

The Protocol Governing The Thirty Second America's Cup

amended on

21 January 2004

16 June 2004 [article 11.2 (d)]

14 July 2004 [article 13.12]

23 July 2004 [articles 10.2, 16.1, 21.1 (c), 21.1 (d)]

**26 June 2005 [articles 4.3 (b) (ii) (A), 4.3 (b) (ii) (B), 5.8,
11.2 (h)]**



**THE PROTOCOL GOVERNING THE
THIRTY SECOND AMERICA'S CUP**

AS AMENDED ON 21 JANUARY 2004

- (i) Société Nautique de Genève
- (ii) The Golden Gate Yacht Club

BACKGROUND

- A. Société Nautique de Genève holds a silver cup 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 Golden Gate Yacht Club in accordance with the Deed of Gift.
- C. Société Nautique de Genève and The Golden Gate Yacht Club recorded in a Protocol dated 2 March 2003 the arrangements they mutually agreed in accordance with the terms of the Deed of Gift.
- D. In accordance with the provisions of Article 18.1 of the Protocol and in furtherance of the purpose and intent of the Protocol set out in Article 2 of the Protocol, Société Nautique de Genève and The Golden Gate Yacht Club have agreed amendments to the Protocol as incorporated into this revised Protocol.

AGREED AS FOLLOWS

1. INTERPRETATION

1.1 In the interpretation of this Protocol:

- (a) **ACC Yacht** includes an Old ACC Yacht and a New ACC Yacht;
- (b) **ACC Rules** means version 5.0 of the Rules Governing America's Cup Class yachts approved by the Defender and the Challenger of Record as interpreted and amended from time to time, and also includes, where stated, version 4.0 of the Rules Governing America's Cup Class Yachts as that version has been interpreted and amended from time to time;
- (c) **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 trade marks;
- (d) **Advertising** is the name, logo, slogan, description, depiction, a variation or distortion thereof, or any other form of communication that promotes an organisation, person, product, service, brand or idea so as to call attention to it or persuade persons or organisations to buy, approve or otherwise support it, provided that the following do not constitute advertising:

- (i) name of skipper of the yacht;
 - (ii) name of the home port of the yacht;
 - (iii) name, flag or emblem of the nation or national territory the yacht represents;
 - (iv) name and burgee of the yacht club the yacht represents;
 - (v) builders and/or makers marks no more than 150mm x 150mm in size;
 - (vi) the name of the yacht, if approved by the Jury under Article 10.13 of the Protocol; and
 - (vii) any flag(s) or other mark(s) that the Event Authority may require each yacht to display while racing, pursuant to Article 10.3;
 - (viii) the name and 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 by ACPI, and is not used for any purpose other than by the Competitor and its sponsors to support the Competitor's sailing activities.
- (e) **Challenger** means, except where inconsistent with the context, a Yacht Club whose challenge has been accepted by SNG under Article 3 and includes any person or entity which undertakes that Yacht Club's challenge as its representative;
 - (f) **Challenger Commission** means the organisation to represent all Challengers required to be established by the Challenger of Record pursuant to Article 6 of this Protocol. Where the Challenger Commission has not been established and is not required to be established by the terms of this Protocol, the Challenger Commission shall mean the Challenger of Record;
 - (g) **Challenger of Record** means The Golden Gate Yacht Club and includes any person or entity which undertakes that Yacht Club's challenge as its representative, or such Challenger as determined by Article 6.2;
 - (h) **Challenger Selection Series** means the selection series referred to in Article 3.3(c)(i);
 - (i) **Competitor** means the Defender or a Challenger or any one or more of them as the case may be;
 - (j) **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;
 - (k) **Defender** means the entity selected by SNG to defend the America's Cup in the Match on its behalf;
 - (l) **Designer** means a person who applies substantial intellectual creativity and judgement 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 component 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;

- (m) **Event** means the Regatta, all Pre-regattas, any Exhibition Regattas and any special events as may be defined in the Terms of Challenge;
- (n) **Event Authority** means AC Management Limited, the entity appointed by SNG to organise and manage the Event pursuant to Article 4.2;
- (o) **Exhibition Regattas** means regattas which may be organised by the Event Authority pursuant to the Terms of Challenge, but which are not Pre-regattas or part of the Regatta;
- (p) **Fleet Race Regatta** means the fleet race Pre-regatta referred to in Article 3.3(b)(ii) to be held immediately prior to the Challenger Selection Series;
- (q) **Hull** shall have the same meaning ascribed in the ACC Rules;
- (r) **Jury** means the Jury appointed pursuant to Article 21 of this Protocol;
- (s) **Match** means the 32nd Match between the Defender and a challenger for the America's Cup pursuant to the terms of the Deed of Gift;
- (t) **Measurement Committee** means the Committee appointed pursuant to Article 5.2(b) of this Protocol;
- (u) **Media Organisation** means an organisation whose business is, in whole or in part, dissemination of information to the public or any section of it in any form by any means;
- (v) **New ACC yacht** means a yacht that complies with the ACC Rules, that was allocated a sail number after the last race of the 31st America's Cup match (2 March 2003) pursuant to the ACC Rules, or is deemed to be a New ACC Yacht under the terms of this Protocol;
- (w) **Notice of Race** means the Notice of Race for the Regatta and the Pre-regattas;
- (x) **Officials** means:
 - (i) The Regatta Officials; and
 - (ii) Any other person or entity assisting with the organisation or management of the Event.
- (y) **Old ACC yacht** means a yacht that meets any version of the ACC Rules, and which was allocated a sail number under the ACC Rules prior to the last race of the 31st America's Cup match;

- (z) **Pre-regatta** means any of the regattas referred to in Article 3.3(b) organised by the Event Authority;
 - (aa) **Protocol** means this Protocol together with any amendment, or any replacement protocol that is to govern the 32nd America's Cup;
 - (bb) **Race Committee** means the Committee appointed pursuant to Article 5.2(a);
 - (cc) **Regatta** means the Challenger Selection Series and the Match;
 - (dd) **Regatta Director** means the person appointed pursuant to Article 5.1;
 - (ee) **Regatta Officials** means the Regatta Director and any persons appointed by him pursuant to Article 5.2, the Technical Director and members of the Jury including the Jury Chairman;
 - (ff) **SNG** means Société Nautique de Genève as holder of the America's Cup;
 - (gg) **Technical Director** means the Technical Director of the America's Cup Class appointed pursuant to Article 20.5;
 - (hh) **Terms of Challenge** means the terms on which challenges must be made pursuant to Article 3 of this Protocol;
 - (ii) **Venue** means the venue to be determined by and announced by SNG pursuant to Article 8 and comprises the Competitor bases, public areas, all berthage areas, water space, airspace and all other areas under the control of the Event Authority. Where the context so requires, Venue shall also mean the venue of Pre-regattas and/or any Exhibition Regatta not at the Venue.
- 1.2 **Singular/Plural:** Unless the context otherwise requires, the plural means the singular and vice versa.
 - 1.3 **Official Dictionary:** The English language shall prevail in the interpretation of this Protocol. The meaning of any word used in this Protocol and any document governing the Event, unless defined in Article 1.1, shall be determined by reference to the Oxford English Dictionary, Second Edition (1989) – CD Rom Version 3.0 (Oxford University Press 2002) or any later published version.
 - 1.4 **Conflicting Documents:** In the event of a conflict between the provisions of this Protocol and any other document, other than the Deed of Gift, the terms of this Protocol shall prevail.
 - 1.5 **Articles/Annexures:** A reference to an article or annexure is a reference to an article or annexure to this Protocol.

2. PURPOSE AND INTENT

The general underlying purpose and intent of this Protocol shall be to promote a competitive sporting regatta for all Competitors, to realise 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.

3. ACCEPTANCE OF CHALLENGES

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 initial challenge:** Unless SNG has previously accepted at least one other challenge pursuant to this Protocol and such other challenge has not been withdrawn, the Challenger of Record must give 90 days notice of an intention to withdraw its challenge. The Challenger of Record's challenge shall remain valid until expiry of the 90 day notice period. Withdrawal of the challenge without giving notice of an intention to withdraw the challenge in accordance with this Article shall be 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 **Pre-regattas and Challenger Selection Series:**

- (a) SNG and Challenger of Record have agreed to hold a selection series to determine the challenger for the Match. The winning Challenger shall become the challenger under the Deed of Gift in the Match. If the winning Challenger is for any reason ineligible to be the challenger in the Match, then the Challenger which placed second in the Challenger Selection Series, or failing the eligibility of that Challenger, the Challenger which gained the next highest place in the Challenger Selection Series 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.
- (b) The Pre-regattas shall, unless otherwise agreed by the Event Authority, the Defender and the Challenger of Record, have the following format:
 - (i) Pre-regattas to be announced in the Terms of Challenge to be held in the years prior to the Match;
 - (ii) a Fleet Race Regatta held in the year of, but immediately prior to, the races referred to in paragraph (c)(i) below, at the Venue, in which each Competitor is required to participate in one of the yachts they have declared pursuant to Article 13.2;
- (c) The Challenger Selection Series shall, unless otherwise agreed by the Event Authority and the Challenger of Record, have the following format:
 - (i) A seeded round robin series with Competitors placed in groups, the number of groups and the numbers in each group to depend on the number of Challengers, seeded based on their placing in the regattas referred to in paragraphs (b)(i) and (b)(ii) above but weighted heavily in favour of later regattas as determined by the Challenger Commission and approved by the Event Authority;
 - (ii) At least the top four Challengers from the results of the seeded group round robins shall compete in a knock out series to select a Challenger for the Match, the winner of each match of the knock out round to be the first to win four races, except for the final of the Challenger Selection Series which shall be the first to win five races.

