

# **32<sup>nd</sup> America's Cup Terms of Challenge**

issued by AC Management Limited as the Event  
Authority for 32<sup>nd</sup> America's Cup pursuant to Article  
3.4 of the Protocol

**23 January 2004**

**amended on**

**3 March 2004 (clause 6.2)**

**23 March 2004 (clause 6.8(a))**

**13 October 2004 (clause 6.1(b))**

**5 May 2005 (clause 24.3)**

**17 October 2006 (clause 24.3)**

# 32<sup>nd</sup> America's Cup

## Terms of Challenge

### 1. INTRODUCTION

These Terms of Challenge are issued by ACM as the Event Authority under the authority of Article 3.4 of the Protocol.

### 2. INTERPRETATION

2.1 **Interpretation:** Words and phrases defined in Article 1 of the Protocol shall have the same meaning in these Terms of Challenge. The following additional terms are used in these Terms of Challenge:

- (a) **ACM** means AC Management Limited, a company duly incorporated in Jersey, and includes any subsidiaries under its effective control including, but not by way of limitation, AC Management S.A. a company duly incorporated in Switzerland and any subsidiary company which may be incorporated at the Venue;
- (b) **AC Park** means that part of the AC Village which will generally be accessible to the general public where public entertainment will be provided and authorized merchandising and concession activities will be situated, but excludes any Base;
- (c) **AC Village** means the AC Park, each Base, VIP hospitality areas, super yacht berthage and hospitality area, media centers including international press centre and international broadcast centre, Race Committee Offices, ACM Offices, accreditation centre, volunteer centre, heliports, storage facilities and all other facilities established by ACM or its authorized agents for the Event, and land, air or water space under the control of ACM or its contractors and agents, and includes, but not by way of limitation, all mooring and berthage areas leased to and under the control of the Competitors, as well as mooring and berthage areas under the control and supervision of ACM or its contractors and agents;
- (d) **Bank Guarantee** means the bank guarantee at first demand in accordance with Clause 4.4;
- (e) **Base** means a base at the AC Village leased to a Competitor and under the control of that Competitor but subject to the restrictions set out in these Terms of Challenge and in the lease and includes an adjacent mooring area also under the control of the Competitor, and shall include any similar areas under the control of a Competitor at a Pre-regatta;

- (f) **Course Area** means one or more circles within the Race Area on which courses may be set at the Venue and includes the Race Diamond and the Flag Area;
  - (g) **Flag Area** means that part of the Course Area, immediately adjacent to the Race Diamond, as designated by ACM and the Regatta Director exclusively for vessels provided with accreditation flags by ACM;
  - (h) **GGYC** means The Golden Gate Yacht Club;
  - (i) **Host City** means the city at the Venue hosting the Regatta;
  - (j) **Late Fee** means the fee prescribed in Clause 4.3(e);
  - (k) **Notice of Challenge** means the document required from Challengers (other than the Challenger of Record) by Clause 4.3(a) of these Terms of Challenge in the form set out in Schedule 2 to this document;
  - (l) **Performance Bond** means a bond of €1,000,000 required by the Protocol which is to be provided by all Challengers in the manner set out in these Terms of Challenge;
  - (m) **Race Area** means an area at the Venue within which Course Areas will be set; it also means, an equivalent area at the site of any Exhibition Regatta or Pre-Regatta as defined in the relevant Notice of Race;
  - (n) **Race Diamond** means that part of the Course Area generally used by Competitors' yachts comprising an area bounded by the start/finish line, the laylines and the windward mark;
  - (o) **Special Events** means events to be organized and managed by ACM described in Clause 13.1.
- 2.2 **Cross Reference:** Unless otherwise specified, reference to a clause or a schedule is a reference to a clause or a schedule in these Terms of Challenge. Reference to an Article is a reference to an Article in the Protocol.
- 2.3 **Singular and plural:** Unless the context otherwise requires, the singular includes the plural and vice versa.
- 2.4 **Reference includes amendments:** Reference to these Terms of Challenge includes any amendments made to the Terms of Challenge in accordance with the terms of the Protocol.
- 2.5 **Time Zones:** Unless otherwise specified, all times in these Terms of Challenge are Central European Time.

### 3. PURPOSE AND INTENT

The general underlying purpose and intent of these Terms of Challenge is provided in Article 3 of the Protocol. By filing its Notice of Challenge, a Challenger undertakes to comply with all terms of the Protocol.

### 4. CHALLENGING FOR THE AMERICA'S CUP

4.1 **Qualifications:** Under the terms of the Deed of Gift, all Challengers are required to meet the qualifications for a challenger prescribed in the terms of the Deed of Gift. In summary, these are:

- (a) Challengers must be an organized yacht club;
- (b) Challengers cannot be a Swiss yacht club;
- (c) Such yacht club must be incorporated, patented or licensed by the legislature, admiralty or other executive department of a Country; and
- (d) Such yacht club must hold, at least annually, a regatta on an ocean water course on the sea, or on an arm of the sea, or one which combines both.

4.2 **Time period to challenge:** Challengers may challenge in accordance with the Terms of Challenge and the Protocol until 1600 hrs on 17 December 2004. Thereafter, challenges will be accepted between 1600 hrs on 17 December 2004 until 1600 hrs on 29 April 2005 on payment of the Late Fee.

4.3 **Documents and fees:** Challengers must provide to SNG, when challenging:

- (a) a completed Notice of Challenge in the form set out in Schedule 2 to this document;
- (b) a Performance Bond in the amount of €1,000,000.00 (one million Euros) as required by Clause 4.4 of these Terms of Challenge;
- (c) a bank draft in the amount of €50,000 (fifty thousand Euros) made payable to "The Challenger's Commission" being the Challenger's initial contribution to fund the Challenger Commission;
- (d) a bank draft in the sum of US\$25,000.00 (twenty five thousand US Dollars) made payable to "America's Cup Properties Inc." as a contribution to ACPI's costs to protect the America's Cup trademarks in accordance with Article 19.1 of the Protocol;
- (e) where a challenge is made after 1600 hrs on 17 December 2004, a bank draft in the sum of €200,000 (two hundred thousand Euros) made payable to "AC Management Limited" as a late fee; and
- (f) declarations from both the challenging yacht club and from the entity which undertakes that yacht club's challenge on its behalf as its

representative within the meaning of Article 1.1(e) of the Protocol, that since 2 March 2003 and until the last race of the Match:

- (i) it accepts that it will be bound by the terms of the Deed of Gift, the Protocol, and these Terms of Challenge, together with the other documents referred to in Article 12 of the Protocol;
- (ii) it has complied with and will in the future comply with the terms of the Deed of Gift, the Protocol and the Terms of Challenge;
- (iii) it acknowledges that all decisions rendered by the Jury established by the Protocol, and any arbitration body referred to in Article 22, will be binding on it and shall not be subject to appeal or be referred to any court, tribunal or other authority or body for review in any manner except as may be expressly permitted by the terms of the Protocol.

