

# Agreement

relating to the 33<sup>rd</sup> America's Cup

By and between

**INTERNATIONAL SAILING FEDERATION**

And

**SOCIÉTÉ NAUTIQUE DE GENÈVE**

A handwritten signature in black ink, consisting of a stylized 'V' followed by a flourish and the letters 'MS' below it.

**This Agreement** is made the 5th day of June 2009 by and between:

- The International Sailing Federation ("**ISAF**") on the one part; and
- Société Nautique de Genève ("**SNG**") on the other part;

both being hereinafter collectively referred to as the ("**Parties**").

## **Background**

ISAF is the governing international authority of the sport of sailing and, as such, has issued numerous rules and regulations, such as the ISAF Racing Rules of Sailing ("**ISAF RRS**") and the ISAF Regulations.

SNG is a member of Swiss Sailing, which is itself a member national authority of ISAF.

The America's Cup is a challenge based yachting event established in 1857 and is governed by a Deed of Gift, executed under the laws of New York and dated 24 October 1887.

SNG represented by Team Alinghi won twice the America's Cup (31<sup>st</sup> and 32<sup>nd</sup> America's Cup). SNG is the current trustee of the America's Cup and holder of the trophy.

The Court of Appeals of the State of New York has directed that SNG accepts the challenge of the Golden Gate Yacht Club.

The Deed of Gift provides that if the club challenging for the Cup and the club holding the same cannot mutually agree upon the terms of a match, said match ("**Deed of Gift Match**") shall be sailed subject to the rules and sailing regulations of the Club holding the Cup in so far these rules do not conflict with the provisions contained in the Deed of Gift. As at the date of this agreement no mutual agreement has been reached between SNG and the Golden Gate Yacht Club.

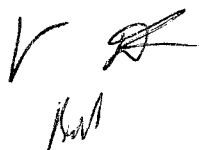
As the holder of the Cup and the organising authority of the Deed of Gift Match, SNG usually runs its regatta under the ISAF RRS and other ISAF regulations. Based on the Deed of Gift provisions, it intends to organise the Deed of Gift Match under the ISAF RRS and other ISAF regulations for the Deed of Gift Match in the 33<sup>rd</sup> America's Cup.

The aim of this Agreement is to set forth, in particular, the terms and conditions according to which the ISAF RRS and the ISAF Regulations will apply to the 33<sup>rd</sup> America's Cup.

Now therefore, the Parties agree as follows:

### **1. Interpretation**

In this Agreement, the following terms shall have the following meaning:



- (a) **ACM** shall mean AC Management SA, a Swiss limited company with headquarters in Geneva, Switzerland, appointed by SNG to help SNG organize, manage and fulfil all of SNG's obligations under the Deed of Gift; for the purpose of this Agreement, ACM may also mean any branch or subsidiary entity;
- (b) **Agreement** shall mean this agreement between ISAF and SNG;
- (b) **Deed of Gift** shall mean a deed dated 24 October 1887 governing competition for the America's Cup;
- (c) **Deed of Gift Match** shall mean a match held in accordance with the default provisions contained in the Deed of Gift when the club challenging for the America's Cup, here GGYC, and the club holding the same, here SNG, could not mutually agree upon all the terms of a match;
- (d) **Fee** shall mean the fee fixed in clause 3 below;
- (e) **GGYC** shall mean the Golden Gate Yacht Club;
- (f) **ISAF** shall mean the International Sailing Federation;
- (g) **ISAF RRS** shall mean the ISAF Racing Rules of Sailing, including the Match Racing Rules, in force as at the date of this Agreement or as further amended during the term of this Agreement;
- (h) **ISAF Regulations** shall mean all ISAF Regulations including ISAF's Standards of Conduct (Regulations 50 and 51) and ISAF's Anti-Doping Code (Regulation 21), in force as at the date of this Agreement or as further amended by ISAF during the term of this Agreement;
- (j) **SNG** shall mean Société Nautique de Genève, the trustee and holder of the 33<sup>rd</sup> America's Cup;

## 2. **Scope**

This Agreement shall be applicable to a Deed of Gift Match between SNG and GGYC. Should the 33<sup>rd</sup> America's Cup be, for any reason, a multiple challenger America's Cup, this Agreement shall not be applicable and SNG and ISAF hereby undertake to enter into another agreement, based on similar terms to those contained in the agreement entered into between ISAF and AC Management SA for the 32<sup>nd</sup> America's Cup.