- (d) The further details of the format described in paragraph (b) above shall be agreed between the Event Authority, the Defender, and the Challenger Commission. Further details of the format described in paragraph (c) above shall be agreed between the Event Authority and the Challenger Commission. Precise timing and scheduling of the Regatta and the Pre-regattas, however, shall be determined by the Event Authority in consultation with the Challenger Commission and the Defender.
- (e) The racing areas for the Challenger Selection Series shall be the same racing areas for the Match.
- (f) Unless otherwise agreed by the Challenger Commission and the Defender, the period between the conclusion of the Challenger Selection Series and the Match shall be not less than 10 days.

3.4 Acceptance of further challenges: The terms and conditions on which all challenges (other than the challenge of the Challenger of Record) must and will be accepted to compete in the Challenger Selection Series will be announced by the Event Authority.

SNG will not accept any further challenges before such an announcement but will accept bona fide registrations of interest for the purpose of receiving communications.

3.5 Terms of Challenge

- (a) The Terms of Challenge shall:
 - (i) include a requirement to comply with the terms of this Protocol;
 - (ii) include an obligation to conduct shore operations at a base within an America's Cup village established by the Event Authority, to be provided to the Competitor at a reasonable rental with the choice of allocation of bases for the Challengers to be determined by the Event Authority at its sole discretion;
 - (iii) include an obligation to participate in the Event as provided in the Terms of Challenge;
 - (iv) also apply to SNG, the Defender and to the Challenger of Record except that:
 - (A) Clauses 4 and 5 of the Terms of Challenge shall not apply to SNG and the Defender, except for the contribution to ACPI by the Defender (Terms of Challenge; clause 4.3 (d));
 - (B) Clauses 4.2, 4.3(a) and 4.3(e) of the Terms of Challenge shall not apply to the Challenger of Record. The Challenger of Record shall however comply with clauses 4.3(b), 4.3(c) and 4.3(d) of the Terms of Challenge prior to the commencement of the first Pre-regatta.

- (b) The Terms of Challenge may be amended by the Event Authority provided such amendment complies with Article 5.9 ("Neutral Management") and subject to the following additional requirements:
 - (i) with the consent of the Defender and Challenger of Record at any time; or
 - (ii) without the consent of the Defender and Challenger of Record, provided:
 - (A) it does not materially affect a Competitor's rights under the Protocol or the Terms of Challenge; and
 - (B) such amendments proposed by the Event Authority shall be notified to the Defender and Challenger of Record at least four days prior to the proposed effective date, during which time the Defender or Challenger of Record may file an application with the Jury asking it to determine whether or not such proposed amendment complies with Article 5.9 ("Neutral Management") and/or Article 3.5(b)(ii)(A) above; if no such application is made, the amendment shall become effective four days after such notification; if an application is made the amendment shall become effective only if and when the Jury determines such proposed amendment so complies, unless on the request of ACM in an emergency situation the Jury determines the proposed amendment can become provisionally effective before the Jury has rendered a decision.

3.6 Fees and Performance Bond

- (a) All Challengers shall provide a performance bond of €1 million, to be held by the Event Authority or its designate in trust, and shall be in such form and on such terms as may be reasonably required by the Terms of Challenge. This bond is to assure a Challenger's participation in the Event, and compliance with this Protocol and the Terms of Challenge as may be determined by the Jury and the Event Authority.
- (b) Challengers shall pay the following fees upon challenging:
 - (i) €50,000 to the Challenger Commission as an initial contribution towards the expenses of the Challenger Commission, any surplus or shortfall to be divided equally amongst the Challengers. The Challenger of Record shall be entitled to reimbursement from the fund for Challenger Commission expenses of reasonable costs incurred prior to the establishment of the Challenger Commission; and
 - (ii) US\$25,000 pursuant to Article 19.1; and
 - (iii) if challenging after the date specified in the Terms of Challenge, a late fee of €200,000, in accordance with the Terms of Challenge.

4. REGATTA FUNDING AND MANAGEMENT

4.1 Management and Funding:

- (a) SNG shall have sole responsibility to organise and manage the Event as provided in this Protocol. SNG shall raise all necessary funds to meet all costs and expenses of the Event. SNG's responsibility shall include:
 - (i) selecting a venue and concluding an agreement with the relevant authorities at a venue;
 - (ii) establishing the format and the timing of the Event consistent with Article 3.3;
 - (iii) appointing, with the Challenger Commission, the Regatta Director pursuant to Article 5.1;
 - (iv) endeavouring to make available space at the Venue for the Competitors at reasonable cost to establish an operational base;
 - (v) raising funds to meet the costs of the Event by developing the rights referred to in Article 4.1(c) to best advantage;
 - (vi) promoting the Event;
 - (vii) meeting its obligations under the Deed and this Protocol.
- (b) All losses, expenses and costs incurred in organising and managing the Event shall be the sole responsibility of SNG.
- (c) To assist SNG to raise all necessary funds to organise and manage the Event, all commercial rights of such Event shall vest in SNG. Such commercial rights shall include (without limitation):
 - (i) funds (if any) provided by authorities to SNG or the Event Authority related to the Venue;
 - (ii) sponsorship and official supplier agreements of the Event;
 - (iii) global media rights including but not limited to mobile telephone rights, still images and moving images;
 - (iv) Event merchandising;
 - (v) ticketing and entry fees;
 - (vi) entertainment;
 - (vii) concessions; and
 - (viii) such other commercial rights and fundraising opportunities as SNG may identify;

subject to compliance with the provisions of this Protocol and the Terms of Challenge.

- (d) Nothing in this clause shall affect the rights and obligations conferred or imposed by the constitution of ACPI.
- (e) All intellectual property rights which are created by the Event Authority, SNG and any Official including their members, representatives or employees, in the course of the organisation, management and conduct of the Event, whether registered or not (except for the rights vested in ACPI or for the rights developed by Competitors in accordance with applicable rules), will be deemed automatically assigned to SNG as trustee of the America's Cup for the benefit of all current and future competitors.

4.2 Event Authority:

- (a) To meet its obligations set out in Article 4.1 and to meet the purpose and intent of Article 2 of this Protocol, SNG will enter into a contract with AC Management Limited to provide professional commercial management expertise and financial resources to minimise the risk of losses. Such entity shall be the Event Authority. Such contract shall be governed by Swiss law or such other jurisdiction as agreed by SNG and such entity.
- (b) To facilitate funding of the Event, SNG shall provide for the management of the commercial rights referred to in Article 4.1(c) to be vested in the Event Authority who shall be entitled to receive and manage all revenue derived from such commercial rights.
- (c) The Event Authority shall be paid a management fee of 10% of the net surplus revenue, available for distribution pursuant to Article 4.3(b).

4.3 Net Surplus Revenue:

- (a) The net surplus revenue shall be the total of all revenue received, less the reasonable costs of:
 - (i) Salaries and bonuses of staff and management engaged by the Event Authority for the purposes of the Event;
 - (ii) The Officials;
 - (iii) TV and other media production;
 - (iv) Sponsor fulfilment obligations;
 - (v) Administration;
 - (vi) Insurance;
 - (vii) Interest, finance and banking charges;
 - (viii) All taxes, duties, levies and social services charges payable;

- (ix) Expenses incurred by SNG or the Event Authority in discharging their duties as holder of the America's Cup; and
- (x) Other expenses incurred by the Event Authority in organising the Event,

but shall not include the costs of any Competitor to compete in the Event except as provided in the Terms of Challenge.

