

The Protocol Governing The Thirty Third America's Cup



Club Náutico Español de Vela

Amended on

20 September 2007 [articles 2.3, 2.7 (d), 4.4, 24.3, 36.1]

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THE PROTOCOL GOVERNING THE THIRTY THIRD AMERICA'S CUP

- (i) **Société Nautique de Genève** ("SNG")
- (ii) **Club Náutico Español de Vela** ("Challenger of Record")

BACKGROUND

- A. Société Nautique de Genève is the current holder and trustee of a silver trophy known as the "America's Cup" in accordance with the terms of a Deed of Gift dated 24 October 1887.
- B. Société Nautique de Genève has received and accepted a notice of challenge from the Challenger of Record in accordance with the Deed of Gift.
- C. Société Nautique de Genève and the Challenger of Record record in this Protocol the arrangements they have mutually agreed in accordance with the terms of the Deed of Gift.

AGREED AS FOLLOWS

PART A

DEFINITIONS - GENERAL PRINCIPLES - AMERICA'S CUP AUTHORITIES

1. INTERPRETATION

1.1 In the interpretation of this Protocol:

- (a) **ACC Rules** means, unless otherwise specified, version 5.0 of the Rules Governing America's Cup Class Yachts or as the case may be new Rules Governing America's Cup Class Yachts to be issued by ACM, as interpreted by the Measurement Committee and amended from time to time;
- (b) **ACC Yacht** means a yacht that complies with the ACC Rules;
- (c) **ACM** means a Swiss limited liability company with headquarters in Geneva, Switzerland, appointed by SNG to help SNG organize, manage and fulfill all of SNG's obligations under the Deed of Gift;

- (d) **Applicable Document** means any document made under authority of this Protocol and includes the documents referred to in Article 2.5;
- (e) **Arbitration Panel** means the Arbitration Panel referred to in Article 22;
- (f) **Challenger** means, except where inconsistent with the context, the Challenger of Record and all Challenging Competitors;
- (g) **Challenger of Record** means **Club Náutico Español de Vela** and includes any person or entity which undertakes that yacht club's challenge as its representative, or such other Challenger as determined by Article 3.3;
- (h) **Challenger Selection** means the selection series referred to in Article 13.4;
- (i) **Challenging Competitor** means a qualified yacht club whose entry has been accepted by ACM under Article 4, and includes any person or entity which undertakes that yacht club's challenge as its representative, but does not include the Defender or Challenger of Record;
- (j) **Competition Regulations** means the regulations issued by ACM pursuant to Article 17.1;
- (k) **Competitor** means the Defender or a Challenger or any one or more of them as the case may be;
- (l) **Competitors' Commission** means a forum of all Competitors and ACM for the exchange of information and consultation, established pursuant to Article 10;
- (m) **Course Area** means one or more circles within the Race Area on which courses for racing during the Event may be set at the Venue;
- (n) **Deed of Gift** means a Deed of Gift dated 24 October 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 the 22nd day of August 1851, as amended by orders of the Supreme Court of the State of New York on 17 December 1956 and 5 April 1985;
- (o) **Defender** means the entity selected by SNG to defend the America's Cup in the Match on its behalf;
- (p) **Designer** means a person who has or is intended to apply substantial intellectual creativity and judgment to the determination of the shape or structure of the following: a yacht's hull, deck, cockpit, mast tube, geometry of the mast rigging, appendages or sails (excluding battens and sail hardware). For the avoidance of doubt, Designer does not mean a person who designs any other components other than those listed above, or who develops, modifies, operates, analyses the results of, or provides instructions for the use of, any design tool or resource including but not limited to computer software or hardware, tow tanks or wind tunnels or any other testing facility;

- (q) **Event** means the Regatta, all Qualifying Regattas, any defender trials at the Venue as determined by the Defender and SNG pursuant to Article 12, and any events that may be announced by ACM from time to time;
- (r) **Event Authority** means the person or body appointed by ACM pursuant to Article 6;
- (s) **Event Regulations** means regulations issued by ACM pursuant to Article 18;
- (t) **Hull** shall have the same meaning as ascribed in the ACC Rules. If no meaning is defined in the ACC Rules, Hull shall mean the fair body of the yacht up to the sheerline, except for the deck, appendages, mast or other equipment that may be installed;
- (u) **Match** means the 33rd match between the Defender and the winner of the Challenger Selection, subject to Article 13.4;
- (v) **Measurement Committee** means the committee appointed by ACM pursuant to Article 5.4 (a) (iii);
- (w) **Net Surplus Revenue** means the revenue available for distribution to Competitors as calculated pursuant to Article 19;
- (x) **Notice of Entry** means the document required from Challenging Competitors by Article 4.1;
- (y) **Notice of Race** means the Notice of Race for the Regatta and the Qualifying Regattas issued by ACM pursuant to Article 2.5 ;
- (z) **Meteorological Data Service** means the meteorological and oceanographic data collection service described in Article 15;
- (aa) **Protocol** means this Protocol together with any amendment, or any replacement Protocol agreed by the parties that is to govern the 33rd America's Cup;
- (bb) **Qualifying Regattas** means the regattas referred to in Article 11;
- (cc) **Race Area** means the area of water on which Course Areas may be set;
- (dd) **Race Committee** means the committee appointed by ACM pursuant to Article 5.4 (a) (ii);
- (ee) **Racing Rules** means the rules to govern racing in the Event to be issued by ACM pursuant to Article 2.5 ;
- (ff) **Regatta** means Trials, Challenger Selection and the Match;
- (gg) **Regatta Director** means the person appointed by ACM pursuant to Article 7;
- (hh) **Regatta Officials** means any persons appointed by ACM pursuant to Article 5.4

