



# UNIVERSITY OF SOUTH CAROLINA

AMENDMENT NO. 3 TO SOLICITATION

TO: ALL VENDORS

FROM: Charles Johnson, Procurement Manager

SUBJECT: SOLICITATION NUMBER: USC-RFP-2527-CJ

DESCRIPTION: Management Services for the Colonial Center at The University of South Carolina

DATE: February 19, 2014

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This Amendment **No.3** modifies the Requests for Proposals only in the manner and to the extent as stated herein.

## Attachments

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BIDDER SHALL ACKNOWLEDGE RECEIPT OF AMENDMENT **NO. 3** IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name of Offeror

\_\_\_\_\_  
Date

**SECTION 8.4. Payments.** In consideration of the rights granted herein, ASM agrees to pay the Operator the following amounts:

**8.4.1. Football Payments:** ASM shall pay the Operator the following guaranteed Football Payments:

\$150,000 each Fiscal Year for a period of ten (10) years beginning Fiscal Year 2001-2002.

**8.4.2. Greater of Guaranteed Payment or Pro Rata Share.** In addition to the Football Payments provided for herein, ASM shall pay the Operator each Fiscal Year the greater of the (i) Guaranteed Payment, or (ii) Pro Rata Share, as hereinafter set forth:

**8.4.2.1.** For purposes of this Agreement, Guaranteed Payments shall be as follows:

First Fiscal Year of Second Term:	\$500,000
Second Fiscal Year of Second Term:	\$600,000
Third Fiscal Year of Second Term:	\$700,000
Fourth Fiscal Year of Second Term:	\$800,000
Fifth Fiscal Year of Second Term:	\$900,000
Each Succeeding Fiscal Year of the Term:	\$1,000,000

**8.4.2.2.** For purposes of this Agreement, Pro Rata Share shall be as follows:

During each Fiscal Year prior to the first Fiscal Year of the Second Term, ASM shall pay the Operator a Pro Rata Share equal to fifty (50%) percent of NET as defined in Exhibit "A".

If ASM is required to pay State of South Carolina sales tax on the System or Venue Signage, ASM shall pay the Operator the following Pro Rata Share in each Fiscal Year during the Term:

One Hundred (100%) percent of the first \$1,400,000 of NET in such Fiscal Year.

Fifty (50%) percent of the next \$1,100,000 of NET in such Fiscal Year.

Twenty (20%) percent of the next \$1,000,000 of NET in such Fiscal Year.

Forty (40%) percent of any additional NET in such Fiscal Year.

If ASM is not required to pay State of South Carolina sales tax on the System or Venue Signage, ASM shall pay the Operator the following Pro Rata Share in each Fiscal Year during the Term:

One Hundred (100%) percent of the first \$1,500,000 of NET in such Fiscal Year.

Fifty (50%) percent of the next \$1,000,000 of NET in such Fiscal Year.

Twenty (20%) percent of the next \$1,000,000 of NET in such Fiscal Year.

Fifty (50%) percent of any additional NET in such Fiscal Year.

**8.4.3. Timing of Payments.** Within thirty (30) days after delivery of the annual statement of Advertising Revenue required by Section 8.3, ASM shall pay to the Operator the amounts defined in Sections 8.4.1 and 8.4.2 for the prior Fiscal Year. If the Operator desires, and notifies ASM of such desire in writing prior to sixty (60) days before the end of the Fiscal Year, ASM will pay the Operator the Guaranteed Payment on or before June 15 of the Fiscal Year, less a pre-payment discount of 0.5% per month that the Guaranteed Payment precedes the scheduled payment date described in this Section 8.4. ASM shall make commercially reasonable efforts (not including litigation or arbitration) to collect all revenues generated by the licensing of suites in the New Arena, and shall remit to the Operator eighty-five



(85%) percent of such revenue collected no later than thirty (30) days after the end of the calendar quarter in which it is received. ASM is not liable for payment to the Operator of any uncollected amounts relating to the Suites; however, ASM agrees to notify the Operator in the event a suite licensee fails to make timely payment of the suite license fee.