## 3. **Consideration**

As full consideration for this agreement, SNG, as the organizing authority, shall pay ISAF a single one-time Fee amounting to €150,000.00 (one hundred and fifty thousand Euros). Such fee shall be payable by SNG in three equal instalments, upon execution of this agreement, upon issuance of the Sailing instructions for the Deed of Gift Match and upon the last race in the Deed of Gift Match. The Fee includes the costs of all anti-doping testing and other anti-doping measures and obligations.

ISAF shall pay all remuneration, travel, accommodation, insurance and other expenses to be paid to members of the Jury, Umpires and the Principal Race Officer at rates to be agreed by both ISAF and SNG. A budget and payment

schedule shall be agreed between ISAF and SNG for such costs with the intent that SNG shall meet the cashflow requirements of ISAF in respect of such costs. ISAF shall invoice SNG for all such costs at the same rate incurred by ISAF. Any amount paid by SNG in excess of ISAF's costs will be refunded to SNG.

For the avoidance of doubt, the Fee and the above reimbursements by SNG includes and covers any and all costs, fees, expenses and charges of any description that ISAF (including without limitation the sanctioning fee for all commercial and media rights), any Member National Authority or any other authority or representative connected or related to ISAF may now or in the future incur in relation with the 33rd America's Cup.

**4. Organizing Authority**

The Organizing Authority for the 33<sup>rd</sup> America's Cup shall be either SNG itself, acting as trustee of the America's Cup, or ACM acting in conjunction with SNG.

ISAF approves SNG and/or ACM as the organizing authority for the 33<sup>rd</sup> America's Cup.

If ACM is appointed by SNG as organizing authority, ISAF shall procure that Swiss-Sailing approves this appointment.

**5. Application of ISAF rules**

As the organizing authority for the 33<sup>rd</sup> America's Cup, SNG and/or ACM will be entitled to issue the notice of race for the Deed of Gift Match and any further instructions or interpretations as may be required from time to time to organize the Deed of Gift Match.

In the Notice of Race, SNG and/or ACM may and will refer to the ISAF RRS and to any relevant ISAF regulations to the extent its standard notices of race and sailing instructions usually contain such reference.

For the sake of clarity, it is acknowledged and agreed that SNG and/or ACM may:

- (a) amend the ISAF RRS and their interpretations as permitted in the ISAF RRS, and given the Match is a specific international event ISAF authorises any changes required by SNG and/or ACM under RRS 86.2 and shall provide SNG on request the letter required by RRS 86.2 .
- (b) amend the ISAF RRS and other ISAF regulations to the extent necessary to comply with the Deed of Gift provisions.

**6. Anti-Doping Rules**

- (a) SNG will establish, in consultation with ISAF, anti-doping rules similar to those applied in the 32<sup>nd</sup> America's Cup and subsequently amended.
- (b) These anti-doping rules will be based either on the World Anti-Doping Code of the World Anti-Doping Agency (WADA) or on the ISAF specific regulations.

- (c) These anti-doping rules will provide jurisdiction to the Jury referred to under clause 8(a) below with respect to their violation.
- (d) ISAF undertakes to provide similar support, assistance and services to the anti-doping program of the 33<sup>rd</sup> America's Cup as it did for the 32<sup>nd</sup> America's Cup, and shall meet all costs of anti-doping testing and all other anti doping measures and obligations.

**7. Conflict of Rules**

The Umpires, the Measurers, the Jury and all officials appointed for the 33<sup>rd</sup> America's Cup shall be bound by the Notice of Race and the relevant documentation issued by SNG. The officials shall in no circumstance be entitled to modify the Notice of Race, the applicable sailing instructions or other relevant documentation.

Any conflict between the provisions of the ISAF RRS and other ISAF Regulations and the provisions of the Deed of Gift, shall be decided by SNG exclusively, who will keep at all times the right to modify the relevant documentation to comply with the Deed of Gift provisions.

SNG and/or ACM may – at its sole discretion – request confidential opinions of officials before issuing the documentation.

**8. Race officials**

**(a) Jury and Umpires**

ISAF shall appoint the members of the Jury, and the Umpires (if Appendix C of the RRS is used), under the terms of the ISAF Regulations. Given the differing nationality of the competing clubs and the differing languages spoken by both clubs, unless otherwise agreed by ISAF and SNG all members of the Jury shall be fluent in both English and French languages, and given the nature of the Match at least two members of the Jury shall be practicing lawyers and two members shall be experienced in being a jury member for multi-hull racing. No member of the Jury or Umpire shall be a national of Switzerland or the US (including any territory, dependency or other associated nation, state or country of the US such as by way of example Guam, Marianas, American Samoa, Porto Rico, US Virgin Islands), nor shall any person be appointed having a direct or indirect interest in the outcome of the Match.

