications pertaining to it, which has acquired the exclusive naming and presenting sponsorship rights for the entire AC36 and other connected rights, as better defined in Appendix 2 hereto;

**Umpires** means the umpires appointed pursuant to Article 16.1 e);

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

(i) controlled by or on behalf of the Defender, COR or COR/D as the case may be, pursuant to its arrangements with the Venue Authorities for the Event; and/or

(ii) designated as part of the venue for the Event pursuant to arrangements with the Venue Authorities for the Event (whether or not controlled by or on behalf of the Defender, COR or COR/D as the case may be);

**Venue Authorities** means the Host Cities and other Persons with which the Defender, COR or COR/D as the case may be, contract for the availability and use of the Venues for the Events;

In the interpretation of this Protocol:

- the use of the word “including” and similar words shall not imply any limitation to the words following such term;
- unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing any gender include any gender;
- the headings to the clauses 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; and
- 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.

**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. It is acknowledged that RNZYS, in its capacity as trustee of the America’s Cup, shall amend this Protocol if, and only if, so required by the judicial authority having jurisdiction over the Deed of Gift.

**Official dictionary:** The official language of this Protocol is English. Unless separately defined the meaning of any word used in this Protocol and any document governing the whole or any part of AC36 shall be determined by reference to the Oxford English Dictionary as it exists in the official online dictionary available at [www.oed.com](http://www.oed.com) (or such later official website of the Oxford English Dictionary).

**Articles / Appendixes:** In the interpretation of this Protocol, a reference to an “Article” or “Appendix” is a reference to an article of or Appendix to this Protocol.

**Dates and times:** Unless otherwise specified, all dates and times referenced in or in any communications pursuant to this Protocol are referred to New Zealand and NZT and the dates and times at the respective Venue.

**Meanings:** In the interpretation of this Protocol, the words “shall”, “must” and “will” are mandatory; and the word “may” is permissive.

Dated this                      day of                      2019

**The Royal New Zealand Yacht Squadron**

**Circolo della Vela Sicilia**

\_\_\_\_\_

\_\_\_\_\_

**LIST OF APPENDIXES:**

**Appendix 1: Description of AC 75 Class Yacht.**

**Appendix 2: Naming and Sponsorship Contract (the “Contract”).**

**Appendix 3: Insurance.**

**Appendix 4: Notice of Challenge Template.**

## APPENDIX 1.

### AC75 CLASS YACHT.

#### **Description:**

A 75 foot high performance monohull governed by the AC75 Class Rule, the objectives of which will be:

- to create a yacht suitable for head to head match racing and close competition;
- to permit technological development to spearhead the development of sailing and maintain the America's Cup as the world's premier sailing event;
- to ensure the class is relevant to the sport of sailing with connection to the community of sailors;
- for the yachts to be demanding to sail, rewarding the top level of skill for all sailors on the yacht;
- to provide for competitive racing in light and stronger wind conditions;
- to provide a safe position for a guest racer on board the yacht;
- to incorporate practical requirements for the launching, retrieval and transporting of yachts.
- an estimated number of 10 – 12 crew members with the actual number to be defined in the Class Rule

#### **Limitations:**

In accordance with Article 13, further limitations to contain costs will be detailed in the AC75 Class Rule, and may include any of the following:

- the incorporation of one design and/or standard single manufacturer elements;
- restrictions on materials and equipment;
- restrictions on construction techniques;
- tightly controlled sail restriction rule.

## **APPENDIX 2.**

### **Terms and Provisions to be included in the 36<sup>th</sup> America's Cup Naming and Sponsorship Agreement ("the Contract").**

Due to the commercial nature of Appendix 2, its contents shall remain confidential to the RNZYS, CVS and the Title Sponsor and shall only be released, at the joint discretion of RNZYS and CVS, to Competitors and bona fide prospective Challengers who give notice of their intention to lodge a Notice of Challenge.