#### 4.4 Performance Bond

- (a) **€1 million Bond:** The Performance Bond of €1,000,000.00 (one million Euros) required by Article 3.6 of the Protocol of all Challengers, may be paid in cash or by way of a Bank Guarantee at first demand issued by a primary bank approved by ACM.
- (b) **Form of posting**
  - (i) **Cash:** Each Performance Bond shall be by delivery to ACM of certified or bank cheque payable to "AC Management Limited" in the amount of €1,000,000.00 (one million Euros). The Performance Bond will be held as required by Article 3.6 of the Protocol.
  - (ii) **Bank Guarantee:**
    - A. In lieu of delivering cash for a given Performance Bond, a Challenger may deliver a bank guarantee on first demand issued by a primary bank registered in Switzerland or a branch registered in Switzerland, in both cases the form and substance of the Bank Guarantee and the issuing bank shall be satisfactory to ACM;
    - B. A suggested form of the Bank Guarantee is attached to Schedule 3 of these Terms of Challenge;
    - C. If the expiration date of any Bank Guarantee is earlier than 31 December 2007, the Bank Guarantee must state that it will be renewed or extended automatically for a term expiring no earlier than 31 December 2007, unless at least 30 days prior to such scheduled expiration date, the bank issuing such Bank Guarantee gives written notice to ACM that the scheduled expiration date will not be renewed or

extended. In the event of such notice, ACM shall be entitled to present and draw upon the Bank Guarantee in its full amount and the funds received upon the presentation of, and draw upon, the Bank Guarantee will be held, and returned or forfeited, in accordance with the provisions of these Terms of Challenge.

(c) **Return of Performance Bonds**

Challengers' Performance Bonds will be held by ACM in accordance with Article 3.6 of the Protocol and will be returned in full as promptly as practicable once Challengers have discharged all their obligations but not later than 180 days after the last race of the Match, providing the Performance Bond has not been forfeited in whole or in part pursuant to Clause 4.4(d) of these Terms of Challenge.

(d) **Forfeiture of Performance Bonds**

In the event that a Challenger fails to:

- (i) compete in any compulsory Pre-regatta or any compulsory Exhibition Regatta;
- (ii) compete in a majority of races forming part of a series for which it is eligible that is part of the Challenger Selection Series;
- (iii) compete in the Match for the America's Cup if it is the successful Challenger; or
- (iv) comply with the terms of the Protocol or the Terms of Challenge,

its Performance Bond may at the discretion of ACM, in whole or in part, be irrevocably forfeited, and the forfeited part of the Performance Bond will become the property of ACM and shall constitute revenue of ACM for the purposes of Article 4.3 of the Protocol.

- (e) **Relief against forfeiture:** Any Challenger whose Performance Bond is forfeited in whole or in part, pursuant to Clause 4.4(d) other than arising from withdrawal of a challenge under Clause 5, may seek relief from forfeiture from the Jury. The Jury may grant relief against forfeiture in whole or in part, but shall only do so where it is satisfied the Challenger's failure was inadvertent or caused by circumstances beyond the direct or indirect control of the Challenger, and that ACM's commercial objectives have not been, nor will be, significantly compromised or damaged in any respect. Insufficient funds shall not be grounds for the Jury to grant relief against forfeiture.

## 5. WITHDRAWAL OF CHALLENGE

A Challenger may withdraw its challenge by notice to SNG. Any Challenger withdrawing its challenge before being eliminated in competition will forfeit its Performance Bond and all fees paid on or after challenging. There shall be no right of recourse to the Jury or any other authority for forfeiture of the Performance Bond or any fees paid following withdrawal of a challenge. Unless specifically provided otherwise, all rights of a Challenger under the Protocol or these Terms of Challenge or any other document shall immediately cease on giving SNG notice of withdrawal of a challenge.

## 6. PRE-REGATTAS AND EXHIBITION REGATTAS SCHEDULE

6.1 **Schedule:** Pursuant to Article 3.3(b) of the Protocol, Pre-regattas will be held as follows:

- (a) **2004:** Three regattas to be held in the waters of Southern Europe, at least one to be at the Venue.
- (b) **2005:** Three regattas; one regatta to be at the Venue, one regatta to be held in Northern European waters and one regatta to be held in Southern European waters<sup>1</sup>.
- (c) **2006:** Two regattas at the Venue. ACM may organize a third regatta.
- (d) **2007:** A regatta comprising 7 fleet races to be held immediately prior to the commencement of the Challenger Selection Series in accordance with Article 3.3(b)(ii) of the Protocol but, unless otherwise agreed by ACM, the Defender and the Challenger of Record, such regatta shall be completed at least 10 days prior to the commencement of the Challenger Selection Series.

6.2 **Further details to be advised:** ACM will provide all Competitors with the dates and location of each Pre-regatta not less than 180 days prior to the commencement of each Pre-regatta, except for the first Pre-regatta to be held in 2004 for which this deadline is reduced to 165 days prior to its commencement.<sup>2</sup> The Regatta Director will provide Competitors with a Notice of Race for each Pre-regatta not less than 90 days prior to the commencement of each Pre-regatta. ACM shall arrange, at its cost, the shipment from the Venue to the site of any Pre-regatta with return shipment to the Venue or to the site of the next Pre-regatta, the following for each Competitor:

- (a) one ACC Yacht;
- (b) two masts for ACC Yachts;
- (c) three standard 40 foot shipping containers;

---

<sup>1</sup> Clause 6.1 (b), text amended on October 13, 2004 (Terms of Challenge, Amendment No 3)

<sup>2</sup> Clause 6.2, first sentence amended on March 3, 2004 (Terms of Challenge, Amendment No 1)

- (d) one chase boat (as defined in the applicable Notice of Race), and
- (e) the travel and accommodation (but not food and beverages) for 17 persons.

Any additional equipment to be shipped or persons to travel and be accommodated will be at the cost of the respective Competitor. Any person or entity whose challenge for the America's Cup has not yet been accepted by SNG, and is participating in a Pre-regatta, shall not be eligible to receive such shipping and travel assistance. There will be no entry fee for Pre-regattas for the Defender or Challengers whose challenge for the America's Cup has been accepted by SNG.

### 6.3 **Exhibition Regattas:**

- (a) **Proposal:** ACM may propose up to two Exhibition Regattas with a match racing format to be held in 2006 to promote and publicize the America's Cup, by giving at least one year's notice to all Competitors.
- (b) **Not to be a Pre-regatta:** Exhibition Regattas shall not constitute a Pre-regatta or form part of the Regatta.
- (c) **Yachts to be used:** Yachts to be used for Exhibition Regattas, unless otherwise agreed by the Defender and the Challenger Commission, shall be provided by ACM, branded in the manner set out in Article 10.3 of the Protocol, and with Competitor branding as shall be agreed by ACM, the Defender and the Challenger Commission, provided that Competitor's branding shall be permitted on the yacht similar to the Competitor's ACC Yacht to the extent practicable. In case ACM provides one yacht per team, Competitor branding of such yachts shall be at the costs and expenses of each Competitor. In case Competitors need to share yachts during an Exhibition Regatta, ACM shall procure that the costs associated with branding do not exceed normal costs associated with branding a single yacht.
- (d) **Compulsory attendance:** Where yachts are provided by ACM, the duration of the Exhibition Regatta is not more than 8 days in length, and ACM provides travel and accommodation for 17 persons of each Competitor from the Venue to the site of an Exhibition Regatta and return to the Venue, all Competitors shall compete in such Exhibition Regatta with their best available crews.

6.4 **World Championship:** A world championship trophy may be awarded at the final Pre-regatta in each year based on the results in the Pre-regattas for that calendar year. In 2007, a world championship may be awarded based solely on the Fleet Race Regatta to be held immediately prior to the commencement of the Challenger Selection Series. ACM will announce not less than three months before the commencement of any applicable Pre-regattas whether a world championship will be awarded and the basis of determination of the award. ACM may designate an alternative title to "world championship".

