**SYDNEY 38 CLASS ASSOCIATION**

**[ *EVENT*]**

**[*DATE*]**

**Participant Bareboat Charter Agreement.**

THIS BAREBOAT CHARTER AGREEMENT is made on

**BETWEEN**

**Owner:** Name

 Address

 Contact email

 Mobile number

**Charterer:** Name

 Address

 Contact email

 Mobile number

**S38 Assoc:** SYDNEY 38 ONE DESIGN ASSOCIATION (AUSTRALIA) INCORPORATED Registration No: INC9877156 (**S38 Assoc**)

SYDNEY 38 CLASS ASSOCIATION

 Sydney38assoc@optusnet.com.au

 Tel: +61 2 99994057

**Yacht:** Boat Name

 Class Sydney 38 OD

 Registration

 Sail number

1. **Charter:**  In consideration of the covenants contained in this agreement and the payment of the Charter Fee, the Owner agrees to let, and the Charterer agrees to hire the Yacht from 0800hours on [commencement *date*] to 2359hours on [*concluding date*]
2. **Fee Hull, Spars and Sails:** The Charter Fee for a yacht provided with a sail wardrobe is to be agreed between the Owner and Charterer depending on the condition of the sails. The minimum sail wardrobe is specified in Clause 6. The Insurance Fee is A*$[ fee* ]. An A$[ *fee* ]damage deposit is payable in accordance with clause 8. **Agreed Charter fee is \_\_\_\_\_\_\_\_\_\_\_\_**
3. **Payment Terms:** Upon execution of this agreement a deposit of A$1,000 is immediately due and payable by the Charterer to the Owner. The agreement is non-cancellable subject to clause 4. The balance of the Agreed Charter Fee plus the Insurance Fee is to be paid to the Owner before taking delivery of the yacht. The damage deposit is payable in accordance with clause 8.
4. **The Regatta:** It is understood and agreed that the Vessel is to be sailed in the [ *Event* ] to be hosted by [*Yacht Club*]) and the Sydney 38 Class Association on [ *date* ] The racing courses are to be on [ *location* ]. The use of the Yacht shall be strictly limited to use for racing, practising and otherwise participating in the Regatta pursuant to the Notice of Race and the Sailing Instructions as issued and amended from time to time. It is understood that if the Regatta is cancelled for lack of entries, adverse weather, or other conditions, then the Charterer may cancel this Charter and be refunded by the Owner the deposit and all increments of the Charter fee.
5. **Delivery:** The Yacht is to be delivered by the Charterer from [ *home berth* ] to [ *regatta location* ] during week commencing [ *date* ] and returned from [ *regatta location* ] to [ *home berth* ] before 2359hrs. *[ date* ], subject to suitable weather. The Yacht is to be in seaworthy condition and have a current Cat 4 Safety Certificate and all the required Safety equipment on board and available for audit. The Yacht shall be configured to comply with appropriate S38 Class Rules. The Charterer is to acknowledge acceptance of the Yacht by signing Part 1 of the “Yacht Acceptance and Deposit Release” form (Addendum B) prepared by the Owner and recording any pre-existing damage.
6. **Sail Wardrobe**: For Yachts chartered Hull, Spars and Sails, the minimum sail wardrobe to be carried for One Design events with sheets is to be:
	1. Main sail
	2. 3# jibs, Light, Medium, Heavy
	3. ISAF Heavy weather jib
	4. Spinnakers, S1 and/or S2 Masthead;
	5. S3 Heavy fractional spinnaker..

Sails shall have current Sydney 38 Association registration and sail button numbers where required by Sydney 38 One Design racing rules. The Owner is to complete the Sydney 38 One Design Association Sail Declaration Form and send to the Charterer by [ *date* ] to enable lodgement with Regatta Registration documentation.

 **7. Insurance**: The Owner will arrange a special one-month insurance policy with [ *nominate Insurer* ] or alternative insurer, to cover hull, spars, and liability for damages that may be incurred by the Yacht during the Regatta for which the Charterer is paying an Insurance Fee of $ [ *amount* ]. The Owner and Charterer will be interested parties to the policy. The terms of the Insurance policy are attached to this Agreement as Addendum A. The Charterer acknowledges the deductible amount in the policy and the requirement to pay the required premium in the event of a claim and agrees that the damage deposit may be applied to that purpose.

**8. Damage Deposit:** The Charterer specifically agrees to deposit A$3,500 in immediately available funds with the S38 Association as a “damage deposit” against loss or damage from whatever cause suffered by the Yacht during the Charter period, or any liability to third parties, or damage to another yacht participating in the Regatta, as a result of the Charterers operation of the Yacht during the charter period. Damage deposit payments made by cheque must be lodged in sufficient time to have cleared and funds are available in the S38 Association bank account prior to the commencement of the Regatta.