(b) 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:

- (i) the payment of the management fee referred to in Article 4.2(c) to the Event Authority;
- (ii) the balance of the net surplus revenue shall be paid to Competitors as follows:

(A) half to be distributed to the Defender¹;

(B) the remaining one half, shall be distributed to the Challenger Commission for payment of its costs if in excess of the amounts received by the Challenger Commission pursuant to Article 3.6; and²

(C) the remainder shall be distributed to Challengers as follows (the same distribution structure that applied for the challenger selection series for the 30th and 31st America's Cups):

- 40% divided equally amongst all Challengers;
- 30% divided equally amongst all Challenger semi-finalists;
- 20% divided equally amongst both Challenger finalists;
- 10% to the winner of the Challenger Selection Series,

provided that the Challengers which constitute the Challenger Commission on 30 April 2006, may by unanimous agreement alter this formula for distribution of available funds to Challengers;

¹ Article 4.3 (b) (ii) (A), text amended on June 26, 2005 (Protocol, Amendment No 8)

² Article 4.3 (b) (ii) (B), text amended on June 26, 2005 (Protocol, Amendment No 8)

- (iii) notwithstanding the provisions of Article 4.3(b)(ii)(C), any Challenger that has forfeited half or more of its performance bond, or that has been disqualified from competing further in the Regatta by the Jury, shall not be entitled to receive any part of the net surplus revenue unless the Jury orders the restoration in whole or in part of such entitlement where the Jury is satisfied that forfeiture arose through inadvertence or was beyond the reasonable control of the Challenger, and has not resulted in the Event Authority incurring any significant actual or contingent liability, expense or lost revenue; insufficient funds shall not be grounds for the Jury to restore in whole or in part the entitlement of a Challenger to receive any part of the net surplus revenue.
 - (c) The amount payable to Competitors in paragraph (b)(ii)(C) above 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 SNG is satisfied on reasonable grounds that payment would not breach any duty or obligation to which it is subject.
- 4.4 **Reporting:** The Event Authority shall, from 31 December 2003, prepare and submit six-monthly reports regarding Event revenue and expenditure and including forecasts of future Event revenue and expenditure for approval by SNG. SNG shall provide copies of such reports to the Competitors following its approval. The final accounts for the Event shall be audited and submitted to SNG for approval and following SNG's approval distributed to all Competitors.
- 4.5 **Insurance:** The Event Authority and the Challenger Commission shall cooperate and mutually agree in the obtaining of appropriate third party liability insurance cover for the Event and all Officials on reasonable commercial terms. The cost of insurance cover agreed shall form part of the expenses of the Event Authority as provided in Article 4.3(a)(vi).
5. **NEUTRAL REGATTA MANAGEMENT**
- 5.1 **Regatta Director:** The Defender and the Challenger Commission shall appoint, and shall be entitled to remove and re-appoint, a Regatta Director who shall be responsible for ensuring fair races are conducted at the Venue in the format and at the times specified by the Event Authority and in accordance with the terms of this Protocol.
- 5.2 **Appointment of Regatta Officials (other than the Jury and the Technical Director):** The Regatta Director shall appoint:
- (a) a Race Committee to conduct the races of the Event, comprising the Regatta Director who shall be Chairman, a Principal Race Officer and such other officers as may be reasonably required;
 - (b) 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 who shall be first approved by the Technical Director;
 - (c) a Chief Umpire, who shall be approved by the Defender and the Challenger Commission, and such other umpires as may be reasonably required to umpire races of the Event, approved by the Chief Umpire; the

Chief Umpire and other Umpires may be the Chairman of the Jury or members of the Jury; and

- (d) subject to the approval of the Event Authority, such other persons as are reasonably necessary in meeting the purpose and intent set out in Article 2.

- 5.3 **Management of Regatta Officials (other than the Jury):** The Regatta Director shall be responsible for the management and co-ordination of the activities of the Regatta Officials (other than members of the Jury) to run the races of the Event in a manner that is consistent with the provisions of Article 2 and with the obligations and commercial requirements of the Event Authority. The Event Authority shall agree a budget with the Regatta Director and the Regatta Director shall manage the expenditure of the Regatta Officials within the budget agreed.
- 5.4 **Jury to appoint if no agreement:** If the Defender and the Challenger Commission fail to agree on the appointment of the Regatta Director within 30 days of either party requiring an appointment, the Jury shall appoint the person it believes is best qualified from persons nominated by either party.
- 5.5 **Terms of Engagement:** The terms of engagement of the Regatta Officials shall be agreed and entered into with the Event Authority;
- 5.6 **Selection criteria:** Criteria for selection of all Regatta Officials (excluding members of the Jury whose selection criteria is set out in Article 21.2) includes:
 - (a) they may be a resident or citizen of any country, including a country of a yacht club participating in the Event;
 - (b) they may be a member of a club participating in the Event;
 - (c) they shall be known to be fair minded and possess good judgement; and
 - (d) they shall be able to reside at the Venue for the duration of a regatta, or such lesser time as may be required by the Regatta Director.
- 5.7 **Notice of Race and Sailing Instructions:** The Regatta Director shall, as soon as practicable, in consultation with the Event Authority, the Defender and Challenger Commission, prepare and publish the Notices of Race as well as Sailing Instructions governing the Event regattas consistent with the provisions of this Protocol and meeting the commercial requirements of the Event Authority.
- 5.8 **Meteorological Data Service:** The Race Committee shall, at the request of the Event Authority, establish and manage a meteorological and oceanographic data collection service at the Venue and make the data available to Competitors electronically.

Net costs of the meteorological and oceanographic data service will be borne by the Event Authority as an expense under Article 4.3(a) of the Protocol, provided that in the event that the Event Authority fails to achieve a positive net surplus revenue as described in Article 4.3(a) of the Protocol, the net costs of the service shall be borne by the Event Authority and all Competitors in the same proportion as net surplus revenues would have been distributed in accordance with Article

4.3 (b) of the Protocol if the Event Authority had achieved a positive net surplus revenue.

No Competitor shall use or otherwise apply at anytime prior to conclusion of the 32nd America's Cup any data received from the Meteorological and Oceanographic Data Service in combination with other electronic data to gauge or otherwise analyse the performance of any other Competitor, without that other Competitor's prior written approval³.

5.9 **Neutral Management:** SNG, the Defender, the Event Authority, the Regatta Director, the Challenger Commission, the Challenger of Record and all Officials shall:

- (a) each act in the best interests of all of the Competitors, consistent with Article 2, in organising and managing the Event, and in developing the rights referred to in Article 4.1(c); and
- (b) not favour the interests of the Defender over those of the Challengers nor the interests of the Challengers over the Defender.

6. CHALLENGER OF RECORD AND CHALLENGER COMMISSION

6.1 **Appointment of Challenger of Record:** The Golden Gate Yacht Club, having submitted the first valid notice of challenge to SNG, is appointed by SNG as the Challenger of Record.

6.2 **Replacement Challenger of Record:** If at any time the Challenger of Record or any subsequent Challenger of Record ceases to be a Challenger, the next Challenger of Record shall be the Challenger whose challenge was accepted first in time after the challenge of the Challenger of Record and whose challenge is still current. At the conclusion of the Challenger Selection Series, the successful Challenger in the Challenger Selection Series shall become the Challenger of Record.

6.3 **Challenger Commission:**

- (a) Upon the acceptance of a second challenge by SNG, the Challenger of Record shall immediately establish and maintain, until after the last race of the Match, a Challenger Commission to represent all Challengers.
- (b) Each Challenger shall have the right to appoint one representative to the Challenger Commission, have equal power, and have an equal vote on all issues before the Challenger Commission. All issues shall be determined by majority vote.
- (c) Upon a Challenger (including the Challenger of Record) being excused, eliminated or disqualified by the Jury from further participation in the Event, or if half or more of its performance bond has been forfeited, such Challenger shall, unless otherwise agreed by the Jury, cease to be a member of the Challenger Commission and shall have no further

³ Article 5.8, text amended on June 26, 2005 (Protocol, Amendment No 8)

entitlement to vote on any matter before the Commission; however, where they remain entitled to receive a share of surplus revenue in accordance with Article 4.3, they shall be entitled to vote on any matter regarding distribution by the Challenger Commission of surplus revenue;

- (d) The Challenger Commission shall have no power to amend this Protocol or any of the documents referred to in Article 12.1, or to alter any right or obligation of any Competitor under those documents.

6.4 **Represent all Challengers:** The Challenger Commission shall appoint one (1) representative approved by the Challenger of Record, who shall be authorised to represent all Challengers in accordance with the resolutions of the Challenger Commission with SNG, the Event Authority, the Race Director and Regatta Officials, in exercising any discretion or obligation set out in this Protocol.

6.5 **Funding of Challenger Commission:** Any costs of the Challenger Commission in excess of the amount provided in Article 3.6 for the expenses of the Challenger Commission shall be met exclusively by the Challengers as set forth in Article 3.6(b)(i), and in such manner and amounts as the Challenger Commission shall equitably determine.