- (a), but does not include members of the Sailing Jury or the Arbitration Panel;
- (ii) **Sailing Instructions** means the rules to be issued by ACM pursuant to Article 2.5;
- (jj) **Sailing Jury** means the Sailing Jury referred to in Article 22;
- (kk) **Schedule** means the Event schedule to be announced by ACM pursuant to Article 13.2;
- (ll) **SNG** means Société Nautique de Genève of Geneva, Switzerland, as holder of the America's Cup;
- (mm) **Technical Director** means the Technical Director of the America's Cup Class appointed by ACM pursuant to Article 8;
- (nn) **Trials** means regattas forming part of the Regatta and held prior to the Challenger Selection;
- (oo) **Venue** means the venue to be determined by and announced by ACM pursuant to Article 13.1 and comprises the Competitors' bases, public areas, all berthage areas, water space, airspace and all other areas under the control of ACM. Where the context so requires, Venue shall also mean the venue of any Qualifying Regatta, and any special event announced by ACM that is not held at the Venue.
- 1.2 **Singular/Plural:** Terms defined above shall include the singular and the plural version of that defined term where the context requires.
- 1.3 **Cross reference:** Unless otherwise specified, reference to an Article is a reference to an Article in this Protocol.
- 1.4 **Official dictionary:** The English language shall prevail in the interpretation of this Protocol. The meaning of any word used in this Protocol and any Applicable Document, unless defined in Article 1.1, shall be determined by reference to the Oxford English Dictionary, Second Edition – CD Rom Version 3.1 (Oxford University Press 2004) or any later issued version.
- 1.5 **Appendixes:** A reference to an Appendix is a reference to an Appendix to this Protocol.

2. GENERAL PRINCIPLES

- 2.1 **Protocol purpose and intent:** The general underlying purpose and intent of this Protocol shall be to promote a friendly competition between foreign yacht clubs, to realize the sporting and commercial potential of the America's Cup, and to encourage world-wide growth and interest in the America's Cup as the premier event in the sport of sailing, consistent with the provisions of the Deed of Gift.
- 2.2 **Allocation principle:** The spirit of the Event is to organize the Match between the Defender and a Challenger and a process to select such Challenger. Except as otherwise indicated in this Protocol, the interest of the Defender in the Event is

one half, and the interest of the Challenger of Record is one half. This proportion of interest shall be applied, as the circumstances sensibly require, in all matters, commercial or competitive.

2.3 **Fair Competition:** Qualifying Regatta and Regatta will be conducted and Competitors shall compete in compliance with recognised principles of sportsmanship and fair play¹.

2.4 **Event Support:** All parties to this Protocol and all Competitors shall act in a manner that supports and promotes the Event and shall not do any act or thing that damages the image or reputation of the America's Cup or the Event or brings it into disrepute.

2.5 **Applicable rules:** The Event shall be governed by:

(a) the Deed of Gift;

(b) this Protocol;

(c) the Competition Regulations, the Event Regulations and the ACC Rules;

(d) the Notices of Race;

(e) the Sailing Instructions;

(f) the Racing Rules.

2.6 **Precedence of rules:** Unless expressly provided otherwise, the documents referred to in Article 2.5 shall have precedence in the order the documents are listed with the intent that any express conflict between the provisions of such documents shall be resolved in favour of the document first listed.

2.7 **Binding rules:** The Protocol is:

(a) Between SNG and the Challenger of Record, a bilateral agreement under which both parties have rights and obligations and which cannot be modified unilaterally by either party, and records the terms and conditions agreed pursuant to the mutual consent provisions of the Deed of Gift.

(b) For any other entity which is not a party hereto (especially the Challenging Competitors), a set of rules, which governs the Event and which has full binding effect over all Challenging Competitors based on their acceptance of those rules upon registration in the Event.

(c) Further rules, such as the ACC Rules, the Event Regulations, the

¹ Article 2.3, text amended on 20 September 2007 (Protocol Amendment N° 1).

Competition Regulations, the Notices of Race, the Sailing Instructions, the Racing Rules and any other Applicable Document shall be binding for all Competitors. As signing parties to this Protocol, SNG and the Challenger of Record commit to exercise their best endeavors to fully enforce those rules over all Competitors and in all respects.

- (d) If a Challenger disputes the binding effect of the Protocol, SNG shall be entitled to disqualify such Challenger to participate in the Event provided that the affected Challenger shall be entitled to protest any such disqualification within fourteen days of notice of disqualification being received to the Arbitration Panel, and any disqualification shall be suspended pending the outcome of such protest².

2.8 **Applicable law:** This Protocol, the Event and any dispute related hereto shall be subject to New York law.

3. CHALLENGER OF RECORD

3.1 **First challenge accepted:** The challenge received by SNG from the Challenger of Record was the first challenge received by SNG, and met the requirements of the Deed of Gift.

3.2 **Notice of withdrawal of the initial challenge:** The Challenger of Record shall give 120 days written notice of an intention to withdraw its challenge. The Challenger of Record's challenge shall remain valid until expiry of the 120 days notice period. Withdrawal of the challenge without giving notice of an intention to withdraw the challenge in accordance with this Article shall be always deemed to be a notice of intention to withdraw the challenge in compliance with this Article. SNG may by written notice to the Challenger of Record waive or shorten the notice period.

3.3 **Selection of an alternative Challenger of Record:** Upon the withdrawal or disqualification of the Challenger of Record, SNG shall select, at its sole and exclusive discretion, a new or an existing Challenging Competitor to be the new Challenger of Record. If no Challenging Competitor is willing to become the new Challenger of Record, the new Challenger of Record shall be the Challenging Competitor who was the first in time to submit to ACM a completed Notice of Entry. The new Challenger of Record shall execute this Protocol and shall be deemed to entirely replace the previous Challenger of Record in its contractual rights and duties.

3.4 **Challenger of Record duties:** The Challenger of Record shall not owe any additional duties to the Challenging Competitors over and above any duties that may be owed as between Competitors generally.

4. CHALLENGING COMPETITORS

² Article 2.7 (d), text amended on 20 September 2007 (Protocol Amendment N° 1).