- 6.5 **Pre-regatta attendance:** The Pre-regattas to be held in 2004 are not compulsory. ACM may accept any person or entity as a competitor at the Pre-regattas to be held in 2004 and 2005, who is not a Challenger or the Defender, on such terms as ACM may determine. The Pre-regattas held after 30 April 2005 are compulsory for the Defender, and all Challengers whose challenge has been accepted prior to the commencement of any such Pre-regattas. The Pre-regattas in 2006 and 2007 are restricted to the Defender and Challengers.
- 6.6 **Applicable Class Rule:** The Pre-regattas to be held in 2004 shall be held under version 4.0 of the America's Cup Class Rule. All Pre-regattas after 2004 and the Regatta shall be held under version 5.0 of the America's Cup Class Rule.
- 6.7 **Seeding:** The results in the Pre-regattas shall be applied to the seeding of Challengers for the Challenger Selection Series in such manner as shall be determined by the Challenger Commission and approved by ACM in accordance with Article 3.3(c)(i) of the Protocol.
- 6.8 **Pre-regattas format:**<sup>3</sup>
- (a) **2004:** The first two Pre-regattas shall be held over a period of approximately seven days, and the third Pre-regatta shall be held over a period of approximately four days. The first Pre-regatta shall consist of fleet racing followed by match racing, with formal (as opposed to practice) racing to begin on or after 5 September, and with Competitors required to have their yachts available at the venue (Marseille) for measurement, etc., no earlier than 1 September. The second Pre-regatta will consist of match racing only. The third Pre-regatta shall consist of fleet racing only. There shall be separate Notices of Race and prizes for each of the three Pre-regattas. Results of any one regatta shall have no bearing on the results of any subsequent regatta. The results of all three regattas may be used to determine an overall ACC champion for 2004 in accordance with TOC clause 6.4, with the results of each of the three regattas to be given equal weight. The further details of the formats for each of the three Pre-regattas shall be determined in accordance with Article 3.3(d) of the Protocol.
- (b) **2005:** Each Pre-regatta scheduled for 2005 shall be held over a period of approximately seven days from a Sunday through the following Saturday and consist of fleet racing followed by match racing. The further details of the format shall be agreed by ACM, the Defender and the Challenger Commission in accordance with Article 3.3(d) of the Protocol.
- (c) **2006:** Each Pre-regatta scheduled for 2006 shall be held over a period of 7-14 days and consist of fleet racing followed by match racing in accordance with Article 3.3 (b) of the Protocol.

---

<sup>3</sup> Previous clause 6.8(a) [now (a) and (b)] amended, and previous paragraphs (b) and (c) re-lettered (c) and (d) on 23 March, 2004 (Terms of Challenge, Amendment No 2)

(d) **Fleet race:** The Fleet Race Regatta shall comprise a total of 7 fleet races with up to 2 races per day until completed in accordance with Article 3.3 (b) of the Protocol.

6.9 **Pre-regattas:** In the event it becomes impossible or impracticable for any reason to hold any Pre-regatta or Exhibition Regatta, ACM may, in consultation with the Defender and the Challenger Commission, postpone and/or relocate or cancel such Pre-regatta or Exhibition Regatta. Except in case of force majeure, ACM will give Competitors as much advance notice as reasonably possible of any such postponement, relocation or cancellation.

## 7. 2007 REGATTA SCHEDULE

7.1 **Draft schedule:** A draft schedule for the timing and scheduling of the Fleet Race Regatta and the Regatta as at the date of issue of these Terms of Challenge is annexed as Schedule 1 of these Terms of Challenge.

7.2 **Postponement:** In the event the Regatta is postponed pursuant to Article 8 of the Protocol, ACM may require, and each Challenger shall deliver, a replacement Performance Bond on the same terms, except that the Performance Bond period shall be extended until 180 days after the last re-scheduled race of the Match.

## 8. VENUE

8.1 **Venue location:** Subject to Article 8 of the Protocol, the Venue will be in Valencia, Spain.

8.2 **Race Area:** ACM shall select and announce by 31 March 2004 the Race Area at the Venue, and following selection and announcement it shall only be amended by ACM with the approval of the Regatta Director, Defender and the Challenger Commission.

## 9. AC VILLAGE

9.1 **Competitors to be based at AC Village:** All competitors shall lease a Base at the AC Village from which they shall conduct their operations at the Venue. If all available Bases at the AC Village have been allocated, ACM will endeavor to locate and find an alternative location at the Venue for the Competitor, but once all available Bases have been allocated ACM will be under no obligation to provide an alternative location to Competitors.

9.2 **Number of Bases available:** There will be a minimum of 10 Bases at the AC Village for allocation to Competitors. Bases will not be of equal size or prominence. Bases will generally have a minimum water frontage of 30 meters and a maximum water frontage of 80 meters, and shall generally have a standard depth (the distance from the water frontage to the back of the site) of 70 meters and sufficient depth of water adjacent to accommodate the draft of a standard ACC Yacht designed in accordance with version 5.0 of the ACC Rule.

- 9.3 **Allocation of Bases:** Bases at the AC Village will be allocated at the sole discretion of ACM.
- 9.4 **Base Lease:** All Competitors leasing a Base at the AC Village will enter into a lease with ACM consistent with these Terms of Challenge and with the terms set out in a lease agreement to be provided by ACM by 31 March 2004.
- 9.5 **Occupation until conclusion of Match:** Competitors shall continue to occupy and operate their Base at the AC Village at their cost and expense until the conclusion of the last race of the Match of the 32<sup>nd</sup> America's Cup notwithstanding the Competitor being eliminated from the 32<sup>nd</sup> America's Cup competition. This obligation shall include, after elimination, the participation in all Special Events, the public display in a manner reasonably required by ACM on their Base of at least one of their yachts that competed in the Regatta, and the continued performance of all obligations under these Terms of Challenge. Prior to the conclusion of the last race of the Match, no eliminated Competitor shall, without the prior approval of ACM, in any area visible to the public, disassemble, dismantle, pack up their Base, yacht, support vessels or other assets and equipment.
- 9.6 **Base Construction:** ACM will arrange for the construction of part or all of the exterior shell of a shed on each Base. Competitors shall be responsible to organize, manage and meet all costs to fit out their Bases. All Bases will comply with general architectural guidelines to be advised by ACM including but not limited to guidelines regarding height, exterior color, exterior construction materials, impact on surrounding areas and overall exterior appearance of the Base, and the positioning of piles, travel lift facilities and pontoons on any water space adjacent to a Base. Competitors are entitled to be consulted in the preliminary design phase of their Base provided their challenge has been accepted by SNG prior to 31 May 2004. Unless otherwise agreed with ACM, all Competitors shall dismantle all improvements made by the Competitor on the Base within 90 days after the conclusion of the last race of the Match and restore the Base area to the condition it was in prior to any improvement made by a Competitor.
- 9.7 **No assignment of Base Lease:** Competitors shall not, at any time, hire, sub-lease or assign their Base to any person or entity without the prior written consent of ACM.
- 9.8 **Public bars, restaurants and cafes prohibited at Bases:** No Competitor shall use any part of their Base as a bar, restaurant, cafe or similar facility selling or distributing free of charge, food and/or beverages for the general public. Competitors may however operate from within their Base a private bar, restaurant, cafe or similar facilities to entertain their team members, team members' families, sponsors and selected invited guests.
- 9.9 **Base Services:** ACM shall procure that all electrical, gas, water and sewage and fixed-line telecommunications services will be provided, by suppliers that may be appointed by ACM, to each Base at equal to or less than standard market rates. Competitors shall meet all costs and charges relating to the

consumption of water, electricity, gas and telecommunications services, and the disposal of sewage.