7. DEED OF GIFT

SNG and the Challenger of Record have mutually agreed, in accordance with the terms of the Deed of Gift as follows:

- (a) all racing in the Regatta shall be undertaken in yachts that comply with version 5.0 of the ACC Rules and this Protocol;
- (b) centre-board or sliding keel vessels are permitted provided they meet the requirements of the ACC Rules;
- (c) the Regatta shall be held at the Venue on the dates to be announced by SNG pursuant to Article 8 of this Protocol;
- (d) unless otherwise agreed by the Competitors involved in the Match, 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;
- (e) unless otherwise agreed by the Event Authority, the Defender and the Challenger Commission, the match racing courses for the Regatta shall be a windward-leeward configuration, of two or three laps with such length as the Race Committee shall determine, targeted to last approximately one to two hours in duration; and
- (f) (i) the requirement that the yacht of a challenging yacht club be constructed in the country of the challenging yacht club, and the yacht of 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 entire 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;

- (ii) a Competitor shall arrange for a member of the Measurement Committee to inspect the Hull of that Competitor's New ACC Yacht at its place of construction to affirm that the Hull has been constructed in accordance with Article 7(f)(i); affirmation by the Measurement Committee shall be final and conclusive evidence of compliance with Article 7(f)(i);
- (iii) an Old ACC Yacht is deemed to have been constructed in the country in which its hull was originally laminated immediately prior to the issue of its first sail number;
- (iv) 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 in Articles 13 and 14 of this Protocol and the ACC Rule;
- (v) there is no restriction on the locality of substitution and/or modification of any part of an ACC Yacht.
- (g) In accordance with past practice in America's Cup competition prior to 1980, there shall be no requirement regarding the nationality or residency of any crew member, nor of a Designer, of a Competitor's ACC Yacht.

8. SITE AND TIMING OF THE REGATTA

The Challenger Selection Series and the Match will be in Valencia (Spain). The Regatta shall be held in 2007. All such decisions are to be made by SNG. 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 to hold the Regatta at the Venue, SNG may select an alternative venue and/or dates for the Regatta with the approval of the Event Authority, the Defender and the Challenger of Record. Such approvals shall not be unreasonably withheld.

9. INTERPRETIVE RESOLUTIONS

The Trustee Interpretive Resolutions require updating to take into account contemporary circumstances. The content of such Resolutions have been considered and, where appropriate, addressed by mutual consent in this Protocol. All Trustee Interpretive Resolutions including those in effect as at the end of the last race of the 31st America's Cup match (2 March 2003) have no further effect for any purpose whatsoever.

10. ADVERTISING AND NAMES OF YACHTS

- 10.1 **Advertising restrictions:** There will be constraints on advertising in any form on the Hulls, cockpits, appendages, sails, rigs, crew clothing or associated equipment of a yacht as set out in this Article 10. Competitors shall also comply with the appropriate laws of the Venue in respect of their advertising.

10.2 **Prohibited Advertising:** Advertising of, or other reference to, tobacco products by a Competitor or the Event Authority is prohibited⁴.

10.3 **Event signage on competing yachts:** all Competitors shall display the following Event branding on their competing yachts during any Event regatta, as follows:

- (a) Louis Vuitton signage on each side of the jib or genoa of the dimensions described in Annexure 1 of the Protocol;
- (b) Event logo including Venue name on the inside face of the stern scoop placed as shown in Annexure 1 of the Protocol;
- (c) a sign on the pedestal as shown in Annexure 1 of the Protocol including up to four names and/or logos and a reference to the designation “official partners” of the Event. i.e.:
 - (i) a logo or name of Endesa;
 - (ii) a logo or name of a bank institution (such logo or name not being a credit card company such as Visa or American Express, etc);
 - (iii) further logos and/or names of Event partners (which could include a credit card company), provided, however, they do not conflict in the product category with one of the five most prominent sponsors of a Competitor as displayed on its competing yacht.

Conflicting contractual obligations shall not be grounds to justify failure to display required advertising, except as provided in (c)(iii) above.

10.4 **Anti-ambush Advertising:** A Competitor shall not place on its competing yacht or any of its support vessels the name of or any advertising of any Media Organisation unless approved by the Event Authority.

10.5 **Name of Yacht:** A Competitor shall not name its competing yacht with a name that constitutes Advertising.

10.6 **Offensive advertising prohibited:** A Competitor shall not use any offensive, obscene, abusive or illegal image on or name for its yacht. The decision of the Jury shall be final, conclusive and binding on all Competitors as to what constitutes offensive, obscene, abusive or illegal.

10.7 **Restriction on advertising:** A yacht shall display advertising only as specifically permitted by this Article 10 of the Protocol and any other applicable law or rules.

10.8 **Hull advertising**

- (a) Advertising on the Hull is permitted in an area not to exceed ten (10) square meters on each side (a “side” is the area from the centreline of the

⁴ Article 10.2, text amended on July 23, 2004 (Protocol, Amendment No 7)

Hull to the sheerline). The area is measured by constructing the smallest possible rectangle around each advertisement and then adding the areas of the rectangles together.

- (b) Article 10.8(a) notwithstanding, the Hull may be of any colour or combination of colours, and such colour schemes (as opposed to logos or lettering) shall not constitute advertising.
- (c) Each yacht shall display on or near the stern any one or combination of the name, burgee, or initials of the yacht club it represents.

10.9 Deck and Cockpit advertising

- (a) Advertising on the surfaces of the deck, including hatches, troughs, recesses and cockpit(s) is permitted in an area not to exceed twenty (20) square meters. The deck is bounded by the sheerline and the stern, and the area is measured by constructing the smallest possible rectangle around each advertisement and adding the area of the rectangles together.
- (b) Article 10.9 (a) notwithstanding, the deck and cockpit(s) may be of any colour or combination of colours, and such colour schemes (as opposed to logos or lettering) shall not constitute advertising.

10.10 Sails and Boom advertising

Advertising is permitted on:

- (a) Mainsails in rectangular areas not exceeding forty two (42) square meters on each side within the area bounded by the foot, the luff, the leech and a line connecting a point on the luff seven (7) meters above the tack and a point on the leech seven (7) meters above the clew; and
- (b) Spinnakers; and
- (c) Both sides of the main boom.

10.11 Appendages advertising: Advertising is permitted on any surface of the appendages.

10.12 Crew clothing advertising: Advertising on crew clothing is permitted.

10.13 Prior approval

- (a) Details of intended advertising or an intended competing yacht's name may be submitted to the Jury for approval as to compliance with this Article 10.
- (b) When the Jury's approval is granted under Article 10.13, thereafter protests alleging non-compliance with this Article 10 shall be refused unless the protest alleges the display was materially altered after the Jury's approval.
- (c) Jury decisions when issued under this Article 10 shall be distributed to all Competitors.

11. RECONNAISSANCE

11.1 **Worldwide:** This Article 11 applies throughout the world to all Competitors from the last race of the 31st America's Cup match until the completion of the last race of the Match.

11.2 Prohibited activities

The Competitors are prohibited from engaging in any of the following activities:

- (a) any intentional illegal act related to the gaining of information about a Competitor;
- (b) the use of listening devices for eavesdropping;
- (c) the unauthorised entry into any computer system used by a Competitor including the capture, recording or analysis of any data emanating from telemetry, instruments, computers etc, from another Competitor;
- (d) the use of satellites, aircraft (fixed or rotary winged), and/or other means to observe or record from above another Competitors' yacht; except that during a training session or approved non-Event regatta, the involved Competitor(s) and/or prospective competitor(s) may, for promotional purposes, observe or record from above their yachts with the prior written agreement of such involved Competitors and/or prospective competitor(s), and in accordance with the terms of such agreement⁵;
- (e) the use of divers, submarines or other means to observe or record another Competitor's yacht below or from below the surface of the water;
- (f) without the prior consent of the Competitor, observing or capturing images (photos, videos or by any other means) of another Competitor's ACC yacht from another vessel with the principal intent and purpose to gain design or performance information of an ACC yacht that is:
 - (i) outside the racing area designated in the Notice of Race (whether at the Venue or at another regatta for ACC yachts); or
 - (ii) inside the designated racing area and within 200 meters of the Competitor's yacht.
- (g) the acceptance of any information from a third party that, under this Article, would have been improper for the Competitor to obtain directly.
- (h) tracking any other Competitor's yacht using shore based radar or lidar⁶.

⁵ Article 11.2(d), text amended on June 16, 2004 (Protocol, Amendment No 5)

⁶ Article 11.2 (h), text inserted on June 26, 2005 (Protocol, Amendment No 8)

11.3 **Proximity:** The proximity of another Competitor's vessel to a Competitor's yacht, in compliance with applicable local laws and requirements or the requirements of the Race Committee, shall not be, in itself, a breach of Article 11.2.

