



GOVERNMENT OF BERMUDA
Ministry of Economic Development

GRANT AGREEMENT
Standard Terms and Conditions of Grant

This Grant Agreement ("Agreement") is made on the 15 day of APRIL, 2015 ("Effective Date") by and between the **Government of Bermuda**, acting through the Ministry of Economic Development with offices located in the Government Administration Building, 3rd Floor, 30 Parliament Street, Hamilton HM 12 ("Funder") and the **ACBDA LTD**, a company incorporated under the provisions of the Companies Act 1981 of the laws of Bermuda with its registered address at Windward Place, 3rd Floor, 24 Crow Lane, Pembroke HM 19 ("Organisation"). The Funder and the Organisation are both separately referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, the Funder provides grant funds to various organisations to sponsor approved activities, projects and events;

AND WHEREAS, the Organisation has made an application and allocation for grant funds to cover the costs to manage and run the operations of the ACBDA LTD and to provide Capital Development Funding to facilitate the development initiatives in the West End. ("Project");

AND WHEREAS, the Organisation has submitted a Projected Budget, attached hereto as Annex 1;

AND WHEREAS, the Funder has approved an award of grant funds ("Grant") in the amount **\$1,918,000** for the operating funding to the Organisation subject to the terms and conditions provided herein ("Grant Funds"); and Capital Development funding of **\$4,874,000**.

AND WHEREAS, the Grant Funds will be used to provide targeted support for the ACBDA LTD including:

- (a) Operating funds for the year ended March 31st 2016
- (b) Capital Development Funding for the year ended March 31st 2016

AND WHEREAS, as a condition precedent to the disbursement of the Grant Funds to the Organisation, the Funder has required the Organisation to enter into this Agreement which sets forth the terms and conditions for the provision and use of the Grant Funds.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises and representations contained herein, the Parties hereby agree as follows:

Section 1 PERIOD OF AGREEMENT

This Agreement shall become effective as of the Effective Date and shall expire on March 31, 2016, unless earlier terminated as provided herein ("Period of Performance"). Any term or condition herein which by its nature or express provision extends beyond the expiration or termination of this Agreement shall survive the same. The Funder recognises and accepts that this application is part of an ongoing

commitment of Bermuda to deliver on commitments made in the Host Venue Agreement dated November 10, 2014 between the Government of Bermuda and America's Cup Event Authority LLC and that the term of this Grant is but a part of the ongoing commitments. The Project shall be understood to mean delivery of all commitments made by Bermuda to America's Cup Event Authority LLC over the entire term contemplated by the Host Venue Agreement. The use of expressions in this Agreement shall have similar meanings to expressions in the Host Venue Agreement as applicable.

Section 2 GRANT OF FUNDS

- A. The Funder shall provide a grant to the Organisation in the amount of **\$1,918,000** for operating expenses and **\$4,874,000** for Capital Development Funding. The Grant shall be disbursed by the Funder in installments as follows:
- a. Operating Funds paid on a quarterly basis as follows
 - (a) \$ \$485,082 on or before April 22nd 2015
 - (b) \$477,582 on or before July 15th 2015
 - (c) \$477,582 on or before October 15th 2015
 - (d) \$477,754 on or before January 15th 2016
 - b. Capital Development Funds paid on a quarterly basis in the following tranches
 - (a) Quarter 1-**\$1,957,853** on or before April 22nd 2015
 - (b) Quarter 2-**\$1,571,158** on or before July 15th 2015
 - (c) Quarter 3-**\$405,994** on or before October 15th 2015
 - (d) Quarter 4-**\$938,995** on or before January 15th 2016

All disbursements are subject to the Organisation's compliance with the terms and conditions set forth herein.

- B. The Grant Funds shall be used to cover the costs to manage and run the Operating costs and to cover incidental expenses as set forth in the Projected Budget (Annex 1), as approved by the Funder.
- C. The Funder acknowledges that projects sometimes change as they develop or due to a change in circumstances. In the event that:
- (a) significant changes to the Project are required; or
 - (b) the Organisation proposes to expend the Grant Funds to cover costs other than those previously approved and set forth herein; or
 - (c) the schedule is significantly delayed and/or the schedule of delivery requirements to the America's Cup Teams is escalated due to changing requirements of the America's Cup events

the Organisation shall promptly notify the Funder of such changes in writing and request approval from the Funder to expend the Grant Funds.

- D. The Grant Funds or any portion thereof paid by the Funder to the Organisation shall be expended on the Project during the term of this Agreement. If the Project is abandoned, all remaining Grant Funds disbursed to the Organisation hereunder shall promptly be repaid to the Funder. In the event that this Agreement is extended, any remaining Grant Funds that were not expended on the Project following completion of the Project, completion being the finish of the America's Cup in 2017, shall promptly be repaid to the Funder.