**SECTION 8.5. Audits.** The Operator shall have the right, at any time within twelve (12) months after the end of each full or partial Fiscal Year during the Term to cause, at the Operator's sole expense, an independent certified public account to audit all of the books of account documents, records, returns, papers and files of ASM relating to Advertising Revenue for the previous Fiscal Year. Such independent certified public accountant may share with the Operator the results of such audit but shall keep confidential and not disclose to Operator details of ASM's business operations related to confidential business activities of other universities, colleges and athletic venues. ASM shall make all such matters available for examination at the principal office of ASM during regular business hours. ASM shall have the right, at any time within twelve (12) months after the end of each full or partial Fiscal Year during the Term to audit all of the books of account documents, records, returns, papers and files of the Operator relating to Advertising Revenues which may have been collected by the Operator during the previous Fiscal Year (such as Advertising Revenues from Existing Signage) and the Operator shall make all such matters available for examination at the principal financial office of the Operator during regular business hours. If any audit made shows the subject of the audit to be understated, appropriate adjustments will be made. Any such audits shall be at the sole expense of the party conducting the audit.

## **ARTICLE 9.** **Ownership of the System**

**SECTION 9.1. Ownership of the System.** Until the Second Term of this Agreement expires, or a Secured Party forecloses on its Security Interest, title to and ownership of the System shall be and remain with ASM. Upon expiration of the Second Term, title to and ownership of the System shall pass to the Operator.

**SECTION 9.2. Interests and Rights of Secured Creditor.** The Operator understands and agrees that ASM may have granted, may purchase the System subject to, or may hereafter grant a Security Interest in the System to one or more Secured Creditors of ASM. It is further understood and agreed by the Operator that ASM may grant to one or more Secured Creditors an interest in the rights granted to ASM under this Agreement, in ASM's rights under Advertising Contracts and in ASM's rights to receive Advertising Revenues. Except for the Operator's right to receive from ASM its Pro Rata Share, Guaranteed Payments and Football Payments, the Operator agrees to subordinate its interest in the System, this Agreement and in all Advertising Contracts to the Secured Interests of such Secured Creditors and agrees to execute and deliver such subordination agreements or other documents as ASM or its Secured Creditors may from time-to-time reasonably require for such purposes. ASM shall, upon the request of the Operator, give the Operator written notice of the identity, address and contact person at each Secured Creditor that has any interest in the System, this Agreement or in any Advertising Contracts. The Operator also agrees that it shall give to all Secured Creditors identified by ASM the same written notice and opportunity to correct defaults as the Operator is required to give ASM under this Agreement. The Operator shall not be liable for failure to give notice, but if the Operator fails to notify any Secured Creditor of a default hereunder, the time within which that Secured Creditor shall have the right to cure the default shall not commence to run until that Secured Creditor is notified of the default by the Operator. The Operator understands and agrees that the execution of an assignment of this Agreement by ASM, and the acceptance thereof by a Secured Creditor, shall never be deemed an assumption by that Secured Creditor of any of the obligations of ASM (unless the Secured Creditor shall expressly elect to assume those obligations).

**SECTION 9.3. Surrender of System.** Upon the termination of this Agreement for any reason prior to the expiration of the Second Term, the Operator shall surrender and redeliver the System to ASM in good order, condition and state of repair, ordinary wear and tear and casualty damage excepted. The Operator shall permit ASM or its agents to have access to the Venue for the purpose of removing the System and such removal shall be at ASM's sole expense. Although ASM and its agents shall take reasonable precautions to avoid doing unnecessary damage to the Venue in removing the System, ASM shall not be responsible for (i) damage that is necessary or that results from anything other than the negligence or willful misconduct of ASM or its agents in removing the System or (ii) returning the Venue to its condition prior to the installation of the System.