11.4 **Media activities protected:** Article 11.2(d) and (f) shall not restrict the lawful and permitted activities of any media representative accredited by the Event Authority, provided they shall not, other than by way of public dissemination by a Media Organisation, provide to any Competitor any material that a Competitor could not itself collect without breach of Article 11.

12. RULES

12.1 **Applicable documents:** The Event shall be governed by:

- (a) the Deed of Gift;
- (b) this Protocol;
- (c) version 4.0 of the ACC Rules for regattas held prior to 31 December 2004, and version 5.0 of the ACC Rules for regattas held on or after 1 January 2005; and
- (d) the Terms of Challenge;
- (e) the applicable Notice of Race;
- (f) the applicable Sailing Instructions;
- (g) racing rules including match racing rules, as agreed by the Defender and the Challenger Commission; and interpretations (calls and cases) issued in accordance with the Notice of Race.

12.2 **Precedence of Rules:** Unless expressly provided otherwise, the documents referred to in Article 12.1 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.

13. ELIGIBILITY OF YACHTS AND OTHER RESTRICTIONS

13.1 **Eligible yachts:**

- (a) For the Fleet Race Regatta and the Regatta, ACC Yachts shall comply with the Protocol and version 5.0 of the ACC Rules.
- (b) For the Pre-regattas held prior to the Fleet Race Regatta, ACC Yachts shall comply with:
 - (i) the Protocol, except Article 7(f)(i) shall not apply; and
 - (ii) version 5.0 of the ACC Rules, except for Pre-regattas held prior to 31 December 2004 version 4.0 of the ACC Rules shall apply.

13.2 **Declared Yachts:** Three days prior to the scheduled commencement of the first race of the Fleet Race Regatta, Competitors shall declare in writing to the Race

Committee the one or two ACC Yachts which they intend to use in the Fleet Race Regatta and the Regatta. A Competitor may declare an ACC Yacht in the course of construction or modification subject to compliance with Article 14.4. Competitors shall only be entitled to use either of those ACC Yachts in the Regatta or the Fleet Race Regatta subject to the substitution or replacement rules of the Notice of Race. Such substitution or replacement rules shall:

- (a) for the Challenger Selection Series, be approved by the Challenger Commission; and
- (b) for the Pre-regattas, Fleet Race Regatta and Match, be approved by the Defender and the Challenger Commission.

The winner of the Challenger Selection Series and the Defender may choose which of their eligible ACC Yachts to sail in the Match, and shall declare it in writing to the Race Committee prior to the Match.

13.3 New Yacht rule: Each Competitor may only build, acquire or otherwise obtain a maximum of two New ACC yachts.

13.4 Restrictions to reinforce New Yacht rule: In order to give full effect to the intent of this Article 13, which is to limit Competitors to building, acquiring, or otherwise obtaining the specified number of New ACC yachts, the following provisions shall apply:

- (a) The acquiring or obtaining of a new yacht (construction of which commenced after completion of the final race of the 31st America's Cup match) capable of being measured as an ACC Yacht without significant modification shall be deemed to be the acquisition of a New ACC Yacht.
- (b) Once a Competitor has been allocated, or should have been allocated under the ACC Rules two sail numbers, no further sail numbers may be allocated to that Competitor. A Competitor shall only be entitled to be allocated a new sail number under the ACC Rules where they have not built or have been deemed to have built, acquired or obtained (in each case through alteration or otherwise) two New ACC Yachts.

13.5 Designers restricted to work for one Competitor: Subject to the other provisions of this Article 13, each Competitor shall engage separate and independent Designers, who have had no involvement with any other Competitor's program for this Event, to develop an ACC Yacht's Hull, deck, cockpit, mast tube, geometry of the mast rigging, appendages or sails (excluding battens and sail hardware), or those same components of any other yacht capable of being measured as an ACC Yacht without significant modification. Working for the same Competitor as in the 31st America's Cup for a period of up to 90 days after the last race of the 31st America's Cup match (2 March 2003) shall not constitute working for a Competitor.

13.6 Design information and equipment not to be shared: Subject to the other provisions of this Article 13, Competitors, including through the assistance of third parties, shall not share or exchange ACC design or performance information or equipment except hardware (not being Hulls, decks, cockpits, mast tubes, appendages or sails) which is available for purchase by all Competitors on similar terms. This restriction shall not apply to design and performance information which may be gleaned without assistance from the other person or entity in formal

or informal or head-to-head competition or otherwise as permitted in this Protocol. Nothing in this Article shall prevent a supplier to two or more Competitors disclosing improved construction methods or technology developed solely by the supplier, provided the designs, methods or technology developed by the Competitors are not disclosed or exchanged.

13.7 Use of past acquired skills, knowledge and information: Nothing in this Protocol shall prevent any person, subject to any legal obligations relating to confidentiality, intellectual property or otherwise owed to any third party, from using the benefit of their experience, knowledge and skills gained in the design and construction of ACC Yachts built prior to the last race of the 31st America's Cup match (2 March 2003). Any information developed prior to the last race of the 31st America's Cup match (2 March 2003) lawfully available to any person may be used in the design, construction and assembly of an ACC Yacht.

13.8 Acquiring Old ACC Yachts:

(a) At any time a Competitor may acquire an Old ACC Yacht, or any of its components, that was constructed prior to the last race of the 31st America's Cup match (2 March 2003), and may also acquire its plans, specifications, and/or design and performance information that were in existence prior to the last race of the 31st America's Cup match (2 March 2003).

(b) The acquisition by a Competitor of an Old ACC Yacht that has been modified by a previous owner after the last race of the 31st America's Cup match (2 March 2003) shall count as one of that Competitor's two Old ACC Yachts for the purposes of Article 14.4(a). Such yacht shall not be eligible to compete in the Fleet Race Regatta or the Regatta, irrespective of whether it otherwise complies with Article 7(f)(i). Acquisition of such a yacht shall not breach Articles 13.5, 13.6 and 13.9, provided the modification was made solely to comply with Version 5 of the ACC Rule, and the modification was carried out in compliance with Article 14.8. The Competitor acquiring such yacht may also acquire the plans of such modification that were provided to the Technical Director pursuant to Article 14.8. For the avoidance of doubt, the 60% limit in Article 14.4(a) applies to such yacht, and upon acquiring the yacht the acquiring Competitor is also considered to have modified the yacht by the modification-percentage made by a previous owner.

13.9 Trading old design and performance information: A Competitor may acquire, until 1 October 2004, any design or performance information regarding any ACC Yacht from a lawful owner of such design or performance information provided that design or performance information existed prior to the end of the last race of the 31st America's Cup match (2 March 2003) whether or not the ACC Yacht to which it relates has been acquired. Use by a Competitor of any design or performance information acquired under the provisions of this Article 13 shall not constitute a breach of this Protocol.

13.10 Size limitation for models: Any scale model or scaled down version of an ACC Yacht (or other yacht, other than an ACC Yacht, which could be measured as an ACC Yacht without significant modification) which is greater than one-third of the size of an actual ACC Yacht (or such other yacht) is deemed to be a New ACC Yacht for the purposes of this Article and shall be deemed to have been allocated a sail number under the ACC Rules.

13.11 **Anti-avoidance:** Any agreement, arrangement or understanding, whether legally enforceable or not, by one person or entity (in this paragraph “the first person”), whether then a Competitor or not, with any other person or entity (in this paragraph “the second person”) that the second person will directly or indirectly build, acquire or otherwise obtain one or more yachts of whatever type (in this paragraph “other yachts”) so that the first person can directly or indirectly obtain, in any manner whatever, design or performance information regarding the other yacht or yachts for use in the program of design, development or challenge of the first person, is prohibited.

13.12 **Crew restricted to work for only one Competitor⁷ :**

(a) Except with the consent of all Competitors still competing in the Event:

- (i) at any time after 2 March 2003, a person who has been contracted, employed, paid or otherwise engaged (paid or unpaid) by a Competitor as a race or training crewmember for a total of 180 or more days may not be engaged (paid or unpaid) by another Competitor in any capacity; and
- (ii) at any time after 1 January 2006, a person who sails on a Competitor’s yacht as a race or training crewmember may not be engaged (paid or unpaid) by another Competitor in any capacity.

(b) A 17th person under version 4.0 of the ACC Rules, or an 18th person under version 5.0, shall not constitute a crew member for the purposes of Article 13.12 (a) (ii).

(c) Article 21.4 notwithstanding, a Competitor that breaks rule 13.12 (a) (i) shall be ineligible to compete, or to continue to compete, in the Event.

