



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

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

Attachments

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

- (c) Except as to Colonial's failure to pay the Naming Rights Fee as described and provided for in Paragraph 11(b) above, ASM and/or the University may terminate this Agreement if (i) Colonial materially breaches any material term or condition of this Agreement so as to substantially deprive ASM and/or the University of the intended benefits of any such material provision, (ii) such breach continues for a period of sixty (60) days ("Cure Period") after ASM and/or the University gives written notice specifying the breach to Colonial; and (iii) Colonial does not substantially cure the breach within the Cure Period, except if Colonial is diligently pursuing the cure of the breach at the expiration of the Cure Period, then ASM and the University agree to forbear from terminating this Agreement until Colonial ceases to diligently pursue the cure of the breach and the breach remains uncured.
- (d) Colonial may terminate this Agreement if (i) ASM and/or the University materially breaches any material term or condition of this Agreement so as to substantially deprive Colonial of the intended benefits of any such material provision; (ii) such breach continues for a period of sixty (60) days ("Cure Period") after Colonial gives written notice specifying the breach to ASM and the University; and (iii) ASM and the University do not substantially cure the breach within the Cure Period, except if ASM and the University are diligently pursuing the cure of the breach at the expiration of the Cure Period, then Colonial agrees to forbear from terminating this Agreement until ASM and the University cease to diligently pursue the cure of the breach and the breach remains uncured.
- (e) (1) Colonial may terminate this Agreement at the conclusion of the seventh Contract Year (September 30, 2010) by providing written notice of termination to ASM and the University not later than August 1, 2009. If written notice of termination is not provided as required herein, the term of this Agreement shall continue through September 30, 2015.
- (2) In the event Colonial exercises its right to terminate this Agreement pursuant to Paragraph 11(e)(1) herein, the following provisions shall apply:
- (i) all rights, obligations and benefits of the parties shall continue through September 30, 2010; provided, however, if ASM and the University identify and contract with a new naming rights partner for the Arena following notice of termination of this Agreement from Colonial, the parties hereto may, upon mutual agreement, terminate this Agreement prior to September 30, 2010, and ASM or the University shall, within thirty (30) days after the effective date of termination, repay to Colonial any prorated amount

of the Naming Rights Fee for the Contract Year in which termination occurs based on a 365 day year;

- (ii) the University shall within sixty (60) days after the effective date of termination repay to Colonial any remaining amount of the Advance Payment made by Colonial not previously offset in accordance with Paragraph 3(d) herein; provided, however, such repayment obligation shall apply only if Colonial's decision to exercise its right to terminate this Agreement pursuant to Paragraph 11(e)(1) above results from ASM's and/or the University's repeated failure to timely provide the benefits to which Colonial is entitled under this Agreement such that Colonial reasonably determines it is not receiving the intended value for payment of the Naming Rights Fee;
- (iii) except as set forth in Paragraph 11(e)(2)(ii) above, the University shall have no obligation to refund to Colonial that portion of the Advance Payment that has not been applied to offset and reduce the annual Naming Rights Fee as set forth in Paragraph 3(d) herein.

12. Force Majeure. Neither party shall be in breach of this Agreement if either party is unable to perform as the result of an act of God, natural disaster, catastrophe, fire, labor dispute, lockout, strike, riot or civil commotion, act of public enemy, governmental act, regulation or rule, failure of technical facilities, a day of national mourning, emergency or other circumstance or event beyond the control of the parties to this Agreement.

13. Relationship of the Parties. The relationship of ASM, the University, and Colonial shall be that of independent contractors, and nothing herein or in any related document or representation shall be construed to create or imply any relationship of employment, agency, partnership or any other relationship other than that of independent contractors. ASM, the University, and Colonial acknowledge and agree that each is engaged in a separate and independent business and neither shall state, represent or imply any interest in or control over the business of the other.