Section 3 PROJECT IMPLEMENTATION

A. Service Delivery

1. The Organization shall deliver the Bermuda responsibilities as outlined in the Host Venue Agreement (HVA), an agreement between the Bermuda Government and America's Cup Event Authority LLC (ACEA).
2. In addition, the Organisation shall provide a concierge service for ACEA, the Teams, the Regatta Officials, and their designated sponsors, as well as carry out the necessary advisory, consultative and administrative functions for the preparation and development of Royal Naval Dockyard for the America's Cup events.
3. The Organisation shall act as a "One Stop Shop" for any and all requests or interactions between ACEA and the Bermuda Government
4. The Organisation shall be the primary liaison between ACEA, AC Teams and related parties and the community of Bermuda
5. The Organisation shall deliver the responsibilities outlined in the HVA for the successful realisation of the World Series events to be held in the City of Hamilton in October 2015 and for all events currently scheduled to take place in Bermuda in May and June of 2017.
6. The Organisation may make a written request to the Funder to delete or increase a service area at any time during the term of this Agreement. If the Funder allows the Organisation to delete, reduce, or increase a service area, the Grant Funds may be reduced or increased commensurate with the cost to provide basic and additional services in the adjusted service area.
7. The Organisation shall ensure that no member of its personnel shall engage directly or indirectly in other business or professional activities that would prevent them from performing their duties under this Agreement.

B. Project Management and Performance Monitoring

The Organisation shall establish the necessary project management and performance monitoring systems that will enable it to track and submit the report items listed in Reporting Requirements, Section 4.

Section 4 REPORTING REQUIREMENTS

A. Progress Report

1. The Organisation shall, upon the request of the Funder, submit quarterly progress reports ("Progress Reports") to the Funder such reports shall be provided within 30 days of the relevant quarter end.
2. A Progress Report shall be delivered by email to the Permanent Secretary of the Ministry of Economic Development and shall cover the activities of the immediately preceding period.
3. Each Progress Report shall include the following:
 - a. A narrative report of the activities performed under the Project.
 - b. An expense report, containing:
 - i) A listing of each expenditure of all Grant Funds and, for each expenditure, a designation of the eligible cost category with which the expenditure is associated; and
 - ii) A narrative description of each expenditure of Grant Funds;
4. Late submission Reports: Reports are considered late if the Organisation submits incomplete data or submits data after the report submission deadline.

B. Closeout Report

1. The Organisation shall submit a closeout report to the Funder no later than May 15th, 2016 ("Closeout Report").
2. The Closeout Report shall cover the period beginning on the Effective Date and ending on the date of the Closeout Report.

C. Review and Approval of Reports

1. The Progress Reports and Closeout Report shall be subject to the review of the Funder. The Funder will only review completed reports. If the Funder determines that any report is not complete, the Funder will stop its review of the report until the Organisation completes its submission.

Section 5 ACCOUNTING REQUIREMENTS

The Organisation shall maintain complete and accurate accounting records and documentation of all costs incurred under this Agreement. The records and documentation shall be organised by cost categories and shall include an itemized list of each expenditure for which Grant Funds were used.

Section 6 RECORDS MAINTENANCE AND INSPECTIONS

A. Records Maintenance and Inspections

The Organisation shall be required to make available, upon request, files and records that will assist the Funder in assessing compliance with this Agreement and the impact of the Grant.

B. Availability and Inspection of Records

The Organisation shall promptly make available to the Funder for examination and copying, at reasonable times and locations and after reasonable notice from the Funder, any and all information and records related to the Organisation's performance of the Project, and any and all records and documentation prepared pursuant to this Agreement, and any and all information and records related to the receipt, expenditure and accounting of the Grant Funds. The Organisation shall cooperate fully with the Funder in locating and making accessible any such records.

Section 7 PERFORMANCE EVALUATION AND MONITORING

- A. The Funder may conduct evaluations and perform on-site monitoring of Project performance at such times and with such frequency as the Funder deems appropriate in its sole discretion. The Organisation shall cooperate fully with the Funder during the performance of any evaluation or monitoring under this Agreement.
- B. If the Funder finds any deficiencies during its evaluation or monitoring, the Funder may issue a written finding of deficiencies to the Organisation along with a demand to cure the deficiencies by a specified date. If the Organisation does not cure the deficiencies by the date specified, the Organisation shall be considered to be in default of this Agreement under Section 10.

Section 8 UNSPENT FUNDS



On termination of the Project being the completion of all of the America's Cup Events in 2017 or as otherwise agreed the Organisation shall transfer any unspent, excess or surplus Grant Funds to the Funder.

Section 9 NON-DISCRIMINATION

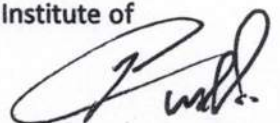
In the provision of goods and services associated with the Project, the Funder shall not engage in any activity that would be prohibited by the Human Rights Act 1981.