13.13 **Restrictions on number of support vessels:** Except in an emergency, a Competitor shall not use simultaneously more than six vessels supporting sailing operations at the Venue or a designated site of any Pre-regatta, including chase boats, tenders, weather boats and utility boats, but not including ACC Yachts or other yachts used for team training, or vessels used for team recreation, or other vessels for sponsor or spectator purposes. In addition, a Competitor may use a seventh support vessel strictly for ferrying equipment and/or personnel between the shore and sailing operations afloat.

13.14 **Mast Tube Tools:** A Competitor may acquire and use, without restriction, any mast tube tool which existed prior to 2 March 2003. Any modification is subject to the provisions of Articles 13.5 and 13.6 of the Protocol. Competitors shall demonstrate to the Measurement Committee that the history of the tools complies with this provision.

13.15 **Old Masts:** A Competitor may acquire and use, without restriction, any mast that was completed or constructed prior to 2 March 2003. Such masts may be modified, provided such modifications shall be designed by a Designer who satisfies the provisions of Article 13.5. Competitors shall demonstrate to the Measurement Committee that the history of such mast complies with this provision.

⁷ Article 13.12, text amended on July 14, 2004 (Protocol, Amendment No 6)

13.16 **Permitted Weather Data:** A Competitor may use weather, wind, sea state or sea current data from:

- (a) any source that is public and readily available to all Competitors at no cost; or
- (b) a consolidated weather programme managed by the Race Committee pursuant to Article 5.8 of this Protocol; or
- (c) any other sources provided they are not otherwise limited by Article 5.8 and such sources do not at any time make use of:
 - (i) any form of aircraft, satellite or airborne weather station;
 - (ii) any lidar, sodar or similar device capable of measuring wind speed or direction at a distance from the device; however this shall not preclude the use of sonic and/or other non-mechanical wind-measuring devices with an operating range of less than one meter.

For the avoidance of doubt, the sources specified in (a) and (b) are not limited by the restrictions under (c)(i) and (ii) above.

13.17 **Use of patented products:** Use of a design or process for the Hull, appendages, spars and sails for which a patent has been granted or is pending is prohibited unless the design or process is available to all Competitors on a reasonable commercial basis.

14. MODIFICATIONS TO YACHTS

14.1 **Purpose and intent:** The purpose of this Article 14 is to maximize the use of all ACC yachts, and to enable yachts to be reshaped in a cost effective manner.

14.2 **“Original Hull surface” definition:** In general, the meaning of “original Hull surface” for an Old ACC Yacht shall be as the Hull was on 2 March 2003, and for a New ACC Yacht shall be as the Hull was when completed. “Original Hull surface” will be defined in detail for both Old and New ACC Yachts in the Measurement Committee Interpretation issued pursuant to Article 14.11.

14.3 **No limits before launch:** A New ACC yacht is deemed to be completed on its launching date, being the date it is first floated in the water for any reason. There is no limit on modifications that may be made to an ACC Yacht before it is completed.

14.4 **Limits after launch:** Competitors may modify the Hulls of a maximum of four ACC Yachts as follows:

- (a) two Old ACC Yachts, each of which may be modified by a maximum of 60% of the original Hull surface of the yacht;
- (b) two New ACC Yachts, each of which may be modified by a maximum of 50% of the original Hull surface of the yacht.

If the total of all Hull surface modifications to a yacht exceeds the permitted limits set out in this Article 14.4, then the yacht shall be deemed to be a New ACC Yacht

within the terms of Article 13 and shall be allocated a new sail number under the ACC Rule.

14.5 Lines plan of New ACC Yachts: Upon completion of a New ACC Yacht, a Competitor shall provide the Technical Director with a lines plan in the form, scale and with the detail required by the Measurement Committee. Structural plans shall also be provided if required by the Measurement Committee.

14.6 No limits on modifications of decks: There is no limit on modifications that may be made to an ACC Yacht's deck or cockpit surfaces.

14.7 Measurement Committee to approve modifications: No modifications shall be made to the Hull surface of an ACC Yacht after it is completed without the written approval of the Measurement Committee. The Measurement Committee is empowered to give approval after a modification is commenced where the terms of this Protocol have otherwise been complied with and the Measurement Committee is satisfied failure to obtain approval was through inadvertence.

14.8 Approval procedure: The following procedure shall apply:

(a) For Old ACC Yachts, a Competitor shall provide the Technical Director with a copy of the lines plan for the Hull of the yacht as it existed on 2 March 2003. (Competitors will have submitted lines plans for New ACC Yachts under Article 14.5.)

(b) The Competitor shall provide the Technical Director with plans of the proposed modifications showing the cut lines and physical reference points (such as bulkheads) in respect of each proposed modification. The Measurement Committee shall then calculate both:

(i) the modification in the original Hull surface resulting from the particular proposed modification; and

(ii) the new aggregate of all modifications including this proposed modification.

(c) The Measurement Committee shall advise the Competitor in writing of these calculated values.

(d) The Measurement Committee may also require a check measurement.

14.9 Access to information

(a) The Measurement Committee shall be provided with any additional information it requests and believes is necessary to determine whether the modification is permitted.

(b) The Measurement Committee shall hold all plans provided under Article 14 in strictest confidence, and such plans shall normally be stored for safe keeping in a recognised safety deposit facility or filed in an electronic form protected by an appropriate security encryption.

14.10 Repairs

A repair which is approved by the Technical Director shall not be considered a modification.

14.11 Interpretation

The Technical Director shall consult with the Defender and the Challenger Commission and the Measurement Committee shall issue an interpretation of Article 14 setting out clear technical guidelines on the application of this Article. This interpretation, when issued, shall be deemed to constitute part of Article 14.

15. NUMBER OF SAILS

15.1 **60 sails:** Each Competitor is limited to a maximum of 60 measured sails for the Regatta from which:

- (a) each Challenger is limited to a maximum of 45 measured sails for the Challenger Selection Series; and
- (b) each Competitor in the Match is limited to a maximum of 30 measured sails.

15.2 **Sails to be registered:** To be eligible for use as set out in Article 15.1, a sail must be measured and registered with the Measurement Committee as part of the Competitor's sail inventory. Sails may be measured and/or registered in the sail inventory at any time during the Regatta.

16. UNVEILING

16.1 **Shrouding of Underbodies⁸:**

- (a) Underbodies of any ACC Yacht shall not be shrouded at any time between 1 August 2004 and December 31, 2005.
- (b) The underbodies of any ACC Yacht may be shrouded from 1 January 2006 until the unveiling ceremony to be held immediately prior to the Fleet Race Regatta in 2007. Thereafter, all ACC Yachts, whether or not declared pursuant to Article 13.2, shall not be shrouded until after the conclusion of the Regattas.
- (c) Use of protective wrapping during the shipment of any ACC Yacht, or placing an ACC Yacht in a building or shelter with a solid floor for storage or to carry out maintenance or modifications, shall not constitute shrouding.

⁸ Article 16.1, text amended on July 23, 2004 (Protocol, Amendment No 7)

- (d) Any yacht declared pursuant to Article 13.2 but still under construction after the unveiling ceremony shall, following completion, be immediately moved to the Venue.

16.2 **Unveiling Procedures:** The Event Authority, after consultation with the Defender and the Challenger Commission, shall issue procedures for the unveiling of ACC Yachts declared pursuant to Article 13.2.

17. TELEVISION AND TECHNICAL EQUIPMENT

17.1 **Must carry broadcast equipment:** During racing in the Event, television, audio and other electronic equipment shall be carried on competing ACC Yachts and/or crew as determined by the Event Authority. The amount and manner of placement of such television, audio and other electronic equipment on yachts and crew shall be consistent for all Competitors.

17.2 **Copyright:** All copyright and all other intellectual property in all film, video, photographs, 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 participating in the Event shall be held by SNG and form part of the property of the America's Cup.

17.3 **Protection of performance data:** The Event Authority and Challenger Commission 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 a broadcast through a Media Organisation authorised by the Event Authority.

17.4 **Media Ambush:** A Competitor, or any of its employees, contractors, or agents, shall not grant access to the Event, including official interview areas, to any Media Organisation without the prior written consent of the Event Authority. 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 the Event Authority.

17.5 Releases

(a) **Broadcasting:** All Competitors acknowledge, and shall obtain acknowledgements from all of their crew, team members, sponsors and commercial partners, that the Event Authority and its authorised agents, including its broadcast rights holder and all authorised broadcasters and mobile media providers, shall be entitled, without payment of fees to any person including Competitors or any of their crew, team members, sponsors or 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 crew members and team members and burgee for the purposes of broadcasting the Event in any medium, live or by way of delayed coverage, and in the distribution, exploitation, advertising and promotion of programmes associated with the Event.

(b) **Promotion and advertising:** All Competitors acknowledge, and shall obtain acknowledgements from all of their crew, team members, sponsors and commercial partners, that Event Authority and its authorised agents,

sponsors, licensees, the host cities of the Event, and the host country of the Regatta, shall be entitled, subject to compliance with further restrictions that may be set out in the Terms of Challenge, without payment of fees to any person including Competitors or any of their crew, team members, sponsors and 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 crew members and team members and burgee for the purposes of promotion, advertising and merchandising.