- 4.1 **Notice of Entry:** Other yacht clubs may become a Challenging Competitor by applying to enter the Event on or before the date to be defined by ACM pursuant to Article 4.2. Applying to enter the Event means completing and submitting a completed Notice of Entry in a form to be issued by ACM.
- 4.2 **Meet Challenge requirements:** To the extent any accepted Challenging Competitor might become the Challenger for the Match, any Notice of Entry will only be taken into consideration by ACM if the applicant yacht club meets all the requirements to be the Challenger in the Match, as set out in the Deed of Gift, this Protocol and the Applicable Documents.
- 4.3 **Powers of ACM:** As part of the Event Regulations, ACM shall define at its sole discretion:
- (a) The content of the Notice of Entry form including unconditional acceptance of the dispute resolution provisions of this Protocol;
 - (b) The documents that will be presented with the Notice of Entry;
 - (c) The time limits for registering;
 - (d) An entry fee and a late entry fee to be paid to and to form part of the revenue of ACM;
- 4.4 **Acceptance of Challenging Competitors³:** Subject to Article 4.7, ACM may accept or reject any entry received provided that ACM may only reject an entry on one or more of the following grounds:
- (a) Failure or inability
 - i. to comply with the terms of the Deed of Gift, the terms of Protocol or any entry requirement established under Article 4.3 of the Protocol or,
 - ii. to accept the binding effect of the Protocol or,
 - iii. to accept the jurisdiction of the Arbitration Panel and the Sailing jury as provided for under Part D of the Protocol,
 - (b) There is a lack of space to accommodate a competitor in the organised structure of the competition;
 - (c) Provide an equitable balance of competing nations;
 - (d) A team has foregone an opportunity or deadline to submit an entry under Article 4.

³ Article 4.4, text amended on 20 September 2007 (Protocol Amendment N° 1).

- 4.5 **Rights and duties of Challenging Competitors:** Upon acceptance by ACM, the following duties and rights apply to each Challenging Competitor:
- (a) The Challenging Competitor must comply with the Applicable Documents.
 - (b) The Challenging Competitor shall only acquire the specific and limited rights that are expressly allocated to the Challenging Competitors under this Protocol and the Applicable Documents.
 - (c) Provided the Challenging Competitor has not been disqualified until the end of the Match, neither has withdrawn his entry, it shall be entitled to a share in the distribution of the Net Surplus Revenue as provided for in Article 19.2.
 - (d) A Challenging Competitor is not party to this Protocol. The Challenging Competitor has an expectation to become the Challenger for the Match, provided the Challenging Competitor wins the Challenger Selection.
- 4.6 **Withdrawal by a Challenging Competitor:** A Challenging Competitor may withdraw its entry as a Competitor by written notice to ACM. Any Challenging Competitor withdrawing its entry as a Competitor before being eliminated in competition will forfeit all fees paid on or after submitting the Notice of Entry to ACM. A Challenging Competitor which fails to participate in the Event (even partially) without the approval of ACM shall be deemed to have given notice of withdrawal of its entry and of further participation in the Event.
- 4.7 **Entry recourse:** There shall be a right of recourse to the Arbitration Panel for any matter related to the entry into the Event. The Arbitration Panel decision shall be final and binding on the parties.

5. SNG AND ACM

- 5.1 **Organizing responsibilities:** SNG shall have the sole responsibility to organize and manage the Event in such manner as it shall in its discretion determine consistent with the Deed of Gift general principles set out in Article 2.
- 5.2 **Appointment of ACM:** To meet its obligations set out in this Protocol, the Parties agree that SNG shall appoint ACM to provide professional commercial management expertise and financial resources to minimise the risk of losses. All losses, expenses and costs incurred in organising and managing the Event shall be the sole responsibility of ACM.
- 5.3 **Management of the Event:** ACM shall have the ultimate responsibility for the management, organization, and financing of the Event. ACM shall act in a manner that is consistent with the provisions of the Deed of Gift and this Protocol.
- 5.4 **Powers of ACM:** For the purpose of fulfilling the duties set out in Article 5.3, ACM is granted the following powers:
- (a) the power to appoint the following persons and bodies:

- (i) the Event Authority (see Article 6);
- (ii) the Race Committee (see Article 7);
- (iii) the Measurement Committee (see Article 8);
- (iv) the umpires (see Article 9);
- (v) such other persons as are reasonably necessary in discharging the duties outlined in Article 5.3 and in meeting the purpose and intent set out in Article 2.1.

If the Challenger of Record objects to the appointment on grounds of neutrality of any person to a senior position on the Race Committee, the Measurement Committee, or as an umpire, it may within seven (7) days of the appointment, refer the appointment to the Sailing Jury who shall determine whether such person is capable of exercising neutral judgment to hold the position to which it is appointed.

- (b) the power to unilaterally establish the rules listed under Article 2.5 (c) to (f);
- (c) the power to amend such rules, provided any material amendment shall require the approval of the Defender and the Challenger of Record. If the Defender and/or the Challenger of Record unreasonably withhold their consent, the Arbitration Panel shall make, upon ACM request, the final decision on the proposed amendment;
- (d) When establishing and amending those rules, ACM may impose any rule and restriction on the Competitors that are necessary to the fulfillment of its duties under the Deed of Gift and this Protocol;
- (e) the power to enforce the terms of the rules listed under Article 2.5. ACM shall be entitled to fine Competitors for non-compliance. Fines and penalties shall be determined taking into account the principles referred to in Article 31. A Competitor shall be entitled to appeal any fine or penalty imposed at any time to the Arbitration Panel within seven (7) days of being notified of a fine being imposed. ACM shall be entitled to deduct the fine from any moneys due at anytime to be paid to the Competitor, or otherwise take any legal action necessary to recover the fine. No Competitor shall be entitled to participate in the Event where a fine remains outstanding for more than 30 days, unless an appeal has been lodged with the Arbitration Panel and remains to be decided.
- (f) the power to exercise any competence and to take any decision in relation to the Event, provided such power has not been attributed to another body or person by this Protocol.