Section 10 DEFAULT; REMEDY; NON-WAIVER

- A. Any failure by the Organisation or its agents to comply with any of the terms or conditions of this Agreement, as such failure is determined in the sole discretion of the Funder, shall constitute a default under this Agreement.
- B. In the event of a default, the Funder may in its sole discretion either (i) terminate this Agreement forthwith or (ii) provide to the Organisation written notice of the default along with a demand to cure by a date established in the Funder's sole discretion but in no event less than ten (10) business days from the date on which such notice is given. If the default is not cured or remedied within the time limit established in the notice and demand, the Organisation shall return to the Funder any remaining Grant Funds in the possession of the Organisation. In such circumstances, the Funder shall not be obligated to provide any additional Grant Funds to the Organisation, and the Funder may exercise any legal or equitable remedies available to the Funder.
- C. No delay or omission on the part of the Funder or the Government of Bermuda to exercise any right, power or remedy accruing upon an event of default shall impair any such right, power or remedy or shall be construed to be a waiver of, or acquiescence to, any such default.
- D. In addition to the termination right of the Funder provided in this Agreement, in the event the Organisation is unable for any reason to complete any portion of the work required hereunder, the Funder shall also have the right to engage the services of a third party to complete such work. In such event, the Organisation shall refund to the Funder the amount paid for the services not performed or improperly performed. The Organisation shall also surrender any documents required or necessary for the continuation of the work in so far as they are available.

Section 11 DISPUTE RESOLUTION

- A. If any dispute arises between the Parties touching any Section, matter or thing whatsoever contained in this Agreement, or the operation or construction of this Agreement, or any matter or thing in any way connected with this Agreement or the rights, duties or liabilities of the Parties hereto under or in connection with this Agreement the Parties shall first seek to resolve the matter between themselves within a period of fourteen (14) days. The Permanent Secretary of the Ministry of Economic Development and the Chairman of the ACBDA LTD shall be the nominated officers responsible for seeking resolution of the dispute.
- B. If agreement is not reached in accordance with Section 11. A. above, either Party may give the other seven (7) days' notice to resolve the dispute through arbitration. The dispute shall be determined by a single arbitrator to be appointed by the Appointments Committee of the Chartered Institute of



Arbitrators Bermuda Branch. Once a dispute arises, either Party may write to the other Party indicating that there is a dispute and thereafter either Party may write to the Appointments Committee requesting the appointment of an arbitrator. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1986.

Section 12 NOTICES

- A. Any notice (which for the avoidance of doubt shall not include routine correspondence) to be given under this Agreement shall be in writing and addressed to the relevant Party at its business address or any other address that such Party may have notified to the other Party for this purpose in accordance with this Section 12. The notice shall be deemed to have been served if personally delivered or, if transmitted by telefax, electronic or digital means when transmitted provided that such transmission is confirmed by receipt of a successful transmission report and confirmed by mail or email.
- B. All notices required under this Agreement shall be sent by internal mail or email (if email confirmation is obtained) to the following address:

As to Organisation:

Michael Winfield
Chief Executive Officer, ACBDA LTD
Windward Place, 3rd Floor
24 Crow Lane, Pembroke HM 19, Bermuda
mjw@acbda.bm

As to Funder:

William G. Francis
Permanent Secretary
Ministry of Economic Development
Government Administration Building
30 Parliament Street, 3rd Floor, Hamilton HM12, Bermuda
wgfrancis@gov.bm


Section 13 NONASSIGNABILITY

Subject to the following sentence, neither Party may assign any or all of its rights or delegate its obligations under this Agreement without the prior written consent of the other Party. A Party may, however, assign and transfer all its rights or delegate its obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

Section 14 INDEMNIFICATION

Indemnification provisions shall be in accordance with Section 24 of the America's Cup Act 2015.

Section 15 CONFIDENTIAL INFORMATION



With respect to any information (including knowledge and pre-existing know-how and whether oral, in writing or in any other form), whether of a technical nature or otherwise relating in any manner to the business or affairs of either Party, as is disclosed on a confidential basis in connection with the Project, each Party undertakes that:

- (a) it will not from the date of disclosure use any such information for any purpose other than in accordance with the terms of this Agreement;
- (b) it will treat such information (and use reasonable endeavours to procure that the same be kept) as confidential and not disclose the same to any other person without the prior written consent of the other Party in each case; and
- (c) this restriction shall continue to apply after the termination of this Agreement without limit in point of time.