## ARTICLE 10.

### Casualties

**SECTION 10.1. Partial Damage.** If the System is partially damaged by fire or other casualty covered by ASM's insurance, ASM shall promptly restore the portions of the System originally constructed by ASM to substantially their condition immediately before the damage unless the terms of any security agreement entered into between ASM and a Secured Creditor requires ASM to take other actions.

**SECTION 10.2. Substantial Damage.** If the System is substantially damaged by fire or other casualty covered by ASM's insurance, this Agreement shall, except as hereafter provided, remain in full force and effect and ASM shall promptly restore the portions of the System to substantially their condition immediately before the damage. In case of substantial damage as the result of a risk not covered by ASM's insurance, or in the event any Secured Creditor has the right and causes ASM to apply the insurance proceeds to the repayment of ASM's obligations to such Secured Creditor rather than to restoration of the System, ASM shall likewise be obligated to restore the System as provided above unless within ninety (90) days after the casualty occurs, ASM gives written notice to the Operator of its election to terminate this Agreement.

## ARTICLE 11.

### Taxes

ASM shall pay South Carolina sales tax, if any, assessed on the value of the System. Except for South Carolina sales tax, Operator shall pay all Taxes.

## ARTICLE 12.

### Insurance

**SECTION 12.1. ASM's Insurance.** Until the expiration of the Second Term, or the termination of this Agreement for any reason, whichever occurs first, ASM shall keep the System insured against loss or damage by fire and against loss or damage by other risks covered by "extended coverage insurance," in amounts determined by ASM. The fire and extended coverage insurance on the System may be carried as part of ASM's master fire and extended coverage insurance policy. Upon request, ASM will provide certificates of insurance.

**SECTION 12.2. The Operator's Liability Insurance.** Until the expiration of the Term, or the termination of this Agreement for any reason, whichever occurs first, the Operator agrees to always maintain policies of public liability and property damage insurance under which ASM, Sony, any other Secured Creditor for which ASM has provided notice to the Operator, and the Operator are named as insureds, with contractual liability endorsements covering the agreement of the Operator to indemnify ASM as provided in this Agreement. Each policy shall provide that it cannot be amended, canceled or modified without thirty (30) days prior written notice to ASM, and a duplicate original or certificate evidencing such coverage shall be delivered to ASM no less than ten (10) days prior to the date the Operator commences occupancy of the Premises. The minimum limits of liability of such insurance shall be \$5,000,000 for injury (or death) to any one person, \$5,000,000 for injury (or death) to more than one person, and \$1,000,000 for damage to property. The Operator shall submit any proposed substitution or modification of insurance policies to ASM for ASM's approval not less than thirty (30) days prior to the proposed date of the substitution or modification.

**SECTION 12.3. The Operator's Insurance on Its Property.** Until the expiration of the Term or the termination of this Agreement for any reason, the Operator shall keep all its improvements, fixtures, merchandise, and equipment used in conjunction with the System insured against loss or damage by fire with the usual extended coverage endorsements. The Operator assumes all risk of damage to its own property arising from any cause whatsoever, including loss by fire, theft, or otherwise, unless occasioned by the negligence of ASM or ASM's agents.



**SECTION 12.4. Waiver of Subrogation.** ASM and the Operator agree that the party carrying insurance and suffering any loss covered by that insurance releases the other from all claims with respect to that loss, including claims with respect to the negligence of the other party. ASM and the Operator agree that their respective insurance companies shall have no right of subrogation against the other on account of any such loss.

**SECTION 12.5. Payment of Premiums for Increased Risk.** If the Operator uses the System, or conducts an activity in the Venue that causes the premiums due for the casualty insurance carried by ASM pursuant to Section 12.1 to increase, then any additional insurance premiums incurred by ASM as a result shall be payable separately by the Operator within ten (10) days after billing.