- (c) **No endorsement:** The Event Authority and its agents, sponsors, licensees, the host cities of the Event, and the host country of the Regatta in (a) and (b) above shall not use the foregoing entitlements in any way as to create an endorsement, direct or indirect, by or from a Competitor or any person, organization, sponsor, product or service associated with a Competitor, without the prior consent of the Competitor.

Guidelines for application of this Article 17.5 may be set forth under the Terms of Challenge. For the avoidance of doubt, any such guideline shall not amend this Article 17.5.

18. **AMENDMENTS**

- 18.1 **Amendments:** SNG and the Challenger of Record may, from time to time, by mutual agreement, amend this Protocol and mutually determine such other terms and conditions as they agree are necessary or desirable for the Event.
- 18.2 **Amendments required by authority:** SNG may, after providing notice to the Defender and the Challenger Commission, 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.

19. **AMERICA'S CUP TRADE MARKS**

- 19.1 **ACPI Contribution:** Each Competitor shall pay the sum of US\$25,000 or an equivalent sum in Euro to be held by SNG for defraying costs associated with the maintenance of ACPI and the creation and maintenance of America's Cup trade marks and other intellectual property held or to be held by ACPI. SNG shall ensure ACPI makes an annual report to all Competitors regarding disposal of funds. Such contribution does not create any rights in ACPI or constitute a licence or right to use any trademark or other intellectual property except as provided in Article 19.2.
- 19.2 **Use of America's Cup trade marks:** Each Competitor may, within 6 months of acceptance by SNG of its challenge, or prior to any use of any of the America's Cup trade marks owned by ACPI, whichever is the earlier, 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 determined by the Jury. No Competitor may use any trademark or other intellectual property of ACPI until it has executed a licence agreement with ACPI.
- 19.3 **Reform of ACPI:** SNG may, prior to the end of the Regatta, in consultation with the Challenger Commission and with the consent of all parties required to approve any alterations to ACPI, review and, where considered appropriate, amend the role and structure of ACPI with the intention of expanding its present

role from holding and protecting America's Cup related trade marks to holding and protecting all America's Cup intellectual property for the benefit of all current and future competitors.

- 19.4 **Non-Event regattas:** The Event Authority has or will enter into exclusive sponsorship, broadcasting and other commercial agreements for the benefit of all Competitors. This Article is to protect such agreements while not unduly restricting Competitors. It shall apply until 14 days following the conclusion of the Regatta, except for the provisions of paragraph (c)(i) below which continues to apply under ACPI.

When racing ACC Yachts, Competitors shall participate only in Event regattas except as follows:

- (a) At any time, a Competitor may compete in:
 - (i) a training regatta or session that is un-sponsored;
 - (ii) a pre-existing regatta not specifically organized for ACC Yachts and involving other classes of yachts, such as Cowes Week in the U.K., or the St. Francis Big Boat Series in San Francisco, provided the Competitor shall give the Event Authority advanced written notice of their intent to participate; and
 - (iii) any other regatta with prior written approval of the Event Authority.
- (b) In 2004, 2005 and 2006:
 - (i) the Event Authority will endeavour to conduct a minimum of four Event regattas for ACC Yachts per calendar year; if the Event Authority conducts fewer than four such regattas in a given year, a Competitor may participate in additional non-Event regattas for ACC Yachts such that the total of Event regattas and non-Event regattas that a Competitor may participate in shall not exceed four in a given year, except that
 - (ii) for a Competitor that commits prior to 1 August 2004 to participate in all Pre-regattas and thereafter participates from September 2004, the total number of Event regattas and non-Event regattas that such Competitor may participate in shall not exceed five in a given year.
 - (iii) Any non-Event regatta held pursuant to paragraphs (b)(i) or (b)(ii) shall be held not less than 30 days before or 14 days after an Event regatta; and
 - (iv) a Competitor shall give the Event Authority at least 60 days notice of its intent to participate in a non-Event regatta, including relevant details confirming that the regatta complies with this Article 19.4.
- (c) Notwithstanding the foregoing, a Competitor shall not participate, without the prior written approval of the Event Authority, in any:

- (i) non-Event regatta that is presented in a way that is or could be perceived to be an ambush of the America's Cup Event, or that is presented or held out to be part of the America's Cup Event, or infringes the trademark rights of ACPI (and Competitors shall cooperate with the Event Authority in enforcing this provision on any non-Event regatta organizer);
 - (ii) regatta that is broadcast live;
 - (iii) regatta that is held within the country of Spain; or in any
 - (iv) non-Event regatta that is conducted prior to the first Pre-regatta (the UBS Trophy in Newport, RI in June 2004 has been approved by the Event Authority).
- (d) Any approval by the Event Authority granted for a regatta pursuant to this Article shall not make the regatta an America's Cup Event.

20. MEASUREMENT COMMITTEE

- 20.1 **Jurisdiction:** 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 12.1(g) 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 but shall be entitled to interpret the words used in such documents.
- 20.2 **Decisions final and binding:** Decisions of the Measurement Committee within its jurisdiction shall be final and shall not be subject to appeal or be referred to any court or other tribunal for review in any manner except that any matter relating to the jurisdiction of the Measurement Committee or compliance by the Measurement Committee with this Protocol shall be solely determined by the Jury. All decisions of the Measurement Committee shall be determined by majority vote.
- 20.3 **Delegation:** The Measurement Committee Chairman may delegate one or more measurers to carry out measurement or inspection on behalf of the Measurement Committee and 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 fees and expenses:** Competitors shall pay reasonable fees as determined by the Event Authority and expenses incurred for the services of the Measurement Committee.
- 20.5 **Technical Director:** The Technical Director shall be appointed, and may be replaced, by agreement of the Defender and the Challenger of Record.

21. DISPUTE RESOLUTION AND JURY

- 21.1 (a) **Selection:** A Jury shall be established whereby SNG and the Challenger Commission shall by agreement appoint five members of the Jury

including one of those five to be the chairman by 15 December 2003 or such earlier date as may be reasonably required by SNG or the Challenger Commission. In the event of deadlock or non-selection, the Chairman of the International Jury for the 31st America's Cup match shall appoint the Jury and the Chairman, who may select himself to be Chairman or a member of the Jury.

- (b) **Pool of Jurors may be established:** SNG and the Challenger Commission may appoint more than five persons to be members of the Jury. In such circumstances, the Chairman of the Jury shall select a Jury from the persons appointed for any particular matter based on their availability, experience and knowledge.
- (c) **Size of the Jury⁹:** The quorum for meetings of the Jury shall be all five members. However, if some members are unavailable for any reason, the quorum may be reduced provided that:
 - (i) the remaining members of the Jury believe there is an urgent need to resolve an issue before all five members of the Jury will be available, and resolution reasonably cannot be delayed without disrupting the Event;
 - (ii) the jurisdiction of the remaining Jury is limited to only those urgent matters requiring resolution to avoid disrupting the Event; and
 - (iii) the quorum shall never be less than three.

Decisions of a reduced Jury shall be final, and there shall be no appeal or other redress to the full Jury.

- (d) **Jury Chairman¹⁰:** Subject to the right of SNG and the Challenger Commission to appoint and replace the Jury Chairman under the provisions of Articles 21.1 and 21.5, if the Jury Chairman is temporarily unavailable for any reason, he shall appoint a member of the Jury to be the temporary Jury Chairman until the period of unavailability. This temporary Jury Chairman shall be entitled to exercise all the powers and discharge all the obligations of the Jury Chairman required to be exercised or discharged during such period of unavailability. In the event the Jury Chairman is unwilling or unable for any reason to appoint a temporary Jury Chairman, the remaining members of the Jury shall elect by majority vote a member of the Jury to be the temporary Jury Chairman during the period of unavailability.

21.2 **Selection criteria:** Criteria for selection of all members of the Jury includes:

- (a) may be a resident or citizen of any country, including a country of a yacht club participating in the Event;
- (b) may be a member of a club participating in the Event;

⁹ Article 21.1(c), text amended July 23, 2004 (Protocol, Amendment no 7)

¹⁰ Article 21.1(d), text added July 23, 2004 (Protocol, Amendment no 7)

- (c) shall possess knowledge of America's Cup history and the Deed of Gift;
- (d) shall possess good general knowledge of yacht racing and yacht clubs;
and
- (e) shall be known to be fair minded and possess good judgement.