Upon conclusion of the Regatta, and the return of the yacht to [ *home berth* ], the Yacht shall be promptly inspected by a representative of the Owner and the Charterer and, if requested by either of them, a representative of the S38 Assoc. The Owner and the Charterer are to complete and both sign Part 2 of the “Yacht Acceptance and Deposit Release” form detailing any loss or damage and the estimated value to be retained from the damage deposit and providing directions to the S38 Assoc as to how the damage deposit is to be disbursed. The form is to be lodged with the S38 Assoc who will disburse the damage deposit in accordance with the directions in the “Yacht Acceptance and Deposit Release” form within 14 days of receiving the form fully completed and signed by both the Owner and Charterer. The Owner and the Charterer each agree not to unreasonably obstruct the return of the damage deposit funds. In the event a claim is presented by a third party the entire damage deposit may be retained until the resolution of such claim. In the event that the damage deposit amount is insufficient to cover the cost of repairs and the Owners expenses after any insurance payment, then the Charterer hereby agrees to promptly reimburse the Owner for all such additional amounts immediately upon demand and presentation of the details. It is further acknowledged by the Charterer that the Insurance Policy has exclusions for damage to sails

1. **Running Expenses:** The Charterer agrees to accept the Yacht as provided and to pay all running expenses during the time of charter.
2. **Navigation Limits and Conditions of Use:** The Charterer agrees to restrict the use of the Yacht to racing in, practising for, and delivery to the [ *event* ], which shall take place [ *location* ]. The Charterer is fully responsible for conducting safe navigation, adhering to the Rules of Racing, avoiding collisions, and taking due care of the Yacht. The Charterer agrees to operate the Yacht in a safe manner at all times. The Owner reserves the right to revoke this Charter Agreement if it considers the Charterer is handling the Yacht in an unsafe manner, including (without limitation) following any complaint from the organising authority, or the S38 Assoc.
3. **Re-Delivery:** The Charterer agrees to surrender the Yacht at the expiration of this Charter to the [ *home berth* ] in as good a condition as when the delivery was taken.
4. **Non-Assignment:** The Charterer agrees not to assign this agreement or sub-charter the Yacht without the express consent of the Owner in writing.
5. **Indemnification of S38 Assoc and Owner**: The Charterer will at all times indemnify and keep indemnified S38 Assoc, including its Directors, Managers, Officers, and Volunteers, and the Owner from and against any and all actions or causes of actions, claims demands, liabilities loss damage or expenses of whatsoever kind including legal fees which they may sustain or incur in consequence of any act or omission of the Charterer, his agents or others during the term of hire of the Yacht.

The Owner and the Charterer each acknowledge and agree that:

1. the obligations of the S38 Assoc under and in connection with this agreement are limited to its express obligations under clause 8;
2. other than as provided in a) above, the S38 Assoc is not liable to any other party to this agreement for any loss, damage or cost suffered or incurred by any party in connection with this agreement including (without limitation), their decision to enter into this agreement, their charter of the Yacht and the insurance arrangements (together the “Charter Arrangements”);
3. they are capable of evaluating and understanding (on their own behalf or through independent professional advice), and do understand and accept, the terms, conditions and risks of this agreement and the Charter Arrangements;
4. they have not relied on any communication (written or oral) of the S38 Assoc in determining, and have made their own independent decision as to:
	* 1. the suitability of this agreement and the Charter Arrangements for their purposes; and
		2. their entry into this agreement and the Charter Arrangements
5. **Disputes:** Any controversy or claim arising out of or relating to this agreement shall be settled through the following disputes resolution process:
6. The Insurance provider will deal with claims for damage lodged under the Insurance policy. The Insurer will utilise its own procedures to determine a party at fault in the event of an incident incurring damage during a race or to another vessel.
7. In the event of a dispute with a third party which does not involve the Insurer, it is incumbent on the Charterer to resolve the dispute with the third party
8. In the event of a dispute between the Owner and Charterer which does not involve the Insurer, and the parties fail to resolve the dispute, a Mediation will be convened at the request of one or both parties. If the Parties agree, a suitably qualified Mediator may be nominated by the S38 Assoc. The conduct of the mediation will follow the guidelines set by The Law Society of NSW, Dispute Resolution Kit, December 2012.
9. If the parties cannot agree in mediation, one or both parties may request an Evaluator to provide a neutral evaluation which the Evaluator shall deliver within 14 days of the hearing. The evaluation will become binding on both parties after 28 days from the issue of the evaluation, unless the matter has been resolved or unless one or both parties has objected to the evaluation in writing to the other party and the Evaluator before the expiration of 28 days.
10. In the event that one or both parties have lodged an objection to the Evaluators determination within 28 days, and the matter remains unresolved, Application to the NSW Courts with the appropriate jurisdiction may be made. It is understood that the Evaluators determination may be entered by either party to the Court.
11. **Owners Representative:** Notwithstanding the foregoing, the Charterer acknowledges and accepts that the Owner may designate one person to serve as a member of the crew as the Yacht’s representative. Notwithstanding such fact, the Charterer remains responsible for the safe and seamanlike operation of the Yacht and retains all obligations of this agreement.

**Signed and Agreed:**

**Owner**

 **Name and Signature**

**Charterer**

 **Name and Signature**

**S38 Assoc**

 **Name, Title and Signature**

**ADDENDUM A**

TERMS OF INSURANCE – ATTACHMENTS

(To be finalised with Insurer)

General Terms:

* One-month cover note/extension to Owners policy = A$ [ *amount* ]
* In the event of claim, full years premium to be paid.
* Deductible = A$ [ *amount* ]

**ADDENDUM B**

* Yacht Acceptance and Deposit Release form