5.5 **Management fee:** ACM shall be paid a management fee of 10% of the Net Surplus Revenue.

- 5.6 **Commercial rights:** To assist ACM to raise all necessary funds to organise and manage the Event, all commercial rights of such Event shall vest in ACM. Such commercial rights shall include (without limitation):
- (a) funds and services (if any) provided by authorities related to the Venue;
 - (b) sponsorship and official supplier agreements of the Event;
 - (c) global media rights including, but not limited to, mobile telephone rights, still images and moving images;
 - (d) Event merchandising;
 - (e) ticketing and entry fees;
 - (f) entertainment;
 - (g) concessions;
 - (h) such other commercial rights and fundraising opportunities as ACM or the Event Authority may identify.

6. EVENT AUTHORITY

- 6.1 **Appointment:** ACM shall appoint an Event Authority to organize and manage the Event.
- 6.2 **Event Authority's duties:** The Event Authority's duties which shall be discharged as it shall in its discretion determine consistent with the general principles set out in Article 2 and the directions of ACM, shall include:
- (a) organizing and managing the Event;
 - (b) establishing the timing of the Event consistent with the Schedule to be announced by ACM pursuant to Article 13.2;
 - (c) endeavouring to make available space at the Venue for the Competitors at reasonable cost to establish an operational base;
 - (d) raising funds to meet the costs of the Event by developing the commercial rights referred to in Article 5.6 to best advantage;
 - (e) promoting the Event;
 - (f) meeting its other obligations under this Protocol.

7. RACE COMMITTEE

ACM shall appoint a Race Committee to conduct the races of the Event. The Race Committee shall comprise a Regatta Director who shall be Chairman, a Principal

Race Officer and such other officers as may be reasonably required.

8. MEASUREMENT COMMITTEE

ACM shall appoint a Measurement Committee to ensure compliance with the ACC Rules and other measurement requirements, comprising the Technical Director as its Chairman, and not less than 2 additional persons. The members of the Measurement Committee shall be appointed by ACM in consultation with the Technical Director.

9. UMPIRES

ACM shall appoint a Chief Umpire and, in consultation with the Chief Umpire, such other umpires as may be reasonably required to umpire races of the Event.

10. COMPETITORS' COMMISSION

- 10.1 **Forum:** ACM shall establish and invite a Competitors' Commission which shall hold regular meetings, not less than two per year, as a forum to exchange information and to consult. The Competitors' Commission shall have no voting powers.
- 10.2 **Representatives:** Each Competitor and ACM shall have the right to appoint up to two representatives to the Competitors' Commission. The Regatta Director may attend to the meeting of the Competitors' Commission. ACM may invite such other persons as may from time to time be appropriate. ACM, the Defender and the Challenger of Record shall collectively appoint by a majority vote a Chairman to conduct the meetings of the Competitors' Commission.
- 10.3 **Membership to cease on elimination:** Upon a Challenger (including the Challenger of Record) withdrawing, being excused, eliminated, or disqualified by the Sailing Jury or the Arbitration Panel from further participation in the Event, such Challenger shall, unless otherwise agreed by the Sailing Jury or the Arbitration Panel, cease to be a member of the Competitors' Commission.
- 10.4 **No power to amend:** The Competitors' Commission has no power to amend this Protocol or any other Applicable Documents.
- 10.5 **No right of making an application:** The Competitors' Commission shall have no right to make application to or make any submission to the Sailing Jury or the Arbitration Panel.
- 10.6 **Minutes:** Minutes of the Competitors' Commission shall be taken and distributed by ACM to all Competitors represented in the Competitors' Commission.
- 10.7 **Funding of Competitors' Commission:** The costs of the meetings of the Competitors' Commission shall be borne by ACM as an expense under Article 19.1.

PART B

COMPETITION

11. THE QUALIFYING REGATTAS

- 11.1 **Qualifying Regattas:** There may be Qualifying Regattas prior to the commencement of the Challenger Selection. The Qualifying Regattas shall be held as advised by ACM when announcing the Schedule referred to in Article 13.2.
- 11.2 **Purpose of the Qualifying Regattas:** Competitors may be required to compete in the Qualifying Regattas as determined by ACM. Such Qualifying Regattas may determine which Challengers will proceed to the Regatta. The scoring during the Qualifying Regattas may be differentially weighted as determined by ACM.
- 11.3 **Yachts:** The Qualifying Regattas held in the years prior to the Regatta are likely to be held in ACC Yachts which comply with version 5.0 of the ACC Rules.

12. DEFENDER TRIALS

SNG with the approval of the Defender may at its sole option require ACM to organize defender trials at the Venue or elsewhere in such manner and at anytime prior to the Match as it shall in its sole discretion determine, either with one or multiple defender candidates.

13. THE REGATTA

- 13.1 **Venue:** ACM will select and announce the Venue for the Regatta on or before 31st December 2007, or such later date announced on 31st December 2007 as may be reasonably necessary to complete selection and contracting. In the event that the authorities at the Venue fail to meet their contractual obligations arising from the selection of the Venue, or it becomes impossible or difficult to hold the Regatta at the Venue, ACM may, on at least 90 days notice, select an alternative venue and/or dates for the Regatta consistent with the provisions of the Deed of Gift.
- 13.2 **Schedule:** The dates of the Event including the Qualifying Regattas and the Regatta will be announced by ACM on or before 31st December 2007 or such later date announced on 31st December 2007 as may be reasonably required, provided that the Match will not be held before 2009 nor after 2011, and the Challenger Selection will not commence within 16 months from the announcement of the Venue and the Schedule. ACM will give the Challenger of Record an opportunity (not being less than seven days or more than 14 days) on a strictly confidential basis to make recommendations to ACM on the draft Schedule before it is published.
- 13.3 **Trials:** There may be Trials forming part of the Regatta which may be compulsory for all Challenging Competitors. The results of the Trials may select the Competitors for the Challenger Selection. The Trials may be held as advised by ACM when announcing the Schedule in accordance with Article 13.2.