21.3 **Costs and expenses:** Members of the Jury shall be paid a fair and reasonable remuneration and expenses by the Event Authority. All application fees, costs and other income generated by the Jury shall be paid to the Event Authority. The Event Authority may establish a schedule of fees payable for applications, which shall be approved by the Jury, and the Jury shall award costs to be paid by one or more parties to any application or any other Competitor the Jury considers just and equitable.

21.4 **Jurisdiction:** The Jury shall act both as a jury under the applicable rules of sailing and also as an arbitration panel and shall be empowered as follows:

- (a) to resolve all matters of interpretation of any of the documents and rules referred to in Article 12, except those expressly under the jurisdiction of the Measurement Committee unless any matter relates to the jurisdiction of the Measurement Committee or compliance by the Measurement Committee with the terms of this Protocol;
- (b) to resolve disputes between any Competitors relating to their participation in the Event;
- (c) to impose any penalty on a Competitor the Jury believes to be just and equitable, having regard to the nature and manner and effect of the breach, including but not limited to any one or more of the following:
 - (i) censure;
 - (ii) fine;
 - (iii) partial or full forfeiture of a Challenger's performance bond (or a fine in the case of the Defender);
 - (iv) loss of existing or future points or races;
 - (v) award of points or races to another Competitor;
 - (vi) disqualification from any race, series or the Event;
 - (vii) the reduction in the number of sails permitted by Article 15 to be used by a Competitor; and/or
 - (viii) the suspension or expulsion of any individual at fault as being a member of a crew of a competing yacht, or as part of a competing team.
- (d) to resolve any dispute, deadlock or impasse between any Competitor, SNG, Event Authority, Race Committee, Challenger Commission or any Official (other than the Jury) that cannot be resolved by the terms of the

Protocol, provided that unless the parties otherwise agree, the Jury shall not have jurisdiction to resolve disputes between:

- (i) SNG and the Event Authority;
 - (ii) SNG and the entity it has selected to defend the America's Cup on its behalf;
 - (iii) the Event Authority and any party which is not referred to in paragraph (d); or
 - (iv) the Event Authority and any Official concerning their contractual or employment relationship.
- (e) to determine the limits of the jurisdiction of the Measurement Committee or compliance by the Measurement Committee with the terms of this Protocol;
 - (f) to act as a Jury under the racing rules applicable for the Event;
 - (g) to resolve any other matters which it is given jurisdiction to determine by SNG and the Challenger Commission;
 - (h) to resolve a dispute between SNG and a yacht club whose challenge has not been accepted by SNG where such Challenger has, in attempting to make its challenge, lodged the declarations required by the Terms of Challenge; and
 - (i) to determine the jurisdiction of the Jury in accordance with the terms of this Protocol.

Unless agreed by all parties to a dispute, SNG and the Event Authority, the Jury shall not have jurisdiction over any matter arising directly from Article 4.1, Article 4.2, Article 4.3 (except Articles 4.3(b)(ii)(B)) or Article 4.4.

- 21.5 **Replacement of Jury Members:** The Challenger Commission and SNG may by agreement replace at any time Jury members including the Chairman.
- 21.6 **Meetings:** Meetings of the Jury may be held in person, by telephone, audiovisual linkup or email. Each member shall be entitled to one vote. Decisions shall be made by a majority of votes.
- 21.7 **Procedure:** The Jury, in consultation with the Event Authority, the Defender and the Challenger Commission, shall establish its rules of procedure consistent with the rules of natural justice and due process which shall apply to all proceedings of the Jury unless an alternative procedure is specified in an applicable document.
- 21.8 **Counsel:** The Jury may, if it believes it requires expert assistance, engage independent counsel approved by the Event Authority, the Defender and the Challenger Commission to assist the Jury and provide legal advice from time to time. Terms of engagement shall be agreed with the proposed counsel and approved by the Event Authority and the Jury.

21.9 **Previous decisions and purpose and intent:**

- (a) The Jury shall not be bound by previous decisions of the America's Cup Arbitration Panel or the International Jury in the 30th or 31st America's Cup, but may take into account such decisions when making any determination.
- (b) The Jury, in making its decisions, shall always give effect to the purpose and intent of this Protocol set out in Article 2 and Article 5.9.

21.10 **Protest time limits:** Unless a shorter time limit is otherwise specified in a relevant document, there shall be a time limit of seven (7) days from when the protestor was or could reasonably have been aware of the circumstances justifying the protest, to lodge any protest alleging non compliance with any of the documents and rules set out in Article 12 of this Protocol. The Jury may extend the time limit if there is good and substantial reason for failure to meet the time limit.

21.11 **Mischievous Applications:** Where the Jury finds that a proceeding is principally motivated by a mischievous intent, or is being prosecuted without reasonable grounds or grounds that lack sportsmanship, it shall dismiss the proceeding and shall penalise the Competitor who brought the proceeding.

21.12 **Proceedings in English:** All proceedings of the Jury shall be conducted in the English language.

22. **ACCEPTANCE OF PROTOCOL AND PROHIBITION ON PROCEEDINGS**

22.1 **Resort to Courts prohibited:** The award of the Jury shall be final and binding on the parties. It may not be challenged by way of an action for setting aside for any reason including but not limited to lack of domicile, habitual residence or business establishment in any jurisdiction. Any Competitor who resorts to any court or tribunal, other than the Jury, the Measurement Committee or any other dispute resolution body agreed by the Event Authority, the Defender and the Challenger Commission will, except as permitted by Article 22.3, be in breach of this Protocol. The penalty for this breach will be, in the case of a Challenger, ineligibility to compete in any Pre-regatta and ineligibility to be a challenger for the Challenger Selection Series or the Match and in the case of a Candidate for the defence, such penalty as the Jury may impose pursuant to Article 21.4.

22.2 **Waiver of claim:** Without in any way limiting Article 22.1, 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 32nd America's Cup, issue proceedings or suit in any court or other tribunal against all or any of the following:

- (a) SNG or any of its officers, members, employees, agents or contractors;
- (b) ACPI or any of its officers, employees, agents or contractors; or

- (c) any Competitor, the Challenger Commission or the Challenger of Record or any of their respective officers, members, employees, agents or contractors; or
- (d) any Officials; or
- (e) any other dispute resolution body agreed by SNG and the Challenger of Record or any members of such entities; or
- (f) the Event Authority or any of its officers, employees, agents or contractors.

22.3 **Proceedings permitted:** The preceding provisions of this Article 22 do not limit the right to issue proceedings or suit in relation to:

- (a) any proceedings against a third party not referred to in Article 22.2;
- (b) any loss or damage to any 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 Competitor.
- (e) SNG seeking any Court or any lawful authority to exercise its inherent jurisdiction to oversee and guide the administration of the Deed of Gift.
- (f) the enforcement of contractual or property or other rights not based on or derived from the Deed of Gift, this Protocol, the Terms of Challenge, the Notice of Race, the ACC Rules, or any determination made under any of those documents by SNG, Challenger Commission, the Jury, or any other Official;
- (g) Any claim or proceeding relating to rights and obligations referred to in Articles 4.1 through 4.4 where the Jury has not been given jurisdiction, and in such circumstances shall be resolved by arbitration with seat in Geneva. The arbitration shall be before 3 arbitrators, each party to select an arbitrator and the two arbitrators selected shall select a President. All proceedings shall be in English and shall be governed by the provisions of Chapter 12 of the Swiss Federal Act on International Private Law of December 18, 1987 relating to international arbitration and the rules of arbitration.

22.4 **Contractor defined:** Reference to “contractors” in Article 22.2 shall be limited to persons whose contractual relationships are analogous to employment relationships and do not extend to contracts for the supply of goods or property.

22.5 **Deed of Waiver and Indemnity required:** SNG and each Challenger shall, upon their challenge being accepted, enter into a Deed of Waiver and Indemnity waiving any and all claims they may have against any Official in such form as SNG may reasonably require to meet SNG’s obligations under a Deed of Disclaimer and Indemnity and a Supplementary Deed of Covenant, Disclaimer and Indemnity entered into in 2002 in respect of protecting members of the then

constituted Arbitration Panel from proceedings by Competitors and related parties.

DATED this 21st day of January 2004 at Geneva, Switzerland

Société Nautique de Genève

by:

Nathalie Vez-Habegger

As attorney in fact

Société Nautique de Genève

Lucien Masméjan

As Attorney in fact by

Special Power of Attorney dated

15 January 2004 and attached hereto
on behalf of the Société Nautique de
Genève.

In the presence of:

W. H. Dyer Jones
Regatta Director

The Golden Gate Yacht Club

by:

Melinda C. Erkelens

The Golden Gate Yacht Club

Thomas F. Ehman Jr.

As Attorney in Fact by

Special Power of Attorney dated

14 January 2004 and attached hereto
on behalf of Edward J. Barrett,
Commodore, The Golden Gate Yacht
Club

In the presence of:

W. H. Dyer Jones
Regatta Director