- 9.10 **Base retail activities:** Subject to supplying ACM's authorized retailers in accordance with Clause 11.2, a Competitor may sell its team merchandising from its respective Base. Such merchandising shall not include the sale or distribution of any food or beverage item to the general public. A Competitor shall not carry on or facilitate the carrying on by any third party of any retail or merchandising activities to the general public from a location that is on or adjacent to a road or street adjacent to the AC Village provided that this shall not prevent merchandising from a Competitor's Base in accordance with the above.
- 9.11 **Bases to be clean and tidy:** All Competitors shall keep their Base clean and tidy and in good repair at all times and remove promptly any rubbish and waste on or about their Base.
- 9.12 **Environmental protection:** Competitors shall comply with applicable environmental protection laws and regulations and shall conduct all their operations and activities in an environmentally responsible manner, and return their respective Bases to ACM in the same environmental condition as such Base was on being first accepted by the respective Competitor.

## 10. SIGNAGE

- 10.1 **Compliance with local laws and in good taste:** All Venue signage including Bases, competing yachts and any other vessel or vehicle under the control of ACM or a Competitor shall comply with all applicable laws and regulations, and shall be in good taste, not be offensive, or bring the America's Cup, any Competitor, ACM, any sponsor of any Competitor or ACM, the Race Committee, Umpires or Jury, the Host City, the country of the Venue, any other Official, or any of their employees, agents or contractors, into disrepute or ridicule.
- 10.2 **Compliance with ACM Guidelines:** All signage on Base buildings and signage on Competitors' support vessels shall meet and comply with the guidelines set out in Schedule 4 of these Terms of Challenge.
- 10.3 **AC Village:** ACM will grant exclusive signage and display rights to its Event sponsors and commercial partners at the AC Village other than on a Base.

## 11. MERCHANDISING

- 11.1 **Retailing and Concession:** With the exception of Team merchandising facilities permitted in the Bases by Clause 9.10, only ACM appointed retailers and concessionaires are authorized to carry on any retailing or merchandising activities to the general public at the AC Village.
- 11.2 **Merchandising by ACM retailers:** Competitors need not have a merchandising programme at their Base or elsewhere. Any Competitor which has a merchandising programme shall procure that they or their merchandising

suppliers sell their merchandise to ACM appointed retailers at most favorable wholesale customer price and terms. The ACM retailers shall be entitled to sell Competitors' merchandise at the AC Village and other locations required by ACM. Competitors shall make arrangements to ensure sufficient quantities of merchandise are produced to meet ACM's retailers' requirements. ACM's appointed retailers normally shall stock a representative selection of a Competitor's merchandise.

- 11.3 **Use of Trademarks:** All Competitors consent to and shall procure written consent from the owners of all trademarks and other intellectual property used in or depicted on their merchandising so as to permit the sale by ACM and its appointed retailers of such clothing and merchandising.
- 11.4 **Sampling:** No free promotional product shall be distributed to the general public at the AC Village without prior written approval of ACM.
- 11.5 **Merchandising security devices:** To facilitate the interception of counterfeit merchandise by the Venue authorities, all Competitor merchandising using any trademark owned by ACPI, including but not limited to the words "America's Cup", shall carry a security device from a supplier authorized by ACM proving and demonstrating it is an authorized item of merchandising, provided such devices are available. ACM shall obtain the best available prices for such devices.

## 12. ENTERTAINMENT

All public entertainment at the AC Village will be organized and managed by ACM or its authorized contractors and agents, except that a Competitor may offer the following at its Base:

- (a) interactive, educational and museum facilities that relate solely to the respective Competitor, its members, its history and activities and which do not relate largely to the history and heritage of the America's Cup; and/or
- (b) displays and promotions of that Competitor's sponsors, provided the signage rules specified in Clause 10 are complied with; and provided the area is partitioned or fenced in a manner that clearly indicates it is part of the Competitor's Base.

## 13. SPECIAL EVENTS

13.1 ACM will exclusively organize and manage:

- (a) an opening ceremony for 32<sup>nd</sup> America's Cup comprising the Fleet Race Regatta and the Regatta;
- (b) pre and post race press conferences;

- (c) pre and post race public presentations at the AC Park;
- (d) special America's Cup functions, such as, for example, a Challenger Selection Series party and an America's Cup Ball;
- (e) prize giving ceremonies;
- (f) a closing ceremony for 32<sup>nd</sup> America's Cup; and
- (g) other events as may be advised by ACM from time to time.

13.2 **Participation in Special Events:** All Competitors are required to participate, at no cost to the Competitors, in Special Events, with the number of team members reasonably specified by ACM.

13.3 **Event Co-ordination:** ACM will maintain a calendar of America's Cup related events and make it available to Competitors. To prevent conflict of events, Competitors shall advise ACM of any major event, or any event to which they plan to invite Officials or other Competitors, whether on their Base or elsewhere.

#### 14. **SECURITY**

The safety of all Competitors, their sponsors and guests and the general public is paramount. Competitors shall comply at all times with all security measures adopted by ACM for the safety of Competitors, sponsors, VIP's, and the public. This will include the need for all Competitors' employees, contractors and agents to carry at all times at the AC Village security passes issued by ACM or its agents or its security contractors. Competitors shall take all measures necessary to assist security contractors appointed by ACM and to assist any lawful authority at the Venue and at the site of any Pre-regatta or Exhibition Regatta to facilitate the safety of all Competitors and the public. ACM will take all reasonable measures to protect the privacy and confidentiality of Competitors. Competitors will be solely responsible for the security of their Bases, their competing yachts, support vessels and all other equipment and assets of the Competitor and their team members.

#### 15. **AIR SPACE**

All air space above the AC Village and above the water space designated for use during the Event at the Venue or other Event location will be under the control and direction of ACM or its designates. No Competitor or their employees, contractors, agents or sponsors shall contest or attempt to use the air space for any purpose without the prior written consent and authorization of ACM or its designate.

16. **WATER SPACE**

16.1 **Control by ACM:** The Race Area at the Venue, and at the site of any Pre-regatta and any Exhibition Regatta, is under the control of ACM. During racing in the Event, ACM will delegate control of the Race Diamond and the Flag Area to the Race Committee. Outside the period of any racing in the Event, ACM may from time to time regulate use of the Race Area by Competitors, including but not limited to restricting access by Competitors for special events approved by ACM. All Competitors will be entitled to fair and reasonable access to the Race Area. Competitors will be entitled to fair and reasonable shared access to any Course Area when not in use by the Race Committee.

16.2 **Spectator vessels:** The Regatta Director shall endeavor to maximize the opportunities for spectator vessels on the Race Diamond and on the Flag Area. ACM shall have the sole right to control and utilize all capacity for spectator vessels on the Race Diamond and in the Flag Area during all racing in the Event. ACM will always be entitled to at least one spectator vessel of up to 45 meters in length on the Race Diamond of any race in the Event. ACM shall, however, subject to the overriding directions of the Race Committee to ensure fair racing, allocate the following minimum number of spectator vessels in accordance with the following table:

**Table of number and location of spectator vessel allocations to Competitors by ACM**

One flight on Race Diamond				Multiple flights on Race Diamond			
<i>Race Diamond</i>		<i>Flagged Area</i>		<i>Race Diamond</i>		<i>Flagged Area</i>	
Competing Competitor	Non-competing Competitor	Competing Competitor	Non-competing Competitor	Competing Competitor	Non-competing Competitor	Competing Competitor	Non-competing Competitor
2	0	3	1	0	0	3	1

All other available capacity shall be available solely to ACM. Each Competitor spectator vessel shall be no more than 35 meters in length overall. Competitors shall not permit more than 3 persons on their chase boat on the Race Diamond that are not bona fide members of their competing team as either an owner, employee or contractor. Persons in the Race Diamond and in the Flag Area shall not hold or use any camera (still or video) or sound equipment that has the effect of competing with any broadcast rights licensed by ACM, nor make any broadcast.