### **ARTICLE 13.** **Indemnity**

**SECTION 13.1. The Operator's Indemnity Agreement.** The Operator agrees to indemnify and hold ASM harmless to the maximum extent permitted under South Carolina law from all liability or claims on the part of the Operator, the Operator's agents or employees, or third parties, of whatever nature (a) arising from any act, omission, or negligence of the Operator or the Operator's contractors, licensees, agents, or employees, or arising from any accident, injury, or damage whatsoever caused to any person or to the property of any person, including that of the Operator or the Operator's agents or employees, occurring as a result of the use and operation of the System under this Agreement, or (b) arising from any accident, injury, or damage occurring in the Venue, where such accident, damage or injury results, or is claimed to have resulted, from an act or omission on the part of the Operator or the Operator's agents or employees. This indemnity agreement shall include all costs, expenses (including attorney's fees), and liabilities incurred in connection with any claim and the defense thereof. NOTE: University counsel has advised and ASM acknowledges that South Carolina law currently does not allow the Operator to indemnify ASM.

**SECTION 13.2. ASM Not Responsible for Operator Property.** The Operator will use the System at its own risk, and except for acts covered by casualty insurance carried by ASM or caused by the negligence of ASM or ASM's agents or employees, ASM shall have no responsibility or liability for (a) any loss or damage to fixtures, equipment or other property of the Operator or the Operator's employees, invites, or customers, or (b) any loss or damage that may be caused by persons in the Venue.

### **ARTICLE 14.** **Default by ASM**

**SECTION 14.1. ASM's Defaults.** If ASM fails to perform any of its obligations in accordance with this Agreement, ASM will not be considered to be in default unless ASM has received written notice from the Operator specifying ASM's nonperformance and has failed to correct the nonperformance within thirty (30) days after receipt of the Operator's notice (or in cases not involving payments to Operator required by Section 8.4, if reasonably necessary, within such additional time period as ASM is diligently attempting to correct the nonperformance). ASM will also be considered to be in default in the event that it files or initiates a bankruptcy proceeding.

**SECTION 14.2. Remedies of Operator.** Upon the occurrence of any event of default, the Operator may, immediately or at any time thereafter, without further demand or notice:

**14.2.1** Proceed by appropriate court action or actions or other proceedings at law to enforce performance by ASM of any and all covenants of this Agreement and to recover damages for the breach thereof;

**14.2.2** Terminate this Agreement; and



14.2.3 Exercise a first option to purchase the System at a price to be mutually agreed upon by the parties, or require ASM to remove the System at its sole cost and expense within sixty (60) days after the termination of the Agreement.

**SECTION 14.3. Exculpation of ASM.** ASM shall never be liable to the Operator for any indirect, special, or consequential damages.

**SECTION 14.4. Termination of Third Party Contracts.** Upon the occurrence of any event of default and the termination of this Agreement, it is understood and agreed that all contracts and agreements entered into by ASM with third parties pertaining to any venue subject to this Agreement and arising out of or resulting from the advertising, marketing, sponsorship, signage, pouring, naming or other rights granted by the Operator to ASM pursuant to this Agreement shall automatically terminate.

## ARTICLE 15.

### Default by the Operator

**SECTION 15.1. Operator Defaults.** If the Operator fails to perform any of its obligations in accordance with this Agreement, the Operator will not be considered to be in default unless the Operator has received written notice from ASM specifying the Operator's nonperformance and has failed to correct the nonperformance within thirty (30) days after receipt of ASM's notice (or if reasonably necessary, within such additional time period as the Operator is diligently attempting to correct the nonperformance).

**SECTION 15.2. Remedies of ASM.** Upon the occurrence of any event of default, ASM lawfully may, immediately, or at any time thereafter, without further demand or notice:

15.2.1. Proceed by appropriate court action or actions or other proceedings either at law or equity to enforce performance by the Operator of any and all covenants of this Agreement and to recover damages for the breach thereof;

15.2.2. Terminate this Agreement;

15.2.3. Either (i) demand that the Operator deliver the System forthwith to ASM at the Operator's expense at such place as ASM may designate or (ii) ASM and/or its agents may without liability or legal process, enter into any premises of or under control or jurisdiction of the Operator or any agent of the Operator where the System may be or by ASM is believed to be, and repossess all or any item thereof, disconnecting and separating all thereof from any other property and using all reasonable force necessary or permitted by applicable law so to do, the Operator hereby expressly waiving all further rights to possession of the System and all claims for injuries suffered through or loss caused by such repossession unless occasioned by the negligence of ASM or ASM's agents; and

15.2.4. ASM shall nevertheless, be entitled to recover immediately, as liquidated damages for loss of the bargain and not as a penalty, One Million and 00/100 dollars (\$1,000,000.00).