13.4 **Selection of the Challenger for the Match:** SNG and the Challenger of Record have agreed to hold a selection to select one Challenger to compete in the Match (the Challenger Selection). The winning Challenger of the Challenger Selection shall become the challenger under the Deed of Gift in the Match. If the winning Challenger of the Challenger Selection is for any reason ineligible to be the challenger in the Match, then the Challenger which placed second in the Challenger Selection, or failing the eligibility of that Challenger, the Challenger which gained the next highest place in the Challenger Selection and which is eligible, shall become the challenger in the Match. If no Challenger is eligible, SNG will be declared the winner of the Match.

13.5 **Trials and Challenger Selection format:** The Trials and Challenger Selection format shall be announced by ACM when announcing the Schedule. It may provide for the Defender an option to participate wholly or partly at its discretion in the Trials and Challenger Selection other than the final between the two Challengers to select a Challenger for the Match. [Further Reference]

13.6 **Match format:** 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 five points.

13.7 **Race Area:** The Race Area and the Course Area including their format and dimensions for the Qualifying Regattas and the Regatta, as well as the use outside those periods, shall be defined by ACM in the Competitions regulations.

14. COMPETING YACHTS

14.1 **Revision of the ACC Rules:** ACM shall issue new ACC Rules on or before 31st December 2007, or such later date announced on 31st December 2007, as it may be reasonably necessary to complete review and revision of the ACC Rules. There will be a minimum of 18 months between the issue of the new ACC Rules and the first race of the Regatta in ACC Yachts measured under the new ACC Rules. The new ACC Rules may provide for yachts having a maximum length overall of ninety feet in length overall, a draft whilst racing of 6.5m, but with a compulsory sliding keel system capable of reducing the draft to 4.1m for entering port and docking. All racing in the Regatta shall be undertaken in ACC Yachts that comply with the new ACC Rules.

14.2 **Sliding keels:** Centre-board or sliding keel vessels are permitted provided they meet the requirements of the ACC Rules.

14.3 **Number of authorized yachts:** The Competition Regulations issued by ACM shall determine the number of ACC Yachts that can be built, acquired or otherwise obtained by each Competitor. Such rules shall include

- (a) a prohibition on the building of a new yacht that complies with or is intended to comply with ACC Rule Version 5.0 for use in the Qualifying Regattas; and
- (b) to permit the modification of one Version 5.0 or any earlier version ACC

yacht up to 50% of the original hull surface for use in the Qualifying Regattas.

14.4 Construction in country:

- (a) **Lamination of Hull:** The requirement of the Deed of Gift that the ACC Yacht of a Competitor be constructed in the country of the yacht club the Competitor is representing, shall be deemed to be satisfied by the lamination or another form of construction of all parts of the Hull in such country; materials, moulds and other components and hardware used in or during the lamination or other form of construction of the Hull may be obtained from any source. There is no restriction on the locality of assembly, or modification of any other part of an ACC Yacht.
- (b) **Inspection:** each Competitor shall arrange for a member of the Measurement Committee to inspect the Hull of that Competitor's ACC Yacht at its place of construction to affirm that the Hull has been constructed in accordance with Article 14.4 (a). Affirmation by the Measurement Committee shall be final and conclusive evidence of compliance with Article 14.4 (a).
- (c) **Free access:** the fabrication, acquisition or use of any component, materials or resources used to complete an ACC Yacht may be sourced without restriction as to their country of origin, place of fabrication, assembly, construction or development; for the avoidance of doubt, any such component, materials or resources must nevertheless comply with the restrictions set out in the Competition Regulations and the ACC Rules.

15. METEOROLOGICAL DATA SERVICE

Meteorological Data Service: The Event Authority shall establish and manage a meteorological and oceanographic data collection service at the Venue and make the data available to Competitors electronically (the Meteorological Data Service). The service shall be provided with the specifications and procedures announced by ACM. Net costs of the Meteorological Data Service will be borne by ACM as an expense under Article 19.1. Competitors will be restricted as to other sources of meteorological and oceanographic data as set out in the Competition Regulations.

16. CREW MEMBER AND DESIGNER RESTRICTIONS

16.1 General provisions:

- (a) The America's Cup is partly a design competition and partly a sailing competition. To preserve and protect the America's Cup as a bona fide design competition between the Competitors, and not a competition between combinations of Competitors, a Designer or a crew member who contracts with a Competitor for at least the duration of the Event, or in the case of a Challenging Competitor, until its elimination from the Event (whether before or after becoming a Challenger), may not be employed or engaged in any capacity by another Competitor without the prior written consent of the first

contracting Competitor which may be given at the time of contracting.

- (b) Notwithstanding the above, on or following 1 October 2008 (or such later date as may be announced by ACM), no Competitor shall engage a crew member, who was engaged by another Competitor after 31st of August 2007 (whether before or after becoming a Competitor in the 33rd America's Cup)..
- (c) Notwithstanding the above, on or following 30 days after issuance of the new ACC Rules pursuant to Article 13.1 (or such later date as may be announced by ACM), no Competitor shall engage a designer, who was engaged by another Competitor after 31st of August 2007 (whether before or after becoming a Competitor in the 33rd America's Cup).
- (d) Competitors shall promptly file with the Event Authority the names of persons contracted for the periods described above. The Event Authority shall maintain a register which shall be available electronically for inspection by any Competitor or bona fide intending Competitor.

16.2 Penalty for breach: A Competitor that breaches this Article shall be ineligible to compete, or to continue to compete, in the Event unless the Sailing Jury is satisfied that the breach was caused by error or oversight, that the person that was wrongfully engaged has terminated all involvement with the Competitor in breach, and that no material advantage was gained.

16.3 No nationality rules: In accordance with past practice in America's Cup competition, and following repeal of all past Trustee Interpretative Resolutions on 2 March 2003, there shall be no requirement regarding the nationality or residency of any crew member, or any Designer, of a Competitor's ACC Yacht.