16.3 **Competitors' vessels:** All vessels shall comply with regulations and instructions issued by the Race Committee and the local maritime authorities. Except for ACC Yachts and related chase boats, Competitors' vessels other than the ones mentioned under Clause 16.2 shall remain outside the Race Diamond and Flag Area during racing.

## 17. MEDIA

- 17.1 **Ownership of broadcast and media rights:** All media and broadcast rights and telemetry positioning data in the Event are vested solely and exclusively in ACM. Such rights shall include, but not by way of limitation, all rights to promote the Event, to broadcast the Event and the results and race statistics of the Event. Copyright in all such media shall vest in accordance with the provisions of Clause 18.12.
- 17.2 **Event Sponsor advertising rights:** Any broadcast of the Event may include the names and/or logos of ACM's sponsors within the broadcast.
- 17.3 **On-board cameras and microphones:** All competing yachts shall carry on-board cameras, microphones, media equipment and telemetry and other instrumentation data (providing yacht speed, GPS positioning and true wind direction) supplied and required by ACM or its contractors and agents. The number and positioning of cameras, microphones, media equipment and telemetry and other instrumentation equipment will be the same for each competing pair of vessels, or if not, weight and windage equalized, as approved by the Measurement Committee. Teams shall, when constructing their vessels, comply with the technical requirements advised by ACM in consultation with the Technical Director, for the mounting, housing and wiring of camera, microphone, media equipment and telemetry and other instrumentation equipment.
- 17.4 **Personal Microphones:** In order to produce an attractive and compelling media broadcast, personal microphones supplied by ACM shall be worn and switched on by Crew members. ACM shall advise the number of Crew members on each yacht, not to exceed five unless more are agreed by the Competitor(s), who shall wear personal microphones. The number shall be equal for each competing yacht.
- 17.5 **Media Ambush:** In clarification of Article 17.4 of the Protocol, a Competitor shall not provide access for taping/filming to any videotape or film crew or any other media to the AC Village at any time, or to any Course Area being used for Event racing, without the prior written approval of ACM. Notwithstanding, a Competitor shall not be prohibited from providing access to any videotape or film crew or any other media to its Base at any time.
- 17.6 **Exclusive media rights:** Competitors may not enter into any exclusive arrangement with any media including any broadcaster, which has the effect of preventing access by any media or broadcaster authorized by ACM. Competitors may provide still and moving images of their Team to any media or broadcaster provided it has not done so on an exclusive basis so as to prevent ACM's authorized broadcaster or media from using any image of the Team.
- 17.7 **Press conferences:** Competitors shall send two crew members of their competing yacht, in team uniform, to each official post-race press conference; such crew members may be specified by ACM. When requested by ACM, Competitors will send appropriate Competitor personnel to themed press conferences, for example, designers to a design press conference. ACM may specify the persons to attend any such themed press conferences. Persons

attending any press conferences on behalf of a Competitor shall not be made available to the media, in a way that could compete with the upcoming official press conference, from the time of the request until the official press conference, except for on-the-water interviews and filming and photography shoots conducted by ACM's authorized broadcaster or media. Persons attending official press conferences on behalf of a Competitor will attend for the duration of the conference and will actively participate in such conference which will not exceed approximately one hour. If, after a Competitor and the requested crew or other team member have exercised their best endeavors, a crew or other team member requested by ACM is unable to attend any of the above-mentioned press conference, the Competitor shall send an appropriate alternative crew or other team member agreed by ACM.

- 17.8 **Public appearances:** Competitors will make available up to 3 sailors or prominent team members prior to and after each official race to participate in a public appearance in the AC Park. ACM will submit details of such public appearances prior to the commencement of the Event regatta. Such persons attending such public appearances shall actively participate for the duration of the presentation, which will not normally exceed 30 minutes.
- 17.9 **Host Broadcaster preferential positioning:** The host broadcaster shall be given priority choice of positioning at all open media events and mixed zones organized by or hosted by a Competitor in its Base or outside the AC Village.

## 18. **IMAGE RIGHTS**

### 18.1 (a) **Event still images:**

All rights in images of the Event are vested solely in ACM on behalf of SNG.

### (b) **Use by Competitors and their Sponsors:**

Competitors and their sponsors may use still images of their own yachts and crews taken at any time including during racing in the Event. Where other Competitors or crews also appear in such images, they shall first obtain the written approval of any other Competitor depicted.

### (c) **Not create misleading impression of status:**

All Competitors shall ensure their own use and the use by any of their sponsors of any image does not create a misleading impression as to a sponsorship or association with the Event, other than the sponsorship of that respective Competitor. In particular, to prevent any misleading impression as to the status of the sponsor or licensee, any Competitors' sponsor or licensee using images shall always include a clear statement as to its designation as sponsor or licensee of a particular Competitor.

(d) **Competitors' Sponsors to undertake:**

Prior to authorizing any use of Event images depicting another Competitor, a Competitor shall obtain written undertakings from their sponsors and licensees to comply with the above.

(e) **No alteration:**

Images of the Event shall be used without any alteration. In particular, but without limitation, any trademark or signage appearing on an image shall not be altered. This applies to use of Event images by Competitors, their sponsors, licensees and agents and by ACM, its agents, sponsors, licensees, the host city(ies) of the Event, and the host country of the Regatta.

18.2 **Competitors' Photographers:** Photographers contracted to provide photographic services to Competitors and/or their sponsors shall be accredited by ACM and:

- (a) they may sell and distribute their images of racing during the Event for media editorial use;
- (b) they may sell and distribute their images taken of racing during the Event for commercial use to their respective contracted Competitors and the Competitors' sponsors and licensees, but this shall not entitle Competitors, their sponsors and licensees to use such images for merchandising purposes unless permitted by paragraph (d) of this Clause;
- (c) they may sell and distribute their pictures taken of racing during the Event for non-commercial use by third parties, but not for advertising or promotional purposes;
- (d) they shall not use images taken of racing during the Event depicting any other Competitor for their own, their contracted Competitor, such Competitor's sponsors or licensees, merchandising or publishing purposes on products, except for incidental purposes not amounting to more than 20% of the total images;
- (e) they may sell and distribute images to ACM, its sponsors and commercial partners, the host city(ies) of the Event, and the host country of the Regatta.

In the event of failure to comply with the above conditions, ACM may withdraw a Competitor's photographer's accreditation and upon such withdrawal of accreditation they shall not be further engaged by a Competitor at the Venue.

For the avoidance of doubt, ACM will require similar or more restrictive conditions of all accredited photographers.

18.3 **Competitors' film units:** Members of film units contracted or affiliated to any Competitor must be accredited by ACM and:

- (a) they shall not film any race of the Event, whether from shore, afloat or from the air;
- (b) they shall not film anywhere within the AC Village during the Event, except that they may film that Competitor and its activities within such Competitor's Base at any time;
- (c) for the avoidance of doubt, they may film their own yacht(s) in the Race Area except as prohibited under (a) above, and film units are subject to the provisions of Article 11 of the Protocol (Reconnaissance).