The provisions of this Section 15.2 shall be without prejudice to any rights given to the ASM by any applicable statute.

**SECTION 15.3. No Waiver.** Failure on the part of ASM to complain of any action or inaction on the part of the Operator, no matter how long the failure continues, shall never be a waiver by ASM of any of its rights. Further, no waiver of one provision of this Agreement by ASM shall be a waiver of any other provision, and a waiver at one time of a provision shall not be a waiver at any subsequent time of that provision. The consent by ASM to any action by the Operator requiring ASM's consent shall not waive or render unnecessary ASM's consent to any subsequent similar act. Failure on the part of the Operator to complain of any action or inaction on the part of the



ASM, no matter how long the failure continues, shall never be a waiver by the Operator of any of its rights. Further, no waiver of one provision of this Agreement by the Operator shall be a waiver of any other provision, and a waiver at one time of a provision shall not be a waiver at any subsequent time of that provision. The consent by the Operator to any action by ASM requiring the Operator's consent shall not waive or render unnecessary the Operator's consent to any subsequent similar act.

## **ARTICLE 16.**

### **Representations and Warranties of the Parties**

**SECTION 16.1. Representations and Warranties of ASM.** ASM does hereby represent and warrant to the Operator as follows:

16.1.1. ASM has all corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

16.1.2. The undersigned officer executing this Agreement is authorized to enter into this Agreement on behalf of ASM and has the authority to bind ASM to the terms of this Agreement.

16.1.3. This Agreement does not conflict with the terms of ASM's organizational documents or any agreement to which ASM is a party or by which ASM is bound.

**SECTION 16.2. Representations and Warranties of the Operator.** The Operator does hereby represent and warrant to ASM as follows:

16.2.1. The Operator has all corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

16.2.2. The undersigned officer executing this Agreement on behalf of the Operator is authorized to enter into this Agreement on its behalf and has the authority to bind the Operator to the terms of this Agreement.

16.2.3. This Agreement does not conflict with the terms of the Operator's organizational documents or any agreement to which the Operator is a party, by which the Operator is bound or which relates to the Venue.

16.2.4. The Operator possesses the sole and exclusive right to control and grant rights to exhibit signage within the Venue, to display Advertising Spots in the Venue and to enter into Corporate Marketing arrangements with respect to the Venue subject only to the rights granted by the Operator under the agreements for the Existing Signage and Existing Corporate Marketing. Upon request, Operator will provide evidence of conveyance from all tenants of the rights referenced in this paragraph 16.2.4.

## **ARTICLE 17.**

### **Relationship**

ASM shall never be construed to be a partner, joint venturer or associate of the Operator in the conduct of the Operator's business, nor shall ASM be liable for any debts incurred or obligations undertaken by the Operator in the conduct of the Operator's business. The Operator shall never be construed to be a partner, joint venturer or associate of ASM in the conduct of ASM's business, nor shall the Operator be liable for any debts incurred or obligations undertaken by ASM in the conduct of ASM's business except as expressly provided for herein upon the termination of this Agreement.