ISAF shall advise SNG of all its nominations of the Jury and Umpires and SNG shall confirm whether or not in its opinion such nominee meets the appointment criteria set out in this Agreement. If the parties cannot agree whether a nominee meets the criteria the parties shall resolve the difference pursuant to clause 12 of this Agreement. Once SNG or the arbitrator under clause 12 of this Agreement, confirms the nominee meets the criteria, they shall be appointed.

ISAF and SNG shall implement strict rules to prevent the canvassing of (other than in the normal course of official hearings), or the private entertainment, of members of the Jury or Umpires by or on behalf of any competitor.

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Any Umpires appointed shall have officiated as umpires in an Americas Cup Match.

The terms and conditions of each appointment shall be negotiated directly between ISAF and the appointed Jury members and Umpires..

**(b) Race Committee and other officials**

ISAF and SNG have agreed to appoint Harold Bennett, of Auckland New Zealand (an ISAF qualified International Race Officer) to be the Principal Race Officer for the Match. In the event of his non-availability ISAF and SNG shall agree a replacement.

The terms and conditions of the appointment shall be negotiated directly between ISAF and the appointed Principal Race Officer.

SNG and/or ACM may, exclusively and at its own discretion, select and appoint any other race officials as it considers necessary or appropriate to organize or conduct the competition. ISAF shall not intervene in the appointment of these other race officials.

**9. Other commitments**

Subject to the terms and conditions of this Agreement, ISAF hereby:

- (a) acknowledges that SNG is the current trustee of the America's Cup and as such has the exclusive right and duty to organize the 33<sup>rd</sup> America's Cup match, and,
- (b) acknowledges that provided SNG fulfils its obligations under this agreement, SNG shall be deemed to have satisfied its entire obligation towards ISAF in its capacity as Organiser and Event Authority of the 33<sup>rd</sup> America's Cup and as a yacht club member of the Swiss Sailing Federation, and indirectly of the ISAF.
- (c) Acknowledges and confirms SNG's and/or ACM right as the organising authority to require event advertising on the competing boats in accordance with Regulation 20, and to declare the Match to be a Category A or Category C event under Regulation 20.
- (d) undertakes that neither ISAF nor any of its Member National Authorities will authorise, permit or sanction any event associated with or using the words "America's Cup" in its name or using images of the America's Cup Trophy without the prior written approval of SNG.
- (e) To give effect to the terms of the Deed of Gift, the applicable member national authority shall be Swiss Sailing, and the member national authority of the selected venue, shall have no jurisdiction, authority or other role over the Match except to the extent authorised in writing by SNG as the organising authority
- (f) shall take all necessary actions and steps under its rules and regulations to give effect to the terms of this Agreement

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Subject to the terms and conditions of this Agreement, SNG hereby:

- (a) agrees to display, if required by ISAF, the ISAF logo, in such size and position as may be reasonably determined by the Parties, on
- (i) the Umpire boats;
  - (ii) the relevant pages of the America's Cup website associated with the Jury and the Umpires; and
  - (iii) the relevant documents of the America's Cup event associated with the Jury and the Umpires.
- (b) shall offer to the President of ISAF and three (3) additional guests of his choice invitations to official functions and prize giving ceremonies taking place during the course of the 33rd America's Cup.
- (c) shall ensure the members of the Jury, Umpires and the Principal Race Officer are included as insured parties and under its applicable third party insurance liability cover in respect of the Deed of Gift Match.

**10. Duration**

This Agreement shall enter into force upon its signature and shall remain valid and with binding effect until the last race of the Match of the 33<sup>rd</sup> America's Cup or final withdrawal, disqualification or invalidation of GGYC's Challenge.

**11. Confidentiality**

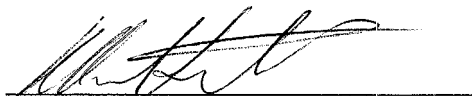
The Parties shall keep this agreement confidential at all times.

**12. Arbitration**

All disputes under this Agreement that cannot be resolved by the Parties shall be resolved by arbitration before the Court of Arbitration for Sport in Lausanne, Switzerland applying Swiss law in the interpretation and implementation of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement in two (2) counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

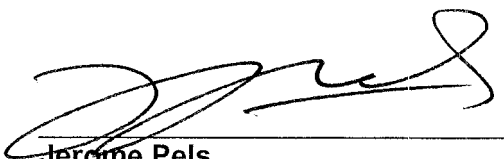
Signed for and on behalf of **Société Nautique de Genève** by:



**Bradley William Butterworth**

Date: 5/6/09

Signed for and on behalf of **International Sailing Federation** by:



**Jerome Pels**

Date: 5/6/2009



**David Kellett**

Date: 05/06/09