16.4 Power of ACM: The restrictions regarding crew members and Designers set out in this Article may be detailed or amended in the Competition Regulations to be issued by ACM to reinforce the purpose and intent of the restriction set out in Article 16.

17. FURTHER RULES AND RESTRICTIONS

17.1 Competition Regulations: Upon announcing the Schedule, ACM shall publish the Competition Regulations consistent with the provisions of this Protocol, which shall contain further competition rules and restrictions which may include (but not limited to) limiting the number of support boats; limiting the number of sails; limiting modification of yachts; training and testing restrictions; meteorological and oceanographic data restrictions, reconnaissance restrictions, further crew and designer restrictions, anti-doping restrictions, and anti-gambling restrictions. ACM may amend the Competition Regulations from time to time. The Competition Regulations may be published in parts at various times as may be required to guide Competitors and intending Competitors. ACM will give the Challenger of Record an opportunity (not being less than seven days or more than 14 days) on a confidential basis to make recommendations to ACM on draft Competition Regulations before they are published.

17. 2 Notice of Race and Sailing Instructions: ACM shall issue within approximately 60 days before the first race of the Event a Notice of Race and Sailing Instructions for each race of the Event which shall be consistent with the terms of this Protocol.

17. 3 Racing Rules: ACM shall publish the Racing Rules that shall apply to the Event within approximately 60 days before a race of the Event in which they are applicable.

PART C

COMMERCIAL

18. EVENT REGULATIONS

No later than 31st December 2007 or such later date announced on 31st December 2007 as may be reasonably required, ACM shall publish the Event Regulations that will apply to all Competitors and will define the scope of the Competitors' commercial rights to allow ACM to exploit the full commercial potential of the Event for the benefit of all Competitors collectively. ACM may amend the Event Regulations from time to time. ACM will give the Challenger of Record an opportunity (not being less than seven days or more than 14 days) on a confidential basis to make a submission to ACM on draft Event Regulations before they are published.

19. NET SURPLUS REVENUE

19. 1 Calculation of the Net Surplus Revenue: The Net Surplus Revenue shall be the total of all revenue received by ACM for the Event, less the costs of:

- (a) Salaries and bonuses of staff and management engaged by ACM or its subsidiaries for the purposes of the Event;
- (b) The Regatta Officials;
- (c) The Dispute resolution and enforcement costs;
- (d) The Race Committee;
- (e) The Measurement Committee;
- (f) TV and other media production;
- (g) Sponsor fulfillment obligations;
- (h) Administration;
- (i) Promotion;
- (j) Insurance;

- (k) Interest, finance and banking charges;
- (l) All taxes, duties, levies and social services charges payable, including any taxes incurred by ACM or its subsidiaries; for the avoidance of doubt, any VAT due or paid by ACM or its subsidiaries shall be considered as an expense to be deducted under this Article;
- (m) Expenses incurred by SNG in discharging its duties as holder and trustee of the America's Cup;
- (n) Costs and expenses related to the Meteorological Data Service;
- (o) Costs of liquidating the Event-related assets at the end of the Match; and
- (p) Other expenses incurred by ACM or its subsidiaries in organising or promoting the Event.

but shall not include the costs of any Competitor to compete in the Event.

19.2 Distribution of the Net Surplus Revenue: The Net Surplus Revenue shall be determined (at least on a provisional basis) within 180 days after the last race of the Match and paid within 90 days of its determination in the following priority:

- (a) the payment of the management fee referred to in Article 5.5 to ACM;
- (b) the residual of the Net Surplus Revenue shall be paid to the Competitors as follows:
 - (i) one half to be distributed to the Defender;
 - (ii) the remainder shall be distributed to the Challengers as follows (the same distribution structure that applied for the Challenger Selection for the 30th, 31st, and 32nd America's Cups):
 - 40% divided equally amongst all Challengers;
 - 30% divided equally amongst all Challengers semi-finalists in the Challenger Selection;
 - 20% divided equally amongst both Challengers finalists in the Challenger Selection;
 - 10% to the winner of the Challenger Selection;
 - (iii) notwithstanding the provisions of Article 19.2 (b) (ii), any Challenger that has withdrawn, or deemed to have withdrawn, or that has been disqualified from competing further in the Qualifying Regattas or the Regatta by the Sailing Jury or the Arbitration Panel, shall not be entitled to receive any part of the Net Surplus Revenue unless the Sailing Jury or the Arbitration Panel orders the restoration in whole or in part of such

entitlement where the Sailing Jury or the Arbitration Panel, as the case may be, is satisfied that forfeiture arose through inadvertence or was beyond the reasonable control of the Challenger, and has not resulted in ACM or its subsidiaries incurring any significant actual or contingent liability, expense or lost revenue; insufficient funds shall not be grounds for the Sailing Jury or the Arbitration Panel to restore in whole or in part the entitlement of a Challenger to receive any part of the Net Surplus Revenue.

- (c) ACM may at its sole absolute discretion make interim distributions at any time on such terms and conditions as it may determine.

19.3 **Basis of payment:** The amount payable to Competitors pursuant to Article 19.2 (b) shall be paid as a contribution to the gross expenses of each Competitor. Any amount in excess of a Competitor's gross expenses shall only be paid to such Competitor if ACM is satisfied on reasonable grounds that such payment would not breach any duty or obligation to which SNG and/or ACM is subject.

19.4 **Half yearly reports:** ACM shall, from 30 June 2008, prepare and distribute to each Competitor six-monthly reports of the forecasted Net Surplus Revenue available for distribution at the conclusion of the Event. The final report containing only the actual Net Surplus Revenue available for distribution and the distributing calculations shall be audited and distributed to each Competitor with a copy of the audit report. All reports shall be strictly confidential to the Senior Management of a Competitor. ACM may require persons having access to the reports first sign a confidentiality agreement.