**ARTICLE 18.**  
**Miscellaneous Provisions Regarding Agreement**

**SECTION 18.1. Addresses and Notices.** Any notice related to this Agreement must be in writing, and may be given by depositing the notice in the United States mail, postpaid and certified, addressed to the party to be notified, with return receipt requested, by telecopier, by overnight carrier using a nationally recognized carrier or by delivering it in person to an authorized representative of that party. Notice deposited in the mail in the manner described above shall be effective three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. The addresses of the parties for purposes of notices shall be as follows:

If notice is to ASM:	Action Sports Media, Inc. One Center Court, Suite 200 Portland, Oregon 97227 Attn: Harry E. Hutt, Senior Vice President Telecopier Number: 503-736-2188
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With a copy to:	Michael V. Fennell Vice President/General Counsel Action Sports Media, Inc. One Center Court, Suite 200 Portland, Oregon 97227 Telecopier Number: 503-736-2188
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If notice is to the Operator:	John T. Moore Associate Athletic Director Rex Enright Athletic Center University of South Carolina Columbia, SC 29208 Telecopier Number: 803-777-0545
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With a copy to:	Walter H. Parham General Counsel 109 Osborne Administration Building University of South Carolina Telecopier Number: 803-777-9500
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Each party shall have the right at any time to change its address to any other address within the continental United States by giving at least fifteen (15) days written notice of such change to the other party.

**SECTION 18.2. Governing Law and Interpretation.** This Agreement is governed by the laws of the State of South Carolina. Each provision of this Agreement to be performed by ASM or the Operator shall be construed to be both a covenant and a condition.

**SECTION 18.3. Partial Invalidity.** If any provision of this Agreement is invalid or unenforceable and the invalid or unenforceable provision does not materially and adversely affect the rights of ASM or the Operator under this Agreement taken as a whole, the remainder of this Agreement shall not be affected, and every other provision shall be valid and enforceable to the fullest possible extent.

**SECTION 18.4. Successors and Assigns.** The Operator shall not (a) assign or in any other manner transfer this Agreement or any estate or interest therein; (b) mortgage, pledge, or encumber this Agreement or any estate or interest therein; (c) permit any assignment of this Agreement or any estate or interest therein by operation of law; (d) grant any license, concession, or other right of usage of the System; or (e) permit the use of the System by any parties other than the Operator, its agents and employees without first obtaining the consent of ASM, which consent will not be unreasonably withheld, delayed or conditioned. The obligations of the Operator under this



Agreement shall, without relieving the Operator of such obligations, be binding upon any party that may hereafter, during the Term of this Agreement, acquire any ownership interest in the Venue. ASM shall not sell or assign its interest in the System or in this Agreement in its entirety or for any portion of the remaining Term other than a sale or assignment to a "Permitted Assignee" (as herein defined) without first obtaining the consent of the Operator, which consent will not be unreasonably withheld, delayed or conditioned. The Operator's decision to approve or disapprove a proposed assignee or purchaser of the ASM's interest in the System or in this Agreement shall be based solely upon the financial and management capabilities of such proposed assignee or purchaser. For purposes of this Section 18.4, "Permitted Assignee" shall mean (i) Sony; (ii) any holder of a Security Interest in the System, any purchaser at a foreclosure sale; (iii) any person selected by a holder of a Security Interest in the System subsequent to a foreclosure sale, or its successors or assigns; (iv) any affiliated entity of ASM or (v) any entity which acquires and is the successor to all or substantially of ASM's business operations. Any attempted assignment by either party without first obtaining the required consent of the other party shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of ASM and the Operator.

**SECTION 18.5. Arbitration of Disputes.** Any dispute or claim which arises out of or which relates to this Agreement, or the interpretation or breach of this Agreement, shall be resolved in accordance with the then effective commercial arbitration rules of the American Arbitration Association. The venue for any such arbitration shall be in Columbia, South Carolina.

**SECTION 18.6. Attorney's Fees.** In case any suit or action or proceeding in bankruptcy court or arbitration is instituted by either party hereto arising out of this Agreement, the prevailing party in such action, including any appeal, shall be entitled, in addition to the cost and disbursements provided by statute, to reasonable attorneys fees as determined by the arbitrator or by the court on trial or appeal.

**IN WITNESS WHEREOF**, duly authorized representatives of ASM and the Operator have executed this Agreement effective the day and year written above.

