



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

- 9.4 No Competitive Use of University Marks.** University and the Rights Holders covenant that they shall not individually or collectively grant any rights to use the University Marks or Designations to third parties (such as Broadcasters) in a way that permits those third parties to use those rights in association with Competitive Products in connection with University Athletics, Teams and Athletics Facilities. However, Broadcasters may sell in-game spot advertising for Competitive Products, so long as the spots do not display or refer to the Designations or University Marks.
- 9.5 No Third-Party Beverage Promotions.** University and the Rights Holders covenant that they shall not grant any third party the right to conduct promotions involving Beverages or Beverage containers, including promotions that relate primarily to non-Beverage items but involve a Beverage -- on a branded or unbranded basis -- as a purchase requirement or promotional fulfillment. This provision applies even if the promotion involves a Company Beverage, unless Sponsor participates in the promotion
- 9.6 Steps to Stop Ambush Marketing.** Except as authorized in this Agreement, if any third party, including, without limitation, University's media partners, Conferences, Bowls and others with whom University has ongoing relationships, tries or attempts, without Sponsor's consent, to associate Competitive Products with University Athletics, Athletic Facilities or Teams -- or tries or attempts to suggest, by implication or otherwise, that Competitive Products are so associated -- University and the Rights Holders will take commercially reasonable steps to stop such "ambush marketing" activity and protect Sponsor's exclusive association.

These steps may include the following, as circumstances warrant.

- (A) complaining in writing to the violating Party;
- (B) issuing private cease and desist letters; and
- (C) instituting legal action (at University's cost), where appropriate, including suits for temporary and permanent injunctive relief.

Any Party learning of ambush marketing will notify the other Parties of such activity immediately upon learning thereof.

10. Intentionally Left Blank.

11. Representations, Warranties, and Covenants

11.1 By University. University represents, warrants, and covenants to Sponsor the following:

- (A) **Authority.** It has full power and authority to enter into this Agreement and to grant Sponsor the rights described in it.
- (B) **Binding Obligation.** It has obtained all necessary approvals for its execution, delivery, and performance of this Agreement. It has duly executed and delivered this Agreement, which is now its binding legal obligation.

(C) Right to License University Marks. It has the exclusive right to license the University Marks to Sponsor.

(D) No Conflicting Agreements.

(1) It has not entered into -- and during this Agreement's Term will not enter into -- either of the following:

(a) any agreement that would prevent it from complying with this Agreement;
or

(b) any agreement granting rights that are in conflict with the rights granted to Sponsor under this Agreement.

(2) It will require Concessionaires and the Rights Holders to comply with the relevant provisions of this Agreement.

(3) The terms of this Agreement do not violate **(i)** any guidelines, regulations or rules of the NCAA or the SEC or **(ii)** the terms of the University's agreement with PepsiCo, Inc's "Gatorade brand" described in Section 5.3(B) of this Agreement.

(4) It will not modify the terms of any contractual arrangements between University and any Rights Holder in a manner that directly effect this Agreement, without the prior written consent of Sponsor, which consent will not be unreasonably withheld or delayed.

(5) The term of the contractual arrangements between University and each Rights Holder is concurrent or longer than the Term of this Agreement.

(6) University shall use best efforts to provide Sponsor with prior written notice prior to any proposed Assignment (as indicated under Section 14.7 below) during the remainder of the Term.

11.2 By Sponsor. Each of Company and Bottler, jointly and severally, represents, warrants, and covenants to the Rights Holders and University the following:

(A) Authority. It has the full power and authority to enter into this Agreement.

(B) Binding Obligation. It has obtained all necessary approvals for its execution, delivery, and performance of this Agreement. It has duly executed and delivered this Agreement, which is now its binding legal obligation.

(C) No Conflicting Agreements. It has not entered into -- and during this Agreement's Term will not enter into -- any other agreement that would prevent it from complying with this Agreement.

11.3 By Rights Holders: Each Rights Holder represents, warrants, and covenants to Sponsor the following:

- (A) **Authority.** It has full power and authority to enter into this Agreement and to grant Sponsor the rights described in it.
- (B) **Binding Obligation.** It has obtained all necessary approvals for its execution, delivery, and performance of this Agreement. It has duly executed and delivered this Agreement, which is now its binding legal obligation.
- (C) **No Conflicting Agreements.**
 - (1) It has not entered into -- and during this Agreement's Term will not enter into -- either of the following:
 - (a) any agreement that would prevent it from complying with this Agreement;
or
 - (b) any agreement granting rights that are in conflict with the rights granted to Sponsor under this Agreement.
 - (2) It will not modify the terms of any contractual arrangements between Rights Holder and University in a manner that directly effect this Agreement, without the prior written consent of Sponsor, which consent will not be unreasonably withheld or delayed.
- (D) **Concurrent Term.** The term of the contractual arrangements between University and Rights Holder is concurrent or longer than the Term of this Agreement.
- (E) **Assignment.** Rights Holder shall use best efforts to provide Sponsor with prior written notice prior to any proposed Assignment (as indicated under Section 14.7 below) during the remainder of the Term.

12. Remedies and Termination

This Agreement may be terminated earlier than the July 31, 2017 expiration date under the following circumstances:

- 12.1 **Rights Holders' Termination Rights.** In addition to other legal and equitable remedies, any Rights Holder may terminate this Agreement if any of the following events occur:
- (A) **If Company or Bottler Doesn't Pay.** Subject to the terms of Section 2.1 of this Agreement, GSP may terminate if Company or Bottler fails to make any payment to GSP under this Agreement, and if this default continues for forty-five (45) days after both Company and Bottler receive written notice of the default. But GSP may not terminate if the payment failure is due to GSP's, ASM's or University's failure to perform or any material loss of Sponsor's rights.
 - (B) **If Sponsor or University Breaches.** Any Rights Holder may terminate if Sponsor or University breaches any other material term of this Agreement and the breaching Party fails to cure the breach within forty-five (45) days of receipt of written notice of the breach.

(C) If Sponsor Becomes Insolvent or Bankrupt.

- (1) In addition, any Rights Holder may terminate on forty-five (45) days written notice to Company and Bottler if Company or Bottler do any of the following:
 - (a) becomes unable to pay its liabilities when due;
 - (b) makes an assignment for the benefit of creditors;
 - (c) files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent;
 - (d) has a receiver appointed for any portion of its business or property; or
 - (e) has a trustee in bankruptcy or trustee in insolvency appointed for it under federal or state law.
- (2) No Rights Holder has the right to terminate because of Bottler's insolvency or other financial instability as described in Section 12.1(C)(1) if Company agrees to assume all of Bottler's obligations under this Agreement.

12.2 Sponsor's Termination Rights. In addition to other legal and equitable remedies, Sponsor may terminate this Agreement if any of the following events occur:

- (A) If University or any Rights Holder Breaches.** Sponsor may terminate if University or any Rights Holder breaches any material term or condition of this Agreement and the breaching Party fails to cure the breach within forty-five (45) days of receiving written notice of the breach. University agrees to immediately notify Sponsor of any default by any Rights Holder under any contractual arrangements between University and such Rights Holder at the same time University delivers notice to such Rights Holder of such default pursuant to the agreement between University and such Rights Holder.
- (B) If University or any Rights Holder Becomes Insolvent or Bankrupt.** Sponsor may terminate if University or any Rights Holder does any of the following:
 - (1) becomes unable to pay its liabilities when due;
 - (2) makes an assignment for the benefit of creditors;
 - (3) files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent;
 - (4) has a receiver appointed for any portion of its business or property; or
 - (5) has a trustee in bankruptcy or trustee in insolvency appointed for it under federal or state law.
- (C) If University or any Rights Holder Loses Authority.** Sponsor may terminate if University's or any Rights Holder's authority to convey any of the rights in this Agreement expires, is revoked or otherwise becomes materially impaired in any respect, in whole or in part.

- (D) **If Athletics Facilities Close.** Sponsor may terminate if Williams-Brice Stadium, Carolina Stadium or the Colonial Life Arena is closed -- other than in connection with regularly scheduled breaks, and for any reason, even if beyond the reasonable control of University -- for a period of more than one hundred twenty (120) consecutive days, and during that period, sales of Company Beverages at the Athletics Facilities decrease by more than 20%, as compared to sales occurring in the same period of the immediately preceding Agreement Year. No later than seven (7) days after the closure, University shall give both Company and Bottler written notice of the closure of either Williams-Brice Stadium, Carolina Stadium or the Colonial Life Arena.
- (E) **Written Notice Required.** Sponsor must give forty-five (45) days prior written notice to University and each Rights Holder when exercising any of its termination rights under Sections 12.2 (B) through (D).

12.3 University's Termination Rights. In addition to other legal and equitable remedies, University may terminate this Agreement if any of the following events occur:

- (A) **If either Company or Bottler Becomes Insolvent or Bankrupt.** University may terminate if either Company or Bottler do any of the following:
 - (1) becomes unable to pay its liabilities when due;
 - (2) makes an assignment for the benefit of creditors;
 - (3) files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent;
 - (4) has a receiver appointed for any portion of its business; or
 - (5) has a trustee in bankruptcy or trustee in insolvency appointed for it under federal or state law.
- (B) **If Sponsor Breaches.** University may terminate if Sponsor breaches any material term or condition of this Agreement and fails to cure the breach within forty-five (45) days of receiving written notice of the breach.

12.4 Any Rights Holder Agreement Expires or is Terminated. In the event that the contractual arrangements between University and any Rights Holder are terminated or expire during the Extended Term, the University shall promptly notify Sponsor of such fact and shall assume the performance of any and all obligations of such Rights Holder hereunder and, if such termination or expiration relates to the contractual arrangements between University and GSP, Sponsor agrees to fulfill all obligations set forth herein and continue making all payments required in Section 2; provided, however, that all such payments shall be made directly to University.

12.5 Repayment of Sponsorship Fees.

- (A) **Prorated Refund.** If this Agreement is terminated for any reason other than breach by Sponsor, GSP will refund to Sponsor any Sponsorship Fees and other fees paid hereunder by Sponsor and allocable to any period after the date of termination.
- (B) **Allocation of Fees.** The Sponsorship Fees for each Agreement Year (or fraction of an Agreement Year included in the Term) will be allocated on an equal daily basis

throughout each Agreement Year (or fraction of the year), without regard to the date of termination or breach.

12.6 Sponsor's Additional Remedies. In addition to Sponsor's other available remedies, Sponsor may seek a reduction of the Sponsorship Fees and other fees paid by it hereunder -- as described in Section 12.7 -- if:

(A) If Athletics Facilities Close. If Williams-Brice Stadium, Carolina Stadium or the Colonial Life Arena is closed -- other than in connection with regularly scheduled breaks, and for any reason, even if beyond the reasonable control of University -- for a period of more than thirty (30) consecutive days, and during that period, sales of Company Beverages at the Athletics Facilities decrease by more than 20%, as compared to sales during the same period occurring in the immediately preceding Agreement Year; or

(B) If Teams Fail to Play. If University's varsity football or men's varsity basketball or men's varsity baseball teams do not play all its scheduled home games at the Athletics Facilities for a period of thirty (30) days or more, whether or not the failure to play is due to a cause beyond University's control (such as a strike or other work stoppage), University agrees to give both Company and Bottler written notice of the failure of any University Team to play all of its home games at Williams-Brice Stadium or the Colonial Life Arena no later than seven (7) days after the end of said thirty-day period.

12.7 Fee Reduction. If the circumstances described in Section 12.6 occur, then GSP and Sponsor will negotiate in good faith for an appropriate reduction of the remaining Sponsorship Fees and other fees payable under this Agreement (and GSP will pay Sponsor a refund of any prepaid amounts in excess of the reduced Sponsorship Fees and other fees paid by Sponsor in accordance with section 12.4(B) above). Sponsor's rights to terminate under subsection 12.2 (D) shall not be diminished by the provisions of Section 12.7.

12.7 Rights Holder Indemnification. Each Rights Holder agrees to indemnify, defend and hold harmless each of Company and Bottler for any claims, lawsuits, loss or damage (including reasonable attorneys' fees) made against or incurred by Company or Bottler arising out of related to such Rights Holder's breach of this Agreement or any negligent act or omission or intentional misconduct of such Rights Holder or any of its respective officers, employees or agents relating to this Agreement. In no circumstance will any Rights Holder be liable for any special, punitive or consequential damages.

12.8 Sponsor Indemnification. Company and Bottler each agree to indemnify, defend and hold harmless each of the Rights Holders and University from any claims, lawsuits, losses or damages (including reasonable attorney's fees) made against or incurred by either or both Rights Holders and/or University arising out of or related to **(i)** Company and/or Bottler's breach of this Agreement, **(ii)** any advertising supplied by Company and/or Bottler pursuant to this Agreement, **(iii)** any Beverage, except as to University for any claim, lawsuit, loss or damages (including reasonable attorneys' fees) arising out of University's negligent or willful conduct in handling of such Beverage or other item, supplied by either Company or Bottler pursuant to this Agreement, or **(iv)** any negligent act or omission or intentional misconduct of Company or Bottler or any of their respective officers, employees or agents

relating to this Agreement. In no circumstance will Company or Bottler be liable for any special, consequential or punitive damages.

13. Confidentiality

13.1 Sponsorship Agreement. Except as otherwise required by South Carolina law, University and its agents, employees and representatives will not disclose in any way any terms of this Agreement. This obligation remains in effect for 3 years after the termination of this Agreement. University will give each of Company and Bottler prompt prior written notice of any disclosure of Agreement terms that appears to be required by law, so that Sponsor may assert any exemptions from or defenses to disclosure that may be available. Sponsor acknowledges that South Carolina law may require public disclosure of this Agreement.

13.2 Other Confidential Information. Confidential information includes any business, marketing, promotional, or technical information provided by one Party to another. If information is designated by the offering Party as confidential, the information will remain the confidential proprietary information of that Party. It will not be disclosed, unless required by applicable law. If a Party determines that disclosure of another Party's confidential information appears to be required by law, that Party will give the other Parties prompt prior written notice, so that they may assert any exemptions from or defenses to disclosure that may be available.

14. Miscellaneous Provisions

14.1 Entire Agreement. This Agreement and any other agreements referenced in it contain all the terms and conditions agreed on by the Parties with respect to this Agreement's subject matter. This Agreement does not invalidate or amend any other agreement between University and Sponsor (or between Affiliates of University and Sponsor) with respect to other subject matter.

14.2 Modification. This Agreement can be modified or changed only by a written instrument signed by all Parties.

14.3 Retained Rights. This Agreement does not give any Party any interest in or the right to use the trademarks of another Party except as specifically authorized in this Agreement. Even if use of a Party's trademarks is specifically authorized, the trademarks remain solely that Party's property, and no joint ownership can arise because of the other Party's use under this Agreement. This Agreement does not make any Party the agent of another Party, nor does it create any partnership or joint venture between University and Sponsor.

14.4 Insurance Obligations. Each Party will maintain sufficient insurance to adequately protect its interests and liabilities under this Agreement in accordance with good business practices customary in its business. Upon request, each Party will provide proof of the required insurance.

14.5 Release, Discharge, or Waiver. A Party's release, discharge, or waiver of any of this Agreement's terms or conditions is effective only if in writing and signed by that Party. A Party's specific waiver does not constitute a waiver by that Party of any earlier, concurrent or later breach or default. No waiver occurs if any Party fails to insist on strict performance of

this Agreement's terms or pays or accepts money under this Agreement with knowledge of a breach.

14.6 Severability. If any portion of this Agreement is severed -- that is, held indefinite, invalid, or otherwise unenforceable -- the rest of this Agreement continues in full force. But if the severance of a provision affects a Party's rights, the severance does not deprive that Party of its available remedies, including the right to terminate this Agreement.

14.7 Assignment.

(A) By University or Rights Holders. Neither University nor any Rights Holder shall assign any of University's or such Rights Holder's rights or obligations without Sponsor's prior written consent, which shall not be unreasonably delayed, withheld or conditioned. None of University's or any Rights Holder's rights or obligations may be assigned by operation of law without Sponsor's prior written consent. Any assignment that violates the terms of this provision is void. In addition to the foregoing, any Rights Holder shall provide advance, prior written notice to Sponsor of any material change in the ownership structure of such Rights Holder.

(B) By Sponsor. Sponsor may assign all or part of Sponsor's rights and obligations under this Agreement to any licensed Company bottler or to any of Company's subsidiaries, subject to the Rights Holders' and the University's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

14.8 Survival. A Party's obligations (if any) to observe confidentiality and to provide refunds, indemnification and rights of first refusal shall survive the expiration or termination of this Agreement for a period of three (3) years.

14.9 Notice. Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. A copy of the notice must be sent by fax when the notice is sent by mail or courier. Notice is considered duly given three (3) days after it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the Parties, notice must be sent to the following addresses:

(A) Notice to Company.

The Coca-Cola Company
acting by and through its Coca-Cola North America Division
One Coca-Cola Plaza
Atlanta, Georgia 30313
Attention: Group Director, Business Affairs
Fax: (404) 598-5018

Copies to: Bruce Strothers, Marketing Counsel
Fax: (404) 598-3866

(B) Notice to Bottler.

CCBCC Operations, LLC
4100 Coca-Cola Plaza
Charlotte, North Carolina 28211
Attention: Mr. James Lee, Marketing Director, Promotions & Activation
Fax: (704) 557-4492

Copy to: Ms. Tracey LeRoy, Esquire
Fax: (704) 353-3266

(C) Notice to University.

University of South Carolina Athletic Department
Rex Enright Athletics Center
Columbia, South Carolina 29208

Attention: Ms. Marcy Girton
Fax: 803-777-8804

Copy to: Walter H. Parham, General Counsel
Fax: 803-777-9500

(D) Notice to ASM.

Action Sports Media
910 NE Martin Luther King Jr. Blvd.
Portland, Oregon 97232

Attention: Mr. Ralph McBarron
Fax: 503-963-3815

Copy to Michael V. Fennell, Vice President & General Counsel
One Center Court, Suite 200
Portland, Oregon 97227
Fax: 503-736-2188

(E) Notice to GSP.

14.10 Counterparts. This Agreement may be executed in two or more counterparts.