PART D

DISPUTE RESOLUTION AND ENFORCEMENT

20. MEASUREMENT COMMITTEE

20.1 **Jurisdiction:** Except as set out in Article 20.2, all matters relating to the measurement of the ACC Yachts, the interpretation of the ACC Rules, or the determination as to whether a yacht meets the ACC Rules, or the Racing Rules referred to in Article 17.3 insofar as they relate to a yacht's equipment, shall be determined by the Measurement Committee. The Measurement Committee shall have no power or authority to amend, alter, cancel or add to the ACC Rules or the Racing Rules relating to a yacht's equipment, but shall be entitled to interpret the words used in such documents. The Measurement Committee may remedy a procedural defect resulting in non-compliance by a Competitor, other than when racing, provided following the procedural defect being remedied, there will be no material advantage or prejudice to any Competitor and the remedy results in full compliance with the ACC Rules. All decisions of the Measurement Committee shall be determined by majority vote.

20. 2 **Appeal:** Decisions of the Measurement Committee within its jurisdiction shall be subject to appeal to the Sailing Jury, which shall have full powers to determine any appeal including replacing any determination or interpretation made by the Measurement Committee as it considers fair and reasonable to do so.
20. 3 **Delegation:** The Technical Director may delegate one or more of the members of the Measurement Committee to carry out measurement or inspection on behalf of the Measurement Committee. The Measurement Committee shall be entitled, in the absence of manifest error, to act on a report of any such delegated member(s).
20. 4 **Payment of Measurement Committee's fees and expenses:** Competitors shall pay reasonable fees as determined by ACM and the expenses incurred for the services of the Measurement Committee outside the time period during which the Regatta is held.

21. RESOLUTION BY ARBITRATION

Any dispute, protest or claim arising out of or in relation to this Protocol and/or the Applicable Documents, the interpretation or breach thereof, shall be resolved by arbitration in accordance with the provisions of this Protocol, except if and where otherwise expressly set forth in this Protocol. Such arbitration shall be final and binding.

22. ARBITRATION BODIES

There shall be two dispute resolution bodies: a Sailing Jury, which shall interpret provisions or resolve disputes of a sporting or technical nature arising under the Competition Regulations, the Notices of Race, the Sailing Instructions and the Racing Rules, and an Arbitration Panel, which shall interpret all other provisions of this Protocol or resolve other disputes. The Sailing Jury and the Arbitration Panel shall in making any determination give effect to all provisions of this Protocol.

23. JURISDICTION

The Sailing Jury and the Arbitration Panel shall have the power to determine their respective jurisdiction upon receiving an application. In case of doubt on whose jurisdiction shall prevail, the Arbitration Panel shall determine jurisdiction. Its decision shall be final and binding.

24. APPOINTMENT

- 24.1. **Composition:** the Sailing Jury and the Arbitration Panel shall each comprise three (3) members. Members may be
- (a) citizens of any country including a country of a Competitor in the Event,
 - (b) residents of any country, except the State of New York without the prior

approval of ACM, including a country of a Competitor in the Event,

(c) members of a yacht club represented by a Competitor in the Event.

A person shall not be member of both the Sailing Jury and the Arbitration Panel, at the same time, provided that a person may resign from one of the bodies and be appointed to the other.

24.2. **Appointment:** Upon signing the Protocol, the Parties hereto have agreed in a separate document on the names of the Arbitration Panel members. The Parties will agree on the names of the Sailing Jury members no later than December 31st, 2007.

24.3. **Replacement:** Upon the resignation, death, or significant unavailability during the Regatta, of any of the members of the Arbitration Panel or the Sailing Jury, a replacement shall be selected and appointed by SNG and the Challenger of Record acting jointly.

In case of deadlock between SNG and the Challenger of Record as to the appointment of a member of the Jury, the Arbitration Panel shall appoint the juror.

In case of deadlock between SNG and the Challenger of Record as to the appointment of a member of the Arbitration Panel, SNG or the Challenger of Record may request that the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association appoint such member, and the parties hereby agree that the ICDR shall act as appointing authority for such purpose⁴.

25. SEAT

Both the Sailing Jury and the Arbitration Panel shall have their seat in New York, however they may act in any other place, or by correspondence or other means of communication at distance.

26. RULES OF PROCEDURE

- (a) Both the Arbitration Panel and the Sailing Jury shall act in accordance with New York arbitration law.
- (b) The Sailing Jury shall establish the rules of procedure of the Sailing Jury consistent with this Protocol and otherwise with the rules of natural justice.
- (c) The Defender and the Challenger of Record shall agree on the rules of procedure of the Arbitration Panel. If none are agreed, the Arbitration Panel and the Jury shall apply the New York arbitration law procedures.

⁴ Article 24.3, text amended on 20 September 2007 (Protocol Amendment N° 1).

27. LANGUAGE

All proceedings of the Sailing Jury and the Arbitration Panel shall be in the English language.

28. STANDING TO MAKE AN APPLICATION

All Competitors, SNG, ACM and the Event Authority, shall have standing to make applications before the Sailing Jury and the Arbitration Panel subject to their respective jurisdictions. The Race Committee and the Measurement Committee shall have standing to bring an application before the Sailing Jury to enforce any of the documents referred to in Article 2.3.

29. APPEAL

The decision of the Sailing Jury and the Arbitration Panel shall be final and binding, except that an appeal may be lodged before the Arbitration Panel against any determination or award of the Sailing Jury. The Arbitration Panel shall have the power to decide on the admissibility of the appeal and its competence. The Arbitration Panel appeal awards shall then be final and binding.