14. Confidentiality. The parties agree that the terms of this Agreement shall be kept confidential, except as may be required by law, rule or regulation, or as may be reasonably necessary to their respective members, lenders, officers, directors, employees, accountants, lawyers or agents with a reasonable need to know such information in their representative capacities.

15. Applicable Law; Limitation of Damages.

- (a) This Agreement is subject to all present and future laws, ordinances, orders, directives, rules and regulations of the United States of America and the

State of South Carolina. Except as expressly set forth herein, in no event will ASM, the University or Colonial be liable for any damages, including, but not limited to, any direct, special, incidental or consequential damages arising out of or in connection with this Agreement or the performance thereof.

- (b) In the event ASM and/or the University terminates this Agreement pursuant to Paragraph 11(b) or 11(c) herein, the parties agree that the recovery of damages from Colonial shall be subject to the following:
 - (1) ASM and/or the University may seek to recover from Colonial an amount equal to the unpaid Naming Rights Fee (as set forth in Paragraph 3(a) herein) for the remaining Term of this Agreement (through September 30, 2015). The recovery of such damages shall be subject to ASM's and/or the University's obligation to take reasonable action to mitigate damages caused by Colonial's breach of this Agreement.
 - (2) Notwithstanding Paragraph 15(b)(1) and the mitigation obligation set forth therein, the parties agree that in no event shall ASM's and/or the University's damages be less than an amount equal to unpaid Naming Rights Fee (as set forth in Paragraph 3(a) herein) for the Contract Year in which Colonial's breach of this Agreement occurs plus the Naming Rights Fee (as set forth in Paragraph 3(a) herein) for the next Contract Year. The parties have bargained for and agreed to the foregoing minimum damage provision, giving consideration to the fact that breach of this Agreement by Colonial will cause ASM and/or the University to incur, among other things, administrative costs in obtaining an entity to replace Colonial as the naming rights holder for the Arena, and costs associated with removing and replacing all signage and advertising installed at University Venues or otherwise prepared pursuant to this Agreement, in addition to potential damage to ASM's and/or the University's reputation and the marketability of the Arena, which damages are difficult to determine fairly or adequately or with certainty. The parties further acknowledge that the foregoing is not, nor should it be construed to be, a penalty.
- (c) In the event Colonial terminates this Agreement pursuant to Paragraph 11(d), the parties agree that the recovery of damages from ASM and/or the University shall be subject to the following:
 - (1) Colonial may seek to recover from ASM and/or the University a total amount equal to the unpaid Naming Rights Fee (as set forth in Paragraph 3(a) herein) for the remaining Term of this Agreement (through September 30, 2015), plus any remaining amount of the

Advance Payment made by Colonial not previously offset in accordance with Paragraph 3(d) herein, such amount to be prorated for the Contract Year in which termination occurs based on a 365 day year. The recovery of such damages shall be subject to Colonial's obligation to take reasonable action to mitigate damages caused by ASM's and/or the University's breach of this Agreement.

- (2) Notwithstanding Paragraph 15(c)(1) and the mitigation obligation set forth therein, the parties agree that in no event shall Colonial's damages be less than an amount equal to unpaid Naming Rights Fee (as set forth in Paragraph 3(a) herein) for the Contract Year in which ASM's and/or the University's breach of this Agreement occurs plus the Naming Rights Fee (as set forth in Paragraph 3(a) herein) for the next Contract Year. The parties have bargained for and agreed to the foregoing minimum damage provision, giving consideration to the fact that breach of this Agreement by ASM and/or the University will cause Colonial to lose the benefits associated with highly visible corporate signage and advertising at the Arena and other University Venues, and other sponsorship benefits that are not readily replaceable, which damages are difficult to determine fairly or adequately or with certainty. The parties further acknowledge that the foregoing is not, nor should it be construed to be, a penalty.

16. Cumulative Remedies. Except as otherwise and specifically contemplated by this Agreement, all rights and remedies of ASM, the University, and Colonial shall be cumulative and none shall exclude any other right or remedy at law and/or at equity.

