

## Charter Agreement

### 1. Definitions:

The “**BROKER**” is NANAIMO YACHT CHARTERS & SAILING SCHOOL LTD. The “**CHARTERER**” refers to the person named above who has full and complete responsibility for the safety of the vessel and its crew. The “**YACHT**” refers to the yacht specified above.

### 2. Payment Terms:

35% of charter fee is due upon booking. The outstanding balance is due 60 days prior to departure. A 1.5% late fee will be applied to all balances not paid by due date.

### 3. Cancellation:

If a cancellation occurs more than 60 days before departure the deposit payment is returned to the **CHARTERER** 60-30 days before departure full refund of charter fee less 10% and if cancellation occurs less than 30 days before departure, if we are unable to resell the same boat for the same period the rain check policy comes into effect whereby the **CHARTERER** has the opportunity to rebook the charter at a later date. The **Broker** shall have the right to cancel the charter should all or any portion Balance not be paid on the dates due. Any monies paid by the **CHARTERER** shall be surrendered to the **BROKER** not as penalty but as liquidated damages. All notice of cancellation must be given in writing.

### 4. Obligations:

The **BROKER** agrees to make available for the **CHARTERER** the **YACHT** and provide the services and supplies set out above and the **CHARTERER** agrees to charter the **YACHT** and pay for the services on the terms outlined above. Should the specified **YACHT** not be available the **BROKER** reserves the right to substitute with a similar yacht. In the event of the yacht being cheaper/smaller. the **BROKER** will refund the price difference, or alternatively, the **BROKER** has the option to return the full charter fee. In this case the **CHARTERER** can have no claims against the owner of the **YACHT** or the **Broker** for any loss, damage, expense or delay. The **CHARTERER** must examine the **YACHT** prior to departure to determine whether the vessel and dinghy are in good working order, are properly outfitted with all Transport Canada standard safety equipment and accessories as well as any other requested items (inventory). Acceptance by the **CHARTERER** certifies that the **BROKER** has fulfilled its obligations

### 5. Accidental Damage, Death and Injury.

**Nanaimo Yacht Charters & Sailing School** strictly prohibits the use or consumption of illegal drugs on board. The consumption of alcohol or drugs may increase the risk of injury around the water and boats and the **CHARTERER** and their crew accept that risk. The **BROKER** shall be held harmless from any and all claims or liability for property damage, personal injury or death arising from or related to, directly or indirectly, the use or consumption of alcohol or drugs, even if the property damage, personal injury or death is caused in whole or in part by the negligence of the **BROKER**. This shall in no way limit or diminish the **BROKER'S** accountability for it's negligence where the property damage,

personal injury or death does not arise from or relate to, directly or indirectly, the use or consumption of alcohol or drugs

#### **6. Availability and Running Expenses:**

Taking the **YACHT** into possession is effective once the formalities have been completed; viz: Full payment of the charter, submission of crew list and boating resume and refundable damage deposit left by credit card. The **YACHT** is handed over with full fuel, water and a tank of cooking fuel. The **CHARTERER** agrees to pay any additional running expenses during the term of the charter. Such additional running expenses may include, but are not limited to, food and other consumable stores, fuel, pilotage, mooring and dockage fees, port charges, park permits, customs and provisions, and supplies for the **CHARTERER** and their party.

#### **7. Insurance:**

The **YACHT** is covered under a standard marine yacht policy. However the **CHARTERER** and crew remain responsible for loss or damage from negligent or wilful misuse of the **YACHT** such as sailing outside the defined cruising area or sailing hours, groundings, operating the **YACHT** under the influence of alcohol or drugs, or failing to adhere to the briefing and on board instructions. The **CHARTERER** specifically acknowledges for himself/herself and crew that the **BROKER** has the right to insist the skipper or any other crew member involved take a drug/alcohol test administered by the police or a doctor after any incident involving the **YACHT** or its auxiliary equipment. The **CHARTERER** must pay a damage deposit before departure as a deductible against loss or damage to the **YACHT**, and all equipment or other Inventory. The deductible shall apply per occurrence of damage or loss. The **BROKER** may apply the balance of the damage deposit toward any unpaid charges for late return, refuelling, and cleaning and such other as may reasonably be deemed necessary by the **BROKER**. The Damage Deposit is not the maximum liability of the Charterer. The deposit required will be retained by the **BROKER** pending return of the Yacht to the agreed port of return and inspection by the **BROKER** (including underwater inspection and/or haul out) Deposit is forfeited if boat goes aground, touches bottom causing any damage. Dinghies and accessories there of are not covered by insurance and as such are the soul responsibility of the **CHARTERER**. In the event of damages, collisions and loss of equipment, the **CHARTERER** must take all reasonable steps to minimize further loss. 1. Report the incident immediately to the **BROKER**. 2. Promptly report to the local Authorities any damage or loss to people or other property.

In the case of an emergency (i.e. a situation that is likely to cause injury or damage the **YACHT**) the **CHARTERER** should contact the **BROKER** and agree on the price to be paid for a tow.

Failure to comply with these terms may void the insurance cover. In the event of a breakdown the **CHARTERER** will not attempt repairs without the authorization of the **BROKER**. All claims for reimbursement shall be supported with receipts from recognized marine repairers and suppliers. In event of breakdown the **CHARTERER** is liable for aggravated damages as a result of continuing the voyage without consulting the **BROKER**. The **CHARTERER** shall be responsible for any loss or damage not covered by insurance resulting from operation of the Yacht in breach of this agreement or the applicable insurance policy.

#### **8. Use of Vessel:**

The **CHARTERER** agrees to take on board only the number of crew as stated on the crew list. The **YACHT** shall be employed exclusively as a pleasure vessel for the sole and proper use of the **CHARTERER**, his or her family, guests, employees and agents, during the term of this charter and shall not transport merchandise or carry passengers for pay or engage in any trade, nor in any way violate the laws of Canada or the United States or of any other government within the jurisdiction of which the Yacht may be at the time and shall comply with the law in all other respects. Rafting to another vessel at anchor is strictly prohibited nor shall the Yacht be operated in fog. In the event that fog conditions occur; the **CHARTERER** shall exercise all reasonable precautions to ensure the safety of all persons on board as well as the safety of the Yacht to travel to safe harbour. The **CHARTERER** shall stand well clear of any commercial shipping. The **CHARTERER** agrees to restrict use of the **YACHT** to the "cruising area" and not to navigate the West Coast of Vancouver Island (including inlets on the West Coast of Vancouver Island) without prior written approval of the **BROKER** and then completion of a WAIVER FORM. When sailing outside the cruising area, the **CHARTERER** is fully responsible for the maintenance and management of the **YACHT** and no support can be guaranteed. Night sailing (between 30 minutes before sunset and 30 minutes after sunrise) by the **CHARTERER** is not permitted. Racing is not permitted, except for booked events when specific conditions apply. The **CHARTERER** shall forthwith notify the **BROKER**, of any accident involving the **YACHT**, of any serious injury of any person aboard the **YACHT** or of any violation of any law rendering the **YACHT** liable to claim, penalty or detention; the **CHARTERER** shall neither assign this agreement nor sub-charter the Yacht without the prior written approval of the **BROKER**. The **BROKER** may assign rights to payments under the charter.

#### **9. Competency:**

The **CHARTERER** certifies that he/she is experienced and competent in the handling and operation of inboard auxiliary powered sailing craft of the general type and size as the **YACHT** herein chartered and that the **CHARTERER** has also had a sufficient practical knowledge of seamanship, piloting and Rules of the Road. The **CHARTERER** shall not delegate any of these duties to any person not equally qualified. The **CHARTERER** agrees not to sail the **YACHT** single-handed and to ensure at all times a competent skipper and leading crew member are aboard except while safely moored. The **BROKER** may in its sole discretion verify the **CHARTERER**s or leading crew's competency at the time of the charter. Should the **CHARTERER** or leading crew be deemed less than fully competent by the **BROKER** in its sole discretion, may insist on the **CHARTERER** at the **CHARTERER**'s expense, An instructional skipper to assist the **CHARTERER** in achieving competency. Should a skipper be unavailable the **BROKER** may restrict the **CHARTERER**'s use of the Yacht to the charter party's occupancy of the **YACHT** at the dock until a skipper has become available. The Charterer acknowledges that the **BROKER** does not independently investigate the competency of any **CHARTERER** to sail, but relies solely and exclusively on the resumes provided. The Charterer further acknowledges that the **BROKER** in its sole discretion may refuse to release a Yacht for sailing but this exercise of discretion shall in no way be construed as an acknowledgment or determination of the competency for sailing of the **CHARTERER**'s crew or the assumption of any liability for loss or damages incurred as a result of sailing, for which the **CHARTERER** assumes sole responsibility.