30. TIME LIMITS

All rights to lodge and application or appeal shall be subject to the following time limits:

- (a) The time limit to lodge an application with the Sailing Jury shall be seven (7) days from when the applicant was or could with reasonable diligence have been aware of the circumstances justifying the protest.
- (b) The time limit to lodge any appeal with the Sailing Jury or the Arbitration Panel shall be seven (7) days from the time of communication of a decision or award of the Measurement Committee or the Sailing Jury.
- (c) The time limit to lodge an application with the Arbitration Panel shall be three (3) months from when the applicant was or could with reasonable diligence have been aware of the circumstances justifying the protest.
- (d) The Sailing Jury and the Arbitration Panel may extend the time limits if there is good reason.
- (e) During regattas, the aforementioned time limits shall be reduced as follows, unless otherwise specified in the Notice of Race by ACM:
 - (i) Any protest or appeal to the Jury during regattas shall be made within a time limit to be set in the Notice of Race;
 - (ii) Any appeal to the Arbitration Panel during regattas shall be made within 12 hours from the communication of the award or decision of the

Sailing Jury.

31. NATURE OF DECISION

The decisions of both the Sailing Jury and the Arbitration Panel shall constitute binding and final arbitration awards.

32. PENALTIES

The Arbitration Panel and the Sailing Jury may at their discretion penalise a Competitor in breach of this Protocol or any Applicable Document. Penalties shall be determined taking into account the surrounding circumstances, any advantage gained or disadvantage sustained by other Competitors or parties, and as may be necessary, the need to encourage future compliance with this Protocol or any Applicable Document.

33. PREVIOUS DECISIONS

The Sailing Jury and the Arbitration Panel shall not be bound by decisions or awards of any dispute resolution bodies of preceding competitions for the America's Cup.

34. COSTS AND EXPENSES

The costs and expenses of the Sailing Jury and the Arbitration Panel shall be subject to the following rules:

- (a) The Sailing Jury shall only proceed upon payment of an application fee which shall be fixed by and payable to ACM. ACM shall remunerate the members of the Sailing Jury and shall reimburse their expenses.
- (b) The Arbitration Panel shall only proceed upon payment of an application fee by the applicant which the Arbitration Panel shall fix being its estimate of total costs to resolve an arbitration. Such application fee shall be paid to the Arbitration Panel. The Arbitration Panel shall award all costs it has or will incur to resolve the arbitration to one or more parties to an application as it considers equitable provided that the starting basis shall be that the losing party or a party seeking an interpretation will be liable for all costs to resolve the arbitration.
- (c) Except as provided above, all revenue generated by the Sailing Jury and/or the Arbitration Panel shall be paid to ACM and be included in ACM's revenue for the calculation of the Net Surplus Revenue.

35. RESORT TO COURTS PROHIBITED

Each person or entity, including its officers, members and employees, having the right to make an application to the Sailing Jury or the Arbitration Panel hereunder shall not resort to any other court or tribunal than the Sailing Jury and the Arbitration Panel. Any such resort shall constitute a breach of this Protocol.

Notwithstanding the above, nothing shall prevent SNG from making any application it considers in its sole discretion appropriate regarding the administration of the Deed of Gift.

PART E

MISCELLANEOUS

36. AMENDMENTS

36.1 Amendments by the parties: SNG and the Challenger of Record may from time to time amend this Protocol by the deletion of terms and/or the addition of new terms provided that no amendment shall be made to the following without the prior approval of the Arbitration Panel:

- (a) Article 24.3 – Replacement
- (b) Article 25 - the seat of arbitration;
- (c) Article 27 – the language of proceedings;
- (d) Article 26, let (a) and c) – the applicable law and rules of procedure;
- (e) Any rules of procedure of the Arbitration Panel;
- (f) Article 21 and 23 – Resolution by Arbitration and Jurisdiction; and
- (g) Article 36.1 - power to amend this Protocol⁵.

36.2 Amendments required by authority: SNG may, after providing notice to the Defender and the Challenger of Record, modify this Protocol to meet the requirements of any authority having jurisdiction over the Deed of Gift as to the manner in which SNG is to administer the Deed of Gift.

37. COSTS AND EXPENSES TO COMPETE

Unless expressly provided otherwise in writing by ACM, all costs and expenses incurred in competing in the Event, including any Qualifying Regatta, and in meeting all obligations under this Protocol and the Applicable Documents shall be the sole and exclusive responsibility of the Competitor incurring such costs.

⁵ Article 36.1, text amended on 20 September 2007 (Protocol Amendment N° 1).

38. LIABILITY AND INSURANCE

38. 1 Own risk: Every Competitor taking part in the Event does so at its own risk and responsibility.

38. 2 Indemnity: Each Competitor shall protect, indemnify and hold harmless SNG, the Defender, the Challenger of Record, any other Competitor, the Competitors' Commission, ACM, the Event Authority, the Sailing Jury, the Arbitration Panel, any Regatta Official, their respective directors, officers, employees and contractors, from and against any and all liabilities, damages, indemnity, compensation, costs and expenses (including all legal fees incurred) whatsoever resulting from any claims, proceedings or actions brought by such Competitor and arising directly or indirectly out of or in any way connected with the acceptance of their challenge and performance in the Event or other associated event provided that such indemnity shall not apply to any proceedings in front of the Sailing Jury or the Arbitration Panel.

38. 3 Insurance: ACM shall obtain from third party a liability insurance cover for the Event and for all Regatta Officials, the Sailing Jury and the Arbitration Panel on such commercial terms as it shall determine. The cost of insurance cover shall be borne by ACM as an expense under Article 19.1.

38. 4 Postponement or cancellation: Neither SNG, nor the Defender, nor ACM, nor the Event Authority, nor any Regatta Official, nor any of their directors, officers, employees, agents or contractors shall be liable to any Competitor or Regatta Official or any of their directors, officers, employees, agents or contractors 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 Event or part thereof due to any event, occurrence or circumstances beyond the reasonable control of SNG, the Defender, ACM or the Event Authority including but not limited to acts of God, terrorism, war, government intervention or regulation, public health, environmental conditions, strikes, lockouts, other industrial acts or any other force majeure circumstance.

DATED this 3rd of July 2007 at Valencia, Spain

The Defender, Société Nautique de Genève

by:

The Challenger of Record, Club Náutico Español de Vela

by: