



# 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

- 2.3 Media Sponsorship Fees.** The Parties agree that Fifty-Thousand Dollars (\$50,000) of the annual Sponsorship Fees provided under Section 2.1 will be allocated by GSP to support Sponsor's sponsorship of the University Coaches' television and radio shows. GSP shall make such payments directly to the media company selected by University to provide the University Coaches' television and radio programs. Such funding will be guaranteed during the Term, unless University and Sponsor mutually agree to a different media program.
- 2.4 Payments Exclusive Consideration.** University acknowledges that the consideration to be paid to it in return for the rights granted by University under this Agreement will be paid by GSP to University pursuant to a separate agreement between GSP and University. University and GSP each agree that the payments and other consideration described in this Section 2 are the sole consideration due for the rights granted to Sponsor under this Agreement, and no other fees or consideration will be charged to Sponsor.
- 2.5 Payments to ASM.** ASM acknowledges that the consideration to be paid to it in connection with the performance of its obligations under this Agreement will be paid by GSP to ASM pursuant to the MSA or other separate agreement between ASM and GSP and/or ASM and University. ASM acknowledges and agrees that Sponsor shall have no liability to ASM, and ASM shall have no recourse against Sponsor, for any consideration that is or may otherwise be due by ASM to GSP in connection with the performance of its obligations under this Agreement.

### **3. Beverage Pricing; Approved Cups; Bottles**

- 3.1 Beverage Purchases.** University acknowledges that it employs a third party to manage or operate food and Beverage operations (the "**Concessionaire**") at the Athletics Facilities. University agrees that it is required to cause Concessionaire to purchase from Bottler (for itself or as Company's agent), and Bottler (for itself or as Company's agent) will sell to Concessionaire, all of Concessionaire's requirements for Beverages at the Athletic Facilities, except for Approved Cups and lids. Those purchases will be made at prices and on other terms as set forth in Company's then current agreement with Concessionaire. If University engages any new Concessionaire(s) to operate at the Athletics Facilities after the Effective Date of this Agreement, University agrees to provide Company with thirty (30) days written notice prior to the effective date of such contract. Except as otherwise provided herein, Company will separately negotiate terms for Beverage prices, equipment and service with such Concessionaire. Should University decide to manage or operate food and Beverage operations on its own, University will purchase from Bottler all requirements for Beverages at the Athletic Facilities, except for Approved Cups and lids, at the pricing mutually agreed upon by University and Bottler at the then-current time.
- 3.2 Approved Cups.** The cups in which Beverages will be sold at the Athletics Facilities are referenced herein as "**Approved Cups**" and are more specifically defined in **Exhibit A**.

### **4. Beverage Equipment**

- 4.1 Loan of Post-Mix Equipment.** Company will lease to Concessionaire approved dispensing equipment reasonably necessary to enable Concessionaire to dispense a quality fountain Beverage on terms as set forth in Company's then current agreement with Concessionaire. If

University engages any new Concessionaire(s) to operate at the Athletics Facilities after the Effective Date of this Agreement, University agrees to provide Company with thirty (30) days written notice prior to the effective date of such contract. Except as otherwise provided herein, Company will separately negotiate terms for equipment with such Concessionaire. Should University decide to manage or operate food and Beverage operations on its own, University will lease such equipment directly from Company.

Unless otherwise agreed to with Concessionaire or University in writing:

- (A) where permitted by law, Company will lease such equipment without charge during the Term;
- (B) any deposits for CO<sub>2</sub> cylinders will be at the discretion of the Bottler and CO<sub>2</sub> deposits will be invoiced by and payments made directly to the Bottler;
- (C) no ice makers, water filters or frozen carbonated beverage equipment will be provided;
- (D) any equipment provided by Company under the Agreement will at all times remain the property of Company;
- (E) the standard lease terms, attached hereto as **Exhibit I**, are hereby made a part of the Agreement;
- (F) if there is a conflict between the terms and conditions of Company's standard lease agreement and this Agreement, the terms and conditions of this Agreement shall govern;
- (G) Company shall be responsible for maintaining, repairing and replacing all required dispensing equipment as needed (such equipment consistent with Company's quality standards for such types of equipment) without charge;
- (H) maintenance and repair as opposed to replacement of Company's fountain equipment will be performed by Company wherever practical;
- (I) the equipment will be made available for return in good condition, reasonable wear and tear excepted, upon the expiration or termination of this Agreement; and
- (J) at the end of the Term, the Company shall have the right to remove all equipment from the Athletic Facilities at no expense to University.

#### **4.2 Intentionally Left Blank.**

#### **4.3 University's Equipment Obligations.** With respect to the equipment described in this Section 4, University will and will cause Concessionaire to:

- (A) upon the equipment owner's request, execute or authorize UCC financing statements or other documents evidencing proper ownership of the equipment; and
- (B) refrain from removing equipment from its location at the Athletics Facilities unless University receives written consent of the equipment's owner; and

- (C) refrain from encumbering the equipment or permit any attachment to it, unless authorized to do so by the equipment's owner; and
- (D) reimburse Company for any loss of or damage to the post-mix equipment, except for reasonable wear and tear; and
- (E) reimburse Bottler for any loss of or damage to any equipment owned by or the responsibility of Bottler, except for reasonable wear and tear.

**4.4 Post-Mix Equipment Service.** Company will provide Concessionaire with mechanical repair service and routine maintenance for post-mix equipment on terms as set forth in Company's existing agreement with Concessionaire.

**4.5 Intentionally Left Blank.**

**4.6 Limitation.** Sponsor will not be liable to University or Concessionaire for damages of any kind arising out of delays in providing service to equipment at the Athletics Facilities, provided however that Sponsor shall make reasonable and timely efforts to repair or replace equipment to prevent such delay.

## **5. Beverage Rights**

Each of the Rights Holders and University grants Sponsor the following exclusive Beverage availability rights and Beverage merchandising rights:

**5.1 Beverage Availability.** Except as provided by Section 5.3 of this Agreement, no Competitive Products shall be sold, dispensed, or served at all or any part of Athletics Facilities for any and all events, athletic and non-athletic, held at the Athletics Facilities during the Term. All Company Beverages sold, dispensed, or served at Athletics Facilities must be bought from Bottler, either directly or through Bottler as Company's agent. University will make Company Beverages available for sale whenever concessions are offered at Athletics Facilities in all package forms, through fountain dispensing, hawking (subject to Section 5.2(C) herein) or any other means agreed upon by Sponsor and University.

University acknowledges that Bottler may sell to Concessionaire, and Concessionaire may sell at the Athletics Facilities, Beverages in 20 oz. plastic bottles ("**Bottles**"). Company, Bottler and University agree that if during any event held at an Athletics Facility, the spectators throw Bottles onto the playing field or surface and thereby disrupt the athletic event or otherwise make use of the Bottles so as to endanger players, officials or other spectators, University may, in its reasonable discretion, direct Concessionaire to suspend the sale of Bottles during such event. Company, Bottler and University further agree that the University may suspend the sale of Bottles at future events at the Athletics Facilities if the University, in its reasonable discretion, and after first consulting with Bottler and Sponsor regarding alternate packaging options, determines that such action is necessary to protect the integrity of such future events or the safety of the players, officials or spectators.

**5.2 Beverage Merchandising.** The exclusive right to merchandise Company Beverages at all Athletics Facilities, including the following specific rights:

- (A) **Point-of-Sale Advertising.** Materials promoting Company Beverages at the point of sale must be clearly visible to the purchasing public and must be displayed in a manner and location acceptable to Sponsor and reasonably agreed to by University.
- (B) **Concession and Menuboard Advertising.** Trademarks of Company Beverages must be prominently listed on the menuboards of all food and refreshment outlets and will be provided by a third party at no cost to University.
- (C) **Approved Cups; Beverage Hawking.** All Beverages served, sold, or dispensed at the Athletics Facilities must be done so in Approved Cups (except as provided in Section 5.3 below), or in Company's packaging or in promotional containers designed by Company or approved in writing by Company, and approved by University for use in the Athletics Facilities. In the event that the University and Concessionaire determine that hawking is worthwhile and appropriate for a given event within the Athletic Facilities, then Company Beverages must be hawked in the stands during all such events.
- (D) **Alternative Distribution.** University will sell Beverages using only Company-trademarked materials, such as hawking trays, kiosks, themed mobile/push carts and themed umbrellas (i.e., at point of sale), if and to the reasonable extent provided by Sponsor at Sponsor's sole cost.

**5.3 Permitted Exception for Other Beverages.** University may serve, sell or dispense the following drinks at the Athletics Facilities:

- (A) University may serve, sell or dispense unbranded fresh squeezed juices, unbranded tap water and hot coffee or hot tea, fresh brewed on the premises. Such coffee and tea drinks must be made available in unbranded cups, with the exception of Starbucks coffee.
- (B) University represents and warrants that each of the Rights Holders and University have an agreement with PepsiCo Inc., under which the Gatorade brand has the exclusive right to make "Gatorade" brand sports drinks available only to players, coaches, sideline personnel and other staff on the sidelines and in the locker rooms at the Athletics Facilities and at away games, to exclusively place such items as coolers, ice chests, drinking cups, and towels in the sideline areas at University's home and away games, and to exclusively display Gatorade promotional materials in the sideline areas.
- (C) **Sports Nutritional Beverage Exception.** Notwithstanding anything in this Agreement to the contrary, University Athletics may procure, directly or indirectly, throughout the Extended Term of this Agreement, a Sports Nutritional Beverage Competitive Product selected by University Athletics provided, however, that University Athletics acknowledges and agrees that such Sports Nutritional Beverage Competitive Product shall be made available for consumption only by the players, coaches, sideline personnel and other staff on the sidelines and in the locker rooms at the Athletics Facilities and shall not be made available or resold to the general public and shall not be advertised or promoted in any way whatsoever at any of the Athletics Facilities. During the Extended Term of this Agreement, University Athletics agrees not to enter into any contracted agreement with any provider of a Sports Nutritional

Beverage Competitive Product for availability or marketing rights and agrees that no marks or logos for any Sports Nutritional Beverage Competitive Product will be publicly displayed (except on individual containers of such Sports Nutritional Beverage Competitive Products consumed on the sidelines), nor will such Sports Nutritional Beverage Competitive Product be marketed, advertised, promoted, or sampled at the Athletics Facilities, or otherwise in connection with the University, the Athletics Facilities or the University Marks. The Parties acknowledge and agree that Sponsor may make available and provide samples of any Company Sports Nutritional Beverage, including Powerade Protein Milk, to University throughout the Extended Term, and University Athletics agrees to make such Company Sports Nutritional Beverages available at the Athletics Facilities for consumption by the players, coaches, sideline personnel and other staff to the same extent that other Sports Nutritional Beverage Competitive Products are made available.

(D) Intentionally Left Blank.

(E) Intentionally Left Blank.

(F) University will hold no more than three (3) concerts per Agreement Year in the Colonial Life Arena, and no more than one (1) concert per Agreement Year in the Williams-Brice Stadium, sponsored by any Competitive Product. In order for the University to allow such a concert in either the Colonial Life Arena or Williams-Brice Stadium, the concert must meet the following requirements: (a) it must be sponsored by such Competitive Product under a sponsorship agreement with the owner or operator of the subject event; (b) it must be conducted on a national basis (i.e., as part of a tour); and (c) the sponsorship agreement referred to in “(a)” above must require, as a pre-condition for the Athletics Facility to host the concert, on-site advertising and/or promotion (but not sampling or availability) for such Competitive Products (“**Excepted Events**”). The exclusive rights of Sponsor shall not be affected during an Excepted Event except as specifically set forth in this Section 5.3(F). If necessary, Sponsor will consider in good faith additional, nationally sponsored competitive events at the request of University, however, Sponsor will approve or disapprove of additional Excepted Events at its sole discretion.

## 6. Sponsorship and Trademark Rights

Each of the Rights Holders and University grants Sponsor the following exclusive sponsorship and trademark rights:

6.1 **General Sponsorship Designation.** Sponsor may promote the fact that Sponsor is a sponsor of University Athletics, Athletic Facilities and Teams and that Company Beverages are available at the Athletics Facilities. This promotion may occur in advertising (including, television, radio, print, internet and all other media, whether now or hereafter known), on packaging (including, without limitation, cups and containers), and at the point of sale of any Company Beverages. For example, Sponsor may refer to itself in any of Sponsor’s marketing, advertising or promotional materials as “sponsor” of University Athletics, Athletic Facilities and Teams, and refer to any Company Beverage in any of Sponsor’s

marketing, advertising or promotional materials as the “official” or “exclusive” Beverage of University Athletics, the Athletics Facilities or the Teams.

## **6.2 License to Use University Marks.**

- (A) **Grant of License.** Subject to University’s approval rights in Section 8.2, University grants Sponsor an irrevocable, license during the Term to use the University Marks throughout the United States -- on a royalty-free basis (except as set forth hereinafter in Section 6.2(C)) for the purposes of promoting Company Beverages solely in connection with University Athletics. No other person or entity shall be granted license or sublicense to use University Marks for the purpose of promoting Beverages in connection with University Athletics. Sponsor may use the University Marks in or on all of Sponsor’s advertising, promotional and packaging materials and activities, which include -- for all purposes of this Agreement -- point-of-sale materials; cans, bottles, commemorative cans or bottles, can/bottle wraps and all other forms of packaging; broadcast, print, internet, electronic and all other forms of media, whether now or hereafter known; and merchandise.
- (B) **Use With Customers.** Subject to University’s approval rights in Section 8.2, Sponsor may use the University Marks in joint advertising and promotions with Sponsor’s customers and display the University Marks with its customers’ trademarks, logos and branded products in or on all advertising, promotional and packaging materials and activities, so long as the University Marks appear with Sponsor’s trademarks, the customer is not depicted as a sponsor of University Athletics or in such a way as to imply that University Athletics endorses the customer, and such advertising and promotions are not exhibited or displayed in the Athletic Facilities. Because the royalties and license fees are included in the Sponsorship Fees to be paid to GSP under this Agreement and each of ASM and University has been or will be compensated by GSP under separate agreements, neither University, ASM nor GSP shall charge Sponsor or its customers a royalty or license fee for using the University Marks as permitted under this Agreement.
- (C) **Use on Merchandise.** Subject to University’s approval rights in Section 8.2, Sponsor may create merchandise bearing trademarks of Company Beverages together with any of the University Marks. Sponsor will not pay any royalties to University for this merchandise, so long as it is distributed in connection with Company Beverages free of charge. University agrees that royalties will not apply in any circumstances to any of the following that bear University Marks: cups; vessels; cans, bottles, or commemorative cans or bottles, containing Company Beverages; and advertising or promotional materials (unless such promotional materials are offered for sale). Except for the merchandise set forth in this Section 6.2(C), the sale of any merchandise bearing University Marks shall be subject to the University’s trademark and licensing program, including applicable royalty fees.

## 7. Promotional and Advertising Rights

Each of the Rights Holders and University grants Sponsor the following exclusive promotional and advertising rights:

**7.1 Promotional Rights.** Each of the Rights Holders and University grants Sponsor the exclusive right to promote Company Beverages during the Term with respect to University Athletics, the Teams, and the Athletics Facilities.

**(A) General.** Subject to University's approval rights in Section 8.2, the Rights Holders' approval rights as they relate to a venue (not a promotion away from the University's campus) and the merchandising rights set forth in Section 6.2(C) herein, Sponsor may engage in promotional activities in order to establish and promote Sponsor's sponsorship association with University Athletics, the Teams, and the Athletics Facilities. These promotional activities may include, for example, offering commemorative bottles or cans or souvenir cups with University Marks, for sale at retail outlets located at the Athletics Facilities and/or at any location outside the Athletics Facilities.

**(B) Activities with Customers.** The promotional activities permitted under this Article 7 may be conducted jointly with Sponsor's customers, who may be identified in or on advertising, promotional and packaging materials with their respective trademarks, logos, and branded products, as well as generally identified as participants in the promotion, so long as Sponsor's trademarks are included, the customer is not depicted as a sponsor of University or University Athletics or in such a way as to imply that University Athletics endorses the customer, and such advertising and promotions are not exhibited or displayed in the Athletic Facilities. Sponsor shall use reasonable efforts to provide University Athletics' exclusive sponsors in the grocery store channel only with a right of first refusal to participate in such promotional activities for the grocery store trade channel in which the University Athletics' sponsor has exclusive rights with University Athletics. Additionally, should such sponsor agree to participate in such advertising and promotions and Sponsor, in its sole and good faith discretion, determines that such sponsor failed to actively participate in, or perform the obligations required of such sponsor with respect to, such promotional activities, Sponsor shall not be required, and shall have no obligation, to provide such sponsor a right of first refusal with respect to any future promotional activities, and Sponsor shall be free to conduct such promotional activities with Sponsor's other customers in that same grocery store trade channel, provided that such promotional activities are not exhibited or displayed in the Athletic Facilities. Should such sponsor decline to participate in such promotional activities with Sponsor, Sponsor shall be free to conduct such promotional activities with Sponsor's other customers in that same grocery store trade channel, provided that such promotional activities are not exhibited or displayed in the Athletic Facilities.

**7.2 Consumer Surveys.** With University prior approval as to location and time, Sponsor may -- at Sponsor's expense -- conduct consumer surveys and Beverage sampling at the Athletics Facilities relating to Company Beverages and advertising. University may withhold approval in its reasonable discretion.