## **APPENDIX 3.**

### **INSURANCE.**

1. Insurances required of Competitors: Subject to the remainder of this Appendix each Competitor shall, at its expense, obtain and maintain in full force and effect throughout its participation in the whole or any part of America's Cup XXXVI (AC36) the following minimum required levels of insurance coverage:
  - a) Protection and Indemnity Insurance, with a primary limit of not less than USD 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 USD1,000,000 (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 USD 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 USD 10,000,000 (ten million United States Dollars) excess to each of the:
    - (i) Protection and Indemnity coverage required pursuant to 1(a) above;
    - (ii) Marine Comprehensive General Liability required pursuant to 1(b) above; and
    - (iii) Business Automobile Liability coverage required pursuant to 1(c) above

- e) Pollution Liability Insurance, either by endorsement to the appropriate insurances listed above, or by separate insurance in the amount of not less than USD 5,000,000 (five million United States Dollars), as provided for under any state law or municipal law that may be applicable at each Event venue;
  - f) Medical, personal accident, death or dismemberment coverage, including emergency medical treatment, for all of its Team Members for amounts and of a type appropriate for the country in which the particular team member is from time to time located 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.
2. COR/D may by written notice to the Competitors from time to time alter these requirements to meet the applicable laws and regulations in the country in which any Event is being conducted.
  3. **Claims-made policies:** Should any of the insurances required in this Appendix 3 be provided under a claims-made form, the Competitor shall maintain such coverage continuously throughout AC36 and, without lapse, for three (3) years beyond the end of the last Event, to the effect that, should occurrences during the term of AC36 give rise to claims made after the end of AC36, such claims shall be covered by such claims-made policies.
  4. **Annual aggregate limit:** Should any of the insurances required in this Appendix 3 be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such aggregate limit, such annual aggregate limit shall be not less than double the applicable occurrence limits specified in this Appendix.
  5. **Additional insureds:** Each of the liability policies required in this Appendix 3 shall include a waiver of subrogation in favour of, and shall be endorsed to name as additional insureds, each of RNZYS and the COR (together with their representative teams, any Regatta Official, and/or the Venue Authorities) and the Title Sponsor 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.
  6. **Primary and non-contributory:** All insurance policies required in this Appendix 3 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.

7. **Insurance rating.** All insurance policies required in this Appendix 3 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.
8. **Proof of insurance:** Upon request by COR/D, each Competitor shall promptly provide reasonably acceptable evidence that policies complying with the requirements of this Appendix have been issued or renewed and are in force, with payment in full of all premiums.
9. **Other:** Neither RNZYS nor the COR shall have any obligation or liability to provide or maintain any insurance coverage for any Competitor or its Team Members.

## APPENDIX 4.

### Notice of Challenge Template.

Notice of Challenge for the 36<sup>th</sup> America's Cup.

TO: ROYAL NEW ZEALAND YACHT SQUADRON.

Attention: The Commodore

(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 authorized 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 36<sup>th</sup> America's Cup (including its constituent events) in accordance with the Protocol Governing the 36<sup>th</sup> America's Cup (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 36<sup>th</sup> 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; and

(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:

- Has been in existence for a minimum of five years;
- Maintains a membership of at least 200 members;
- Is financially supported by a majority of its membership on a pro-rata basis;
- Operates as a yacht club and has objectives consistent with the furtherance of yachting activities; and
- 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 and all other rules referred to in the Protocol;

(b) 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;

(c) 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;

(d) 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;

(e) agrees to submit solely and exclusively to the respective jurisdictions of COR/D, Arbitration Panel, Jury, Rules and Measurement Committees, Umpires and any of the Regatta Officials, in each case as prescribed in the Protocol; **See Protocol Amendment 02.**

(f) shall procure that its Team Members (as such term is defined in the Protocol) will submit solely and exclusively to the respective jurisdictions of COR/D, Arbitration Panel, Jury, Rules and Measurement Committees, Umpires and any of the Regatta Officials, in each case as prescribed in the Protocol; and **See Protocol Amendment 02.**

(g) acknowledges and agrees (for and on behalf of itself and its Team Members) that no decisions or actions of COR/D, Arbitration Panel, Jury, Rules and Measurement Committees, Umpires and any of 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. **See Protocol Amendment 02.**

(6) The Challenger will be represented by [insert name of representative sailing team] in AC36.

(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]. The Challenger Representative shall be, (until further notice)

\_\_\_\_\_

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.