#### **10. Return of the YACHT:**

The **CHARTERER** shall surrender the Yacht at the expiration of the charter at the release port and time specified, free and clear of any indebtedness and liens whatsoever, and in condition and clean state as when delivered and having properly cleared customs. The **BROKER** has the right to charge a cleaning fee if deemed necessary. Fuel tanks for the vessel and the outboard must be filled by the **CHARTERER**. A refuelling fee of \$60 in addition to the cost of the fuel will be charged if vessel is not refuelled prior to redelivery of vessel to **BROKER**. The Charterer is responsible for allowing sufficient time for unforeseen contingencies to permit the return of the Yacht at the stated time. Should the Charterer not make redelivery of the YACHT at the time and place herein before stipulated for any cause, other than that occasioned by an occurrence beyond the **CHARTERER's** control The **BROKER** has the right to: a) charge a pro rata fee for the time the delivery is delayed plus 25% for any loss that the **BROKER** or the Yacht Owner may sustain due to the delayed delivery and b) charge for all expenses involved in returning the yacht to the to the port of origin (should the YACHT be left at any other location) c) charge the **CHARTERER** for all lost charter revenue if the delay in return causes cancellation of the succeeding charter. The Charterer shall surrender the vessel's equipment in as good a condition as delivered. The **BROKER** needs to be informed immediately of any delays.

#### **11. Termination:**

The **CHARTERER** accepts responsibility for the proper conduct of themselves and their crew. The **BROKER** reserves the right in our absolute discretion to terminate, without further notice, the vacation arrangements for any **CHARTERER** who refuses to comply with the instructions or orders of the **BROKER** and whose behaviour or competence in the **BROKER'S** opinion is likely to cause distress, damage, danger or annoyance to their crew, other clients, staff, any third party or to the property. Upon such termination, the **BROKER's** responsibility for the **CHARTERER's** vacation ceases and shall not be liable for any costs incurred by the **CHARTERER**.

#### **12. Skipped Yacht:**

Upon the **CHARTERER** requesting a Skipped charter, the **BROKER** shall select a Skipper to operate the Yacht. Whilst the **BROKER** uses due diligence in selecting a suitable skipper, the **BROKER** shall not be responsible for any loss, damage, delay or expense caused to the **CHARTERER** and/or crew by reason of an act or neglect of the Skipper. The appointed Skipper shall be the sole judge as to whether it is reasonable or prudent to sail at any given time, for any given place having regard to the weather, anchorages and pertinent matters. The **CHARTERER** shall not have the authority to discharge the skipper without prior consent from the **BROKER**.

#### **13. Liability, hold harmless and indemnity:**

It is understood that the **BROKER** is acting for and on behalf of the owner of the Yacht. Neither the **BROKER** nor the owner will be liable to any person for any loss, damage, injury, or death that results from the **CHARTERER's** use of the YACHT. The **BROKER** makes no representations other than those contained in this Contract, the rate sheet and any written materials provided as part of the booking procedures. The **BROKER** will not be responsible for any fees, expenses, airline tickets, hotel rooms, food, phone calls, or other expenses incurred by the **CHARTERER** for any reason whatsoever. The **CHARTERER** will indemnify and hold the **BROKER** and the owner of the YACHT harmless from and against any and all claims for loss or damage to property or injury to persons (including loss of life) resulting from use, operation, or possession of the YACHT and related equipment or other Inventory by the **CHARTERER** or any crew, and from any claims whatsoever from loss or damage to personal

property of the **CHARTERER** or any crew carried on the **YACHT** or dinghy. This Agreement shall be construed and interpreted in accordance with the laws of British Columbia with the exception of any admiralty or maritime claims which shall be construed under the maritime, admiralty laws of Canada or the United States including the International Convention on Limitation of Liability for Maritime Claims 1976 as in effect. The venue for any proceedings hereunder shall lie in Nanaimo, British Columbia, Canada.