- 7.3 **Signage for Products.** Sponsor is entitled to have permanent signage at the Athletics Facilities for Company Beverages, as described in **Exhibit F**.
- 7.4 **Print Advertising.** University will provide Sponsor with print advertising opportunities, as described in **Exhibit F**.
- 7.5 **Internet.** University will acknowledge Sponsor's sponsorship and Company Beverage availability in the Athletic Facilities on its "Gamecocks" Athletics home page on the University's website via banner or button and a hyperlink command to a Sponsor-designated website. Company may also develop a special page acknowledging Company Beverage sponsorship within the "Gamecocks Athletics pages of the University's website."
- 7.6 **Video Advertising & Digital Content.** Sponsor is entitled to video advertising, as described in **Exhibit F**. Additionally, University will provide Sponsor with digital content, which may include video highlights of University events, audio content of University theme songs, screensavers, etc. for Sponsor to replicate and use as promotional premiums, including for use as rewards on Sponsor's "My Coke Rewards" loyalty program. University will make best efforts to clear any rights that may be required for such use, and will refresh the digital offerings periodically.
- 7.7 **Tickets and Hospitality Rights.** University will provide Sponsor with the types and quantities of tickets and other entertainment rights described in **Exhibit F**. University will deliver, as soon as they become available, all tickets for each event to a single location as designated by Sponsor, addressed in care of the person specified designated by Sponsor from time to time.
- 7.8 **Miscellaneous Promotional Rights.** University grants the following promotional rights to Sponsor during each Agreement Year: (i) rights to the Jr. Gamecock Fan Club (at least one mutually agreed upon event), (ii) "Pass with Honors" (at least one mutually agreed upon event), (iii) Gamecocks Experience Tailgate Party (at least one mutually agreed upon event), (iv) three mutually agreed upon on-court promotions at the Colonial Life Arena beginning in the 2003-2004 season, (v) two mascot appearances, subject to availability, and (vi) a premium giveaway (at least one per season at mutually agreed upon games) for each of the varsity football Team and the men's and women's varsity basketball Teams.
- 7.9 **Merchandise.** GSP will provide to Sponsor forty-eight (48) items of merchandise selected and determined by GSP in its reasonable discretion (not autographed).

## 8. Cooperation and Approvals

8.1 **General Cooperation.** University will reasonably cooperate with Sponsor's activities – off-Campus – designed to promote Sponsor's sponsorship association with University Athletics, the Teams, the Athletic Facilities and the University Marks, provided, however, that the University's cooperation under this section would not require University to expend any money.

### 8.2 University Approval Rights.

(A) **Promotions.** University has the right to approve in advance the following:

- (1) the concept for any promotional activity with respect to University Athletics and/or Teams; and
- (2) any materials that display any University Marks.

But Sponsor has the right at any time to use the Designations (for example, "Official Sponsor of University Athletics and/or Teams") without University's prior approval unless such Designations will be made in association with customers of Sponsor and further subject to the merchandising rights granted in Section 6.2(C) herein.

- (B) Deemed Approval.** If University does not respond to a written submission for approval within ten (10) business days after receiving it, then Sponsor may send notice to University that Sponsor has not received University's response. If University still does not respond within forty-eight (48) hours of the sending of that notice via facsimile, Sponsor is entitled to treat the submission as approved.
- (C) Withholding Approval.** University will not unreasonably withhold approval of a submission. Withholding approval is considered unreasonable unless it is based on:
- (1) University's determination that University Marks have been used incorrectly in a technical sense (such as improper color or other trademark nonconformity); or
  - (2) University's reasonable determination that Sponsor's proposed promotional activity or use of University Marks will reflect negatively on University or University Athletics.
  - (3) Notwithstanding the foregoing, University reserves the right to withhold approval of any merchandise bearing University Marks in its sole discretion.

## **9. Exclusive Association; No Competitive Beverages**

- 9.1 No Competitive Products at the Athletics Facilities.** University and the Rights Holders covenant that no Competitive Products will be sold, dispensed, served, or sampled anywhere at the Athletics Facilities, except as set forth in Section 5.3.
- 9.2 No Competing Trademark Visibility.** University and the Rights Holders covenant that they shall not individually or collectively grant any form of trademark visibility or promotional or advertising rights to Competitive Products at Athletics Facilities, except in connection with the lease or license of Athletics Facilities or areas within the Athletics Facilities for private use or as permitted under Section 5.3(F). University and the Rights Holders further covenant that there shall be no association or appearance of an association between Competitive Products, on the one hand, and Teams, University athletics, and Athletics Facilities, on the other hand, except as expressly permitted under Section 5.3.
- 9.3 No Promotion or Advertising of Competitive Products.** University and the Rights Holders covenant that no permanent or temporary advertising, signage, or trademark visibility for Competitive Products is displayed at the Athletics Facilities, except as set forth in Section 5.3(A)-(F) or during private use and except in connection with the lease or license of Athletics Facilities or areas within the Athletics Facilities for private use.