17. Waiver. Failure to enforce any term or condition of this Agreement will not constitute a waiver of any such term or condition.

18. Representation and Warranties.

- (a) ASM hereby warrants and represents to Colonial and the University as follows: (i) ASM has all the corporate power and authority to enter into this Agreement, and to perform its obligations hereunder; (ii) 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; and (iii) 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.
- (b) The University hereby warrants and represents to Colonial and ASM as follows: (i) the University has all the corporate power and authority to enter into this Agreement, and to perform its obligations hereunder; (ii) the undersigned officer executing this Agreement is authorized to enter into this Agreement on behalf of the University, and has the authority to bind the

University to the terms of this Agreement; and (iii) this Agreement does not conflict with the terms of the University's organizational documents or any agreement to which the University is a party or by which the University is bound.

- (c) Colonial hereby warrants and represents to ASM and the University as follows: (i) Colonial has all the corporate power and authority to enter into this Agreement, and to perform its obligations hereunder; (ii) the undersigned officer executing this Agreement is authorized to enter into this Agreement on behalf of Colonial, and has the authority to bind Colonial to the terms of this Agreement; and (iii) this Agreement does not conflict with the terms of Colonial's organizational documents or any agreement to which Colonial is a party or by which Colonial is bound.

19. Arbitration. Any dispute or claim between the parties hereto arising out of or that 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 and location for any such arbitration shall be in Columbia, South Carolina. Judgment of any arbitration award may be entered by any court of competent jurisdiction.

20. Attorney Fees. In the event any suit, action or arbitration proceeding is brought or a bankruptcy proceeding is initiated (including, without limitation, any appeals of the foregoing) to enforce or interpret any of the provisions of this Agreement, or which is based thereon, the prevailing party shall be entitled to reasonable attorneys' fees in connection therewith. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the court(s), including any appellate court, or arbitrator(s) in which such matter is decided.

21. Notices. Any notice related to this Agreement must be in writing, and may be given by (a) depositing the notice in the United States mail, postpaid and certified, addressed to the party to be notified, with return receipt requested; (b) overnight carrier using a nationally recognized carrier; or (c) delivering the notice 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 deposited. Notice given in any other manner described above 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: Ralph McBarron

With a copy to: Michael V. Fennell
Vice President/General Counsel
Action Sports Media Inc.
One Center Court, Suite 200
Portland, Oregon 97227

If notice is to the University: Dr. Michael B. McGee
Director of Athletics
Rex Enright Athletic Center
University of South Carolina
Columbia, South Carolina 29208

With a copy to: Walter H. Parham, Esquire
General Counsel
University of South Carolina
109 Osborne Administration Building
Columbia, South Carolina 29208

If notice is to Colonial: Colonial Life & Accident Insurance Company
1200 Colonial Life Blvd.
Columbia, South Carolina 29210
Attn: D. Thomas Bise

With a copy to: L. Kennedy Boggs, Esquire
Vice President and Managing Counsel
Colonial Life & Accident Insurance Company
1200 Colonial Life Blvd.
Columbia, South Carolina 29210

22. Assignment.

- (a) This Agreement may not be assigned or transferred in whole or in part without the prior written consent of the other parties. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the permitted assigns of the parties.
- (b) Notwithstanding Paragraph 22(a) above, ASM shall be permitted to assign this Agreement to a Permitted Assignee without first obtaining the consent of the University or Colonial. For purposes of this Paragraph 21, "Permitted Assignee" shall mean (i) Sony; (ii) any holder of a security interest in the Video Screen System ("System") installed by ASM in the Arena, or 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 all of ASM's business operations.

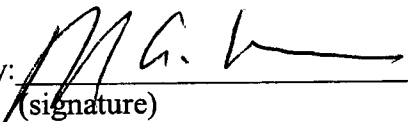
23. Successor to ASM. In the event the MSA between ASM and the University shall terminate prior to the expiration or termination of this Agreement, then the University agrees that any successor to ASM that acquires the Athletics Department's marketing services rights shall be subject to the terms and conditions of this Agreement.