In the event of failure to comply with the above conditions, ACM may withdraw a Competitor's film unit's accreditation. Upon such withdrawal of accreditation they shall not be further engaged by a Competitor at the Venue.

18.4 **Use of Event still images by ACM:** ACM, its agents, sponsors, licensees, the host city(ies) of the Event, and the host country of the Regatta may use Event still images taken at any time, which may include images of Competitors, their yachts, support vessels, crew and team members and sponsors, provided that an unambiguous and visible statement as to the respective status of ACM or its agents, sponsors, licensees, the host city(ies) of the Event, and the host country of the Regatta in relation with the Event or part thereof in a manner required by ACM is included. Use of image(s) in accordance with the foregoing shall not constitute an endorsement, direct or indirect:

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

18.5 **Use of moving images of Event:** Other than for live or delayed broadcasting in any medium of the Event, including any highlights package, VNR and special programmes, use of Event moving images by ACM, its agents, sponsors, licensees, the host city(ies) of the Event, and the host country of the Regatta

- shall be subject to the same conditions set out in Clause 18.4, except that a sequence of moving pictures is to be considered as a whole rather than frame by frame.
- 18.6 **Official video/DVD:** ACM and its licensee(s) may use still images and moving images of the Event and any other images taken by the Event Authority, its authorized broadcaster and other media to compile, produce, market and distribute an official video/DVD of the Event without restriction, except that all such video/DVD shall be conceived on an event background either as individual product or as a series and shall not suggest the individual endorsement by or of a single Competitor in connection therewith. All packaging and promotional material shall comply with the provisions of Clauses 18.4 and 18.5.
- 18.7 **Electronic games and board games:** ACM and its licensees may, with the agreement of the Competitors whose images or logos are used, use still and moving images of the Event as well as the name of any Competitor to produce, market and distribute any electronic or board games of the America's Cup. All packaging and promotional material of such official electronic games and board games shall comply with the provisions of Clauses 18.4 and 18.5.
- 18.8 **Books and magazines:** ACM and its licensees may use still images and moving images taken during the Event, and any images taken by ACM, its authorized broadcaster and other media, to compile, produce, market and distribute books, magazines, programmes, calendars and any other form of publication regarding or associated with the Event without restriction, except that all such publications shall be conceived on an event background either as individual product or as a series (e.g. a book on the Event or part thereof, a calendar depicting various Competitors, programmes on the presentation of Competitors participating to specific stages of the Event [e.g. the Match], a series of programmes/magazines each on different Competitors etc.) and shall not suggest the individual endorsement by or of a single Competitor in connection therewith. All packaging and promotional material shall comply with the provisions of Clauses 18.4 and 18.5.
- 18.9 **Access for promotional filming:** Competitors shall give to ACM, any ACM authorized film crew, and any ACM accredited broadcaster, at mutually agreed times access to film and take pictures of the Competitor's team training, sailing their ACC yachts, and interviews with key team members, such footage solely to be used to produce promotional films and advertising about the Event. All copyright in the material filmed by ACM or any ACM authorized film crew, and any ACM accredited broadcaster, but not archive material provided by the Competitor to ACM, will vest in ACM on behalf of SNG until the last race of the Regatta, when it will form part of the film and video footage of the Event and ownership shall vest in accordance with Clause 18.12..
- 18.10 **Race Area filming:** ACM and its authorized broadcaster, media and production company may film any Competitor at any time or any Competitor sailing in the Race Area during non-race days provided it shall not be allowed to film within 200 meters of a Competitor's yacht without approval of that Competitor. ACM shall not provide any such footage taken to any Competitor. This does not restrict access to footage taken from a public broadcast.

- 18.11 **Use of images in merchandising:** In its merchandising, a Competitor shall have no rights to use any still image taken of racing during the Event which depicts any other Competitor, its yachts, support vessels, crew or team members unless otherwise approved by ACM, except, where such use is incidental and limited to 20% of the content of the product. For the avoidance of doubt, the approval of the other Competitor is always required in accordance with Clause 18.1(b).
- 18.12 **Copyright:** All copyright in film and video footage shall vest in ACM on behalf of SNG until the last race of the 32<sup>nd</sup> America's Cup Match, whereupon, subject to any existing contractual rights, these rights shall vest in SNG as trustee for the America's Cup for the benefit of all current and future competitors for the America's Cup subject to the terms of any existing license not exceeding one year after the last race of the Match.

## 19. AMERICA'S CUP TRADEMARKS

- 19.1 **Exclusive rights:** ACPI is the exclusive owner of all trademark rights which already exist or which may exist in the future that incorporate words, signs or logos referring to the America's Cup. All Competitors acknowledge ACPI's exclusive rights to the trademarks and goodwill attached to the words and signs used in connection with the words "America's Cup" and the image and logo of the America's Cup trophy. No Competitor shall at any time challenge such trademark rights. Unless permitted by license in writing by ACPI or its licensee, no Competitor will develop, use and become the holder of any trademark rights, whether on the basis of registration or use, that incorporate any sign or word referring to the America's Cup or image of the America's Cup trophy. Breach of this Clause and of a trademark license granted to a Competitor will constitute a breach of these Terms of Challenge. The terms of this Clause will remain binding upon Competitors after their elimination from and after completion of the Regatta.
- 19.2 **License to Competitors:** ACPI will grant to each Competitor a license by the way of a separate license agreement starting on 3 March 2004 to use the America's Cup trademarks owned by ACPI in accordance with the terms, conditions and restrictions set out in the Pre-incorporation agreement made as of 1 October 1986 among the New York Yacht Club, the Royal Perth Yacht Club of Western Australia (Inc.) and the Yacht Club Costa Smeralda as amended on 3 February 2000. Competitors shall remove any America's Cup trademark owned by ACPI affixed to its mainsail or other yacht equipment prior to selling, leasing or otherwise parting with possession, to any person or entity that is not a Competitor licensed by ACPI.
- 19.3 **Event Logo:** No Competitor shall use Event logo(s) developed by ACM for the Event or part thereof. The Event logo(s) may incorporate trademarks owned by ACPI.
- 19.4 **Duration of Trademark rights:** The Competitors and their sponsors, licensees and commercial partners are entitled to use the ACPI's trademarks for a term

expiring on the later of the end of the current calendar year of the last race of the Match or six months after the Match, whichever is the longer.

## 20. WEBSITES AND WIRELESS COMMUNICATIONS

20.1 **Websites:** No Competitor or any of its sponsors or commercial partners shall display any moving images or a series of sequential photographs of racing during the Event on its website. Competitors may display still images of racing during the Event on its website as permitted by Clause 18.1. Competitors and their sponsors may display race results of the Event on their websites. If required by ACM, Competitor websites shall be linked to ACM's official website, and vice versa.

20.2 **Wireless:** Competitors shall not broadcast to the general public or enter into any commercial arrangement with a service provider to supply, by wireless means including but not limited to mobile telephones, PDA's or other mobile media, any Event moving or still images of racing during the Event or Event information. Competitors may, however, supply race results by wireless means.

## 21. COSTS AND EXPENSES TO COMPETE

Unless expressly provided otherwise in writing by ACM, all costs and expenses incurred in competing in the 32<sup>nd</sup> America's Cup Event, including any Pre-regatta and any Exhibition Regatta, and in meeting all obligations under the Protocol or these Terms of Challenge shall be the sole and exclusive responsibility of the Competitor incurring such costs.