Section 16 EXCEPTIONS

The confidentiality obligations set out above shall not apply to any information which the receiving Party can show:

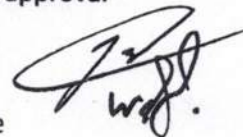
- (a) was at the time of receipt published or otherwise generally available to the public;
- (b) has, after receipt by the receiving Party, been published or become generally available to the public other than through any act or omission on the part of the receiving Party;
- (c) was already in the possession of the receiving Party at the time of receipt without any restrictions on disclosure;
- (d) was rightfully acquired from others without any undertaking of confidentiality imposed by the disclosing Party;
- (e) was necessarily divulged by marketing products in accordance with this Agreement; or
- (f) was in compliance with any requirement of local law.

Section 17 FORCE MAJEURE

A failure in the performance of this Agreement cannot be imputed or assumed to a Party to the extent it is due to Force Majeure. The expression 'Force Majeure' shall mean any circumstances beyond the reasonable control of that Party which prevent or delay its performance of this Agreement. Each Party will notify the other Party in writing of any Force Majeure event as soon as reasonably practicable. The Parties shall discuss in good faith the possibility of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably practicable. If such Force Majeure event is not overcome within six (6) weeks after such notification of the Force Majeure event is given, the transfer of tasks shall be completed provided that it is feasible to continue with the Project.

Section 18 MODIFICATION

- A. The terms and conditions of this Agreement may not be modified, waived, or terminated, in whole or in part, unless agreed to in writing by the Parties.
- B. The Organisation shall not change the Project or the amounts specified in the eligible cost categories without the prior written approval of the Funder. The Organisation shall request in writing approval



of any proposed change to the Project or the amounts specified in the eligible cost categories and shall provide adequate supporting information and a revised budget along with its request. All such requests shall be signed and dated by a duly authorised representative of the Organisation.

Section 19 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. Each Party confirms that such Party has not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

Section 20 APPLICABLE LAW

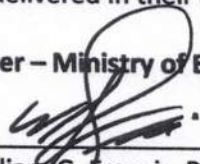
The provisions of this Agreement shall be governed by and construed in accordance with the laws of Bermuda.

Section 21 COUNTERPARTS

This Agreement may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this Agreement by facsimile or electronic mail shall, subject to Section 12, be sufficient for all purposes and shall be binding on any Party to this Agreement.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, acknowledged and delivered in their names by their duly authorised representatives as follows:

Funder – Ministry of Economic Development

By: 
William G. Francis, Permanent Secretary
Ministry of Economic Development


Date: 15/4 2015

Organisation – ACBDA LTD

By: 
Michael Winfield, Chief Executive Officer
ACBDA LTD

Date: 13 Apr 11 2015

Organisation – Ministry of Economic Development

By: 
Jasmin Smith, Government Liaison Officer
Ministry of Economic Development

Date: 15 APR / 2015

	Capital - One Off costs	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Total 2015-2016
Coffee Machine														
Computers x 3	\$4,000													\$4,000
External Storage														
Server	\$1,500													\$1,500
Microsoft licensing														
Office supplies														
Shredder														
Telephones ACEA trunk install	\$2,000													\$2,000
Total Cap Ex	\$7,500													\$7,500
Operating Costs (Monthly)														
Salary Costs *	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$840,000
Electrical	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$6,000
Entertainment	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$24,000
F&B for meetings	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$700	\$8,400
Long distance	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$6,000
Misc Expenses	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$18,000
Office Supplies	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$18,000
Photocopier - Printer	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$7,200
Telephones	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$9,000
Travel	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$25,000
Office Cleaning	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$18,000
General Insurances	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$250	\$3,000
ACEA Telephone handlines	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$2,400
Advertising	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$12,000
AC World Series	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$41,667	\$500,000
Contingent Liabilities	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$27,778	\$333,333
Public Liability Ins.	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$2,083	\$25,000
Airport/Clocktower Retail Space	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$4,167	\$50,000
Legal / Co Secretary	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$417	\$5,000
Total Monthly	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,194	\$159,361	\$1,910,500
Project Costs - BCM														
Construction Management	\$56,670	\$47,413	\$69,353	\$76,101	\$48,646	\$37,692	\$37,589	\$37,589	\$37,589	\$44,259	\$55,777	\$55,531	\$604,210	
Work to be performed	\$570,825	\$376,429	\$837,163	\$978,884	\$329,942	\$99,892	\$97,742	\$97,742	\$97,742	\$99,892	\$341,767	\$341,767	\$4,269,790	
Total Project Costs	\$627,495	\$423,842	\$906,516	\$1,054,985	\$378,589	\$137,584	\$135,331	\$135,331	\$135,331	\$144,152	\$397,545	\$397,299	\$4,874,000	
Total ACBDA Budget _Prelim	\$794,189	\$583,037	\$1,065,710	\$1,214,180	\$537,783	\$296,778	\$294,526	\$294,526	\$294,526	\$303,346	\$556,739	\$556,660	\$6,792,000	