**ACTION SPORTS MEDIA INC.**

By: Harry E. Hatt  
Name: HARRY E. HATT  
Title: FVP / COO

**OPERATOR: UNIVERSITY OF SOUTH CAROLINA**

By: Thomas L Stepp  
Name: Thomas L. Stepp  
Title: Secretary, University of South Carolina Board of Trustees

And: Michael B. McGee  
Name: Michael B. McGee  
Title: Director of Athletics



**EXHIBIT "A"**  
**Definitions**

The following terms shall have the meanings set forth below whenever used in this Agreement:

**Advertising Contracts.** Any contract or agreement entered into by ASM pursuant to this Agreement that relates to the sale of Advertising Spots, Venue Signage or Corporate Marketing.

**Advertising Revenue.** In each Fiscal Year, the sum of:

- (a) the gross amount of revenue collected from the sale of Advertising Spots (other than National Spots) displayed on the System and the Football System;
- (b) plus the gross amount of any revenue collected from the sale of Corporate Marketing excluding any such revenues which relate to National Spots;
- (c) plus the gross amount of any revenue collected from the sale of Venue Signage. In the case of multi-year sales agreements, the amount proportionate to the duration of the sales agreements shall be recognized as Advertising Revenue in each year of such agreement. In the case of the Four Corners program, whether or not the program is renamed or modified, four million dollars (\$4,000,000) of revenue, received from four sponsors who are designated by ASM as substantial supporters of the New Arena, shall be excluded from Advertising Revenue, as follows: Any revenue up to the \$4,000,000 level received from such sponsors prior to the opening of the New Arena shall be excluded. If ASM has received less than \$4,000,000 prior to the opening of the New Arena, revenue from sponsorship agreements which provide for annual payments over ten years shall be excluded each year, provided that such exclusion shall be limited to \$100,000 per sponsor per year or a total of \$4,000,000 for the program, whichever is less. ASM will allocate \$10,000 per year (or \$100,000 total) per sponsor to reduce the sponsor's expense for suite rental.
- (d) the Operator's Share of revenues collected from the sale of National Spots or from Corporate Marketing which relates to such National Spots;
- (e) plus revenues from isotonic beverage and water rights agreements per Section 7.7.
- (f) plus allocated signage revenues from pouring rights agreements, per Section 7.8
- (g) plus the gross amount of any revenue received from Existing Corporate Marketing or Existing Signage collected by ASM or the Operator;
- (h) plus the gross amount of any revenues received as a result of the use of the System by the Operator during commercial events produced by or for third parties, minus the reasonable direct expenses incurred by the Operator in operating the system during such commercial events;
- (i) minus any portion of such revenues payable, that is reasonable and customary, to any advertising agency on account of their fees in arranging for purchase of Advertising Spots, Venue Signage or Corporate Marketing;
- (j) minus other reasonable and customary expenses incurred by ASM in arranging for such Advertising Spot, Venue Signage or Corporate Marketing, such as fees to intermediate parties, extraordinary travel expenses and other unusual costs incurred in procuring Advertising Contracts;
- (k) minus expenses incurred by ASM in producing Programming; and minus a share of expenses incurred in producing National Spots, such share to be calculated in proportion to the Operator's Share of revenue in (d) above.
- (l) minus any refunds made by ASM for sales otherwise included in Advertising Revenue; and
- (m) minus the amount of any federal, state or local gross receipts, sales, luxury, property or excise tax on such sales which ASM is required to pay to any taxing authority as a result of the installation of the System or ASM's receipt of Advertising Revenue.

In the event that any Advertising Contract relates to Venue Signage or Corporate Marketing at not only the Venue but also at one or more locations other than properties of the Operator, Advertising Revenue under such Advertising Contract shall be allocated to this Agreement in accordance with the terms of the Advertising Contract or, if no allocation is made in such Advertising Contract, on the basis of rate-card prices less the discount applied to the Advertising Contract.