## 22. ASSUMPTION OF OBLIGATIONS

In satisfaction of the obligations set out in Article 22.5 of the Protocol, in the event of a successful challenge, the new holder of the America's Cup shall assume, in place of SNG, the obligations of a New Trustee owed to the members of an America's Cup Arbitration Panel instituted for America's Cup XXXI until 31 March 2009, as set out in a Supplementary Deed of Covenant, Disclaimer and Indemnity, as modified by a Supplementary Deed – Ongoing Insurance Cover. Copies of such documents will be provided by ACM to any Challenger upon request. Such Challenger shall enter into a Deed with SNG, assuming such obligations, prior to being given possession of the America's Cup and the shares in ACPI.

## 23. DISPUTE RESOLUTION

All issues of interpretation and any dispute arising from these Terms of Challenge shall be resolved in accordance with the Protocol and Clause 29 of these Terms of Challenge.

## 24. LIABILITY AND INSURANCE

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

24.2 **Indemnity:** Each Competitor shall protect, indemnify and hold harmless SNG, GGYC, any other Competitor, the Challenger Commission, ACM, any 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 of the Jury or of any dispute resolution body referred to in Article 22.3(g) of the Protocol arising from the terms and conditions of the documents referred to in Article 12.1 of the Protocol.

24.3 **Third party risk insurance:** Each Competitor participating in the Event shall provide to ACM Certificates of Liability Insurance, on an industry-standard English language form, showing evidence that the Competitor, as well as any subsidiary company which Competitor may have incorporated in Spain, carries third party liability insurance for both personal injury and property damage on-shore and off-shore with the following minimum coverage and at least during the following periods:.

(i) € 3.000.000 (three million Euros) minimum coverage during the period starting on 17<sup>th</sup> October 2006 and expiring on 4<sup>th</sup> March 2007 as well as during 90 (ninety) days following the last race of the Match or until the Competitor leaves its Base, it being reminded that eliminated Challengers must continue to occupy their Base as per the provisions of clause 9.5.

(ii) €10.000.000 (ten million Euros) minimum coverage during the period starting on 5<sup>th</sup> March 2007 and expiring the day following the last race of the Match.

The Certificates provided to ACM do not need to list all insured activities, however a list of main exclusions shall be provided. For the avoidance of doubt, the off shore Liability Insurance shall not exclude competitor to competitor's liability."<sup>4</sup> / <sup>5</sup>

24.4 **Health insurance cover:** Competitors are strongly advised to arrange and ensure appropriate health insurance coverage for all members of their team participating in the Event, as well as such other insurance coverage for team members as is prudent. Neither SNG nor ACM shall be under any obligation or liability to provide for or make provision for health care for any Competitor or team member.

---

<sup>4</sup> Clause 24.3, text amended on May 05, 2005 (Terms of Challenge, Amendment No 4)

<sup>5</sup> Clause 24.3, text amended on October 17, 2006 (Terms of Challenge, Amendment No 5)

24.5 **Postponement or cancellation:** Neither SNG nor ACM or any Official, nor any of their directors, officers, employees, agents or contractors shall be liable to any Competitor or 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 ACM including but not limited to acts of God, terrorism, war, government intervention or regulation, public health, environmental conditions, strikes, lock-outs, other industrial acts or any other force majeure circumstance.

## 25. **CUSTOMS DUTIES**

Unless a Competitor elects to pay all applicable customs, duties and taxes on the importation of their equipment and goods, each Competitor shall provide the local tax and customs authorities at the Venue with a complete list of equipment and goods imported to the Venue to obtain exemption from local taxes and customs duties and any bond required. Unless consumed or re-exported within 12 months from the Match, the Competitor will be required to meet all local taxes and customs duties on the importation of such equipment and goods.

## 26. **TEAM INFORMATION**

To assist ACM in planning, upon request, all Competitors shall provide ACM with such information regarding the Competitor and their team members as may be reasonably required from time to time.

## 27. **COMPLIANCE WITH ACM REGULATIONS**

ACM may publish from time to time reasonable regulations regarding activities at the Venue consistent with the terms of the Protocol and these Terms of Challenge. Such regulations shall not take precedence over or amend any of the documents referred to in Article 12.1 of the Protocol. Competitors and their team members shall comply with such regulations.

## 28. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

Competitors shall do all things necessary to comply at all times with all applicable laws and regulations of any city, state, region or national governmental authority having jurisdiction over the Event or part thereof.

## 29. **ENFORCEMENT**

ACM shall be the only entity entitled to seek the enforcement of these Terms of Challenge against a Competitor. No Competitor shall be entitled to protest non-

compliance with these Terms of Challenge or seek the enforcement of these Terms of Challenge against another Competitor.

## **EXECUTION**

Signed by AC Management Limited

On this 23d day of January 2004

---

Michel Hodara, Director

---

Nathalie Vez-Habegger, Director

## Schedule 1: America's Cup Regatta Draft Schedule (Clause 7.1)

		Sun	Mon	Tue	Wed	Thu	Fri	Sat			Sun	Mon	Tue	Wed	Thu	Fri	Sat	
MARCH	M C e o a s t u r o l e m s e n t		1	2	3	4	5	6	7								1	2
				Cert.	Fleet 1/2	Fleet 3/4	Fleet 5/6	Fleet 7	Fleet*								CSS	CSS
			Easter 8		9	10	11	12	13	14	J	3	4	5	6	7	8	9
			Off	Off	Off	Off	Off	Off	Off	Off	UN	CSS	CSS	CSS	CSS	CSS	CSS	CSS
			15	16	17	18	19	20	21	21	E	10	11	12	13	14	15	16
			Off	Off	Off	CSS	CSS	CSS	CSS	CSS		CSS	CSS	CSS	Off	Off	Off	Off
			22	23	24	25	26	27	28	28		17	18	19	20	21	22	23
			CSS	CSS	CSS	CSS	CSS	CSS	CSS	CSS		Off	Off	Off	Off	Off	Off	Off
			29	30	1	2	3	4	5	5		Off	Off	Off	Off	Off	Off	Off
			CSS	CSS	CSS	CSS	CSS	CSS	CSS	CSS		24	25	26	27	28	29	30
			6	7	8	9	10	11	12	12		AC	AC	AC	AC	AC	AC	AC*
			CSS	CSS	CSS	CSS	CSS	CSS	CSS	CSS		2	Off	3	4	Off	5	6
	13	14	15	16	17	18	19	19	J	1	2	3	4	5	6	7		
	CSS	CSS	CSS	CSS	CSS	CSS	CSS	CSS	UL	AC*	AC*	AC*	AC*	*	*	*		
	20	21	22	23	24	25	26	26	Y	7	Off	8	9	Reserve	Reserve	Reserve		
	CSS	CSS	CSS	CSS	CSS	CSS	CSS	CSS		8	9	10	11	12	13	14		
	27	28	29	30	31					15	16	17	18	19	20	21		
	CSS	CSS	CSS	CSS	CSS					22	23	24	25	26	27	28		
	31																	
	Declare																	

Notes: Declare Declaration of Yachts per Protocol  
 Cert. Measurement Certificate Deadline

## **Schedule 2: Notice of Challenge (Clause 4.3(a))**

---

**TO: SOCIETE NAUTIQUE DE GENEVE**

Port Noir  
1223 Cologny  
Geneva  
Switzerland

Attn: The Commodore and the Secretary General

**CC: AC MANAGEMENT Ltd**

7, rue du Mont Blanc  
1201 Geneva  
Switzerland

Attn: Chief Executive Officer

1. I, \_\_\_\_\_ am the Commodore (*or state other Full Name office with authority*) of the \_\_\_\_\_ (the "Challenger") (*state yacht club name*) and I am duly authorized by such yacht club to deliver this Notice of Challenge to you.