24. Entire Agreement. As between ASM and the University, this Agreement is subject to the terms and conditions of the MSA between ASM and the University, which is incorporated herein by reference. Except for the MSA, the entire agreement between ASM, the University, and Colonial pertaining to the subject matter of this Agreement is set forth in this Agreement, including Exhibit A attached hereto. This Agreement may not be modified or amended except by a writing duly executed by all of the parties. This Agreement supersedes any and all prior agreements and understandings between ASM, the University, and Colonial.

25. Counsel. Each party has been represented by counsel or has had the opportunity to be represented by counsel in connection with the negotiation and preparation of this Agreement. Each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including, without limitation, any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party who drafted it.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the dates below indicated.

ACTION SPORTS MEDIA INC.

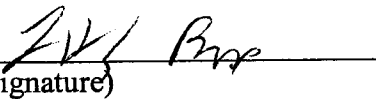
By: 
(signature)

RALPH MCBARROW
(print name)

Its: CEO
(title)

Date: 3-3-04

**COLONIAL LIFE & ACCIDENT
INSURANCE COMPANY**

By: 
(signature)

L. Kennedy BOGGS
(print name)

Its: Vice President + Managing Counsel
(title)

Date: 10/30/03

UNIVERSITY OF SOUTH CAROLINA

By: Thomas L Stepp
(signature)

THOMAS L. STEPP
(print name)

Its: SECRETARY, BOARD OF TRUSTEES
(title)

Date: 10-29-03

And: Michael B. McGee
(signature)

MICHAEL B. MCGEE
(print name)

Its: DIRECTOR OF ATHLETICS
(title)

Date: _____

Approved by the Executive Committee of the University of South Carolina Board of Trustees on behalf of the Board of Trustees on October 7, 2003.

Thomas L Stepp
Thomas L. Stepp, Secretary
USC Board of Trustees

EXHIBIT A

Additional Sponsorship Benefits

A. Exterior Arena Signage

ASM and the University will use their reasonable efforts to remove all existing Arena-identifying exterior signage and to install all required new signage prior to the start of the regularly scheduled 2003 basketball season, but not later than December 1, 2003, subject to manufacturing and delivery schedules outside the control of ASM and the University. All such signage will be produced and installed at the expense of the Arena and will include the Colonial Center name and/or logo. Signage will be placed in or on the following locations:

1. Exterior fascia on main entrance facade of the Arena.
2. Any Arena marquee.
3. Above (main entrance) or adjacent to all points of Arena entry.
4. Any traffic directional signs relating to the Arena, subject to the approval of any governmental entity having jurisdiction over such signs.
5. Parking lot signs in all parking lots owned or controlled by the University that service the Arena, subject to the approval of any governmental entity having jurisdiction over such signs.

B. Interior Arena Signage and Recognition

ASM and the University will use their reasonable efforts to remove all existing Arena-identifying interior signage and to install all required new signage prior to the start of the regularly scheduled 2003 basketball season, but not later than December 1, 2003, subject to manufacturing and delivery schedules outside the control of ASM and the University. All such signage will be produced and installed at the expense of the Arena and will include either the Colonial Center name and/or logo, or Colonial's name and/or logo, as set forth below. Signage will be placed in or on the following locations:

1. Colonial Center name and/or logo will be placed on-court, along and within the sidelines of both sides of the basketball court.
2. Colonial Center name and/or logo will be placed on the top of all four sides of the center-hung scoreboard.
3. Colonial's name and/or logo will appear on two (2) static panels on the upper deck fascia, one (1) of which shall be proximate to each baseline of the basketball court.
4. Colonial Center name and/or logo will appear on rib padding of both basketball goal backboards, or on both basketball goal standards.