2. The Challenger by this Notice hereby challenges for the 32<sup>nd</sup> America's Cup in accordance with the Protocol Governing the 32<sup>nd</sup> America's Cup dated 2 March 2003 as amended, and the Terms of Challenge dated 23 January 2004. The Challenger hereby agrees to be bound by and undertakes to comply with the terms of the said Protocol and all other rules set forth in its Article 12, and any amendments to the Protocol or those rules.

3. The Challenger is a qualified yacht club under the terms of the Deed of Gift of the America's Cup dated 24 October 1887 to challenge for the 32<sup>nd</sup> America's Cup.

4. A copy of the Challenger's certificate of incorporation, patent or license or other document evidencing the incorporation, patent or license of the Challenger is annexed to this Notice of Challenge.

5. Details of the Challenger's annual regatta on the sea or arm of the sea demonstrating the Challenger meets the obligations in the Deed of Gift referred to in clause 4.1(d) of the Terms of Challenge are annexed to this Notice of Challenge.

6. The Challenger will be represented by

\_\_\_\_\_  
*Name of representative*

7. All communications and notices from SNG, ACM, the Technical Director, Measurement Committee, the Regatta Director, the Race Committee and all other organizing authorities are to be sent to:

*[Provide Address, fax, email, telephone details of both the yacht club and the challenge entity with the names of contact persons]*

8. Accompanying this Notice of Challenge are:

- (a) the performance bond required by Article 3.6 of the Protocol and Clause 4.4 of the Terms of Challenge;
- (b) a bank draft in the amount of €50,000.00 (fifty thousand Euros) made payable to "The Challenger's Commission" for the initial Challenger Commission contribution;
- (c) a bank draft in the sum of US\$25,000.00 (twenty five thousand US Dollars) made payable to America's Cup Properties Inc. as a contribution to ACPI's costs to protect the America's Cup trademarks in accordance with Article 19.1 of the Protocol;
- (d) the declarations required by Clause 4.3(f) of the Terms of Challenge; and
- (e) the copy of the Challenger's certificate of incorporation, patent or license referred to at paragraph 4 above;
- (f) the details of the Challenger's annual regatta on the sea or an arm of the sea referred to at paragraph 5 above;
- (g) a bank draft in the sum of €200,000.00 (two hundred thousand Euros) made payable to AC Management Limited, being the Late Fee. *(delete if challenging prior to 1600 hrs on 17 December 2004).*

**Signed by:**

## **Schedule 3: Bank Guarantee Terms (Clause 4.4(b)(ii)(B))**

---

### **Bank Guarantee**

**Beneficiary:**

AC Management Limited

**Amount:**

€1,000,000.00

One Million Euros

**Expiration Date:**

December 31, 2007 [*or other date in the event of renewable guarantee*]

We have been informed that under the Terms of Challenge applicable to the participation of Challengers to the 32<sup>nd</sup> America's Cup, a performance bond of € 1'000'000 is to be delivered to you in the form of an irrevocable bank guarantee by [*name of challenging entity*], an entity which is filing a challenge.

This being stated, we, [*name of Swiss Bank or Swiss subsidiary of bank*] irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defence arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any amount up to the above mentioned maximum amount of € 1'000'000, upon receipt of your duly signed request for payment.

For the purpose of identification, your written request for payment has to be presented through the intermediary of a first rate bank confirming that the signatures thereon are legally binding upon you.

Your claim is also acceptable if transmitted to us in fully by duly encoded telex/SWIFT through a first rate bank confirming that your original claim has been sent to us by registered mail and that the signatures thereon are legally binding upon you.

Our guarantee is valid until December 31<sup>st</sup>, 2007 and expires in full and automatically, should we not be in possession at our above address on or before that date, of your written request for payment at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

*Insert the following language if the Bank Guarantee is renewable and the renewal date of the Bank Guarantee is prior to December 31, 2007:*

*“It is a condition of the Bank Guarantee that it shall be automatically extended for further periods of [.....] without amendment, unless at least thirty (30) days prior to each successive expiration date we shall notify you in writing, via registered mail, return receipt requested at [exact address to be confirmed] of our intention not to renew this Bank Guarantee. After receipt of such notice but not after the then current expiration date, you may draw hereunder up to the available amount. In any event this Bank Guarantee will not be automatically extended beyond 31 December 2007.”*

Subject to your different instructions notified to us in accordance with the procedure set forth above for payment request, any payment under this guarantee will be effected to the following account, by wire transfer:

**Bank:**

The Royal Bank of Scotland International

**Account of:**

AC Management Limited

**Account No:**

1028-5033-2964

**Address:**

Jersey Branch  
P.O. Box 64  
71 Bath Street  
Jersey JE4 8PJ  
Channel Islands

**Swift Number:**

RBOSJESX

This guarantee is governed by Swiss law; place of jurisdiction and performance is Geneva.

*[Insert name of issuing bank]*

\_\_\_\_\_  
Authorised signature

\_\_\_\_\_  
Authorised signature

## **Schedule 4: Signage Rules (Clause 10.2)**

---

1. **Competitor Bases**
- 1.1 **Interior:** There are no restrictions on signage in the interior of Competitor Bases.
- 1.2 **Exterior:** There are the following restrictions in respect of the exterior of Competitor Bases:
  - (a) **Base sea frontage:** There are no restrictions on signage on the side of Bases facing the berthage area under the control of the Competitor of the respective Base;
  - (b) **Sides and AC Park Frontage:** A maximum of 15% of the total surface areas of each side (measured as the total length of the side of the Base and the maximum permitted height of any building whether or not a structure exists) may be used for Competitor or Sponsor signage on the sides, other than the side facing the berthage area under the control of the Competitor of the respective Base. Unused allowances on one side cannot be accumulated and used on other sides; the percentage is measured by constructing the smallest possible rectangle around each signage and then adding the rectangles together;
  - (c) **Flags:** Any flag displaying any Sponsor or Competitor signage shall be included in the 15% calculation of Clause 1.2(b) above;
  - (d) **Roof:** No signage is permitted on the roof of a Base, with the exception of a national flag of the country of the competing yacht club; or the name and/or logo of the respective Competitor, provided such signage 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. Signage displayed on the roof of a Base shall be such size as specified by ACM;
  - (e) **Sea Walls:** Competitors may use the sea wall adjacent to the Competitor's berthage area for signage;
  - (f) **Historic structures:** Restrictions on signage on historic buildings may apply.
- 1.3 **Signage definition:** Signage in this Schedule 4 means a depiction, in whole or in substantial part, of any name, brand, trademark, product, product display by any person or entity, including the name, brand or trademark of a Competitor, but does not include an image of a Competitor's yachts, vessels or team members except that part of an

image which depicts a name, brand or trademark of any person or entity including those of the Competitor.

1.4 **Billboards:** Other than signage affixed to a Base or to sea walls, a Competitor may not install any sign, billboard or other forms of advertising visible from anywhere outside its Base.

2. **Team Support Vessels and Team Spectator Vessels**

2.1 **Permitted Signage:** Signage on Team spectator vessels and Team support vessels is limited to a maximum of 6 square meters per side. No signage is permitted on the deck or roof of such vessel.

2.2 **Billboards:** Other than signage affixed to hulls, topsides and cabin tops, as permitted by clause 2.1 above, Competitors may not display any sign, billboard or other advertising medium on any Team support vessel or Team spectator vessel.