



Kenton County School District | *It's about ALL kids.*

Issue Paper

DATE:

June 15, 2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve the contract between the Kenton County School District and SMG/ASM Global Parent, Inc (Truist Arena) for the 2025, 2026, and 2027 KCSD high school graduation ceremonies.

APPLICABLE BOARD POLICY:

1.11 General Powers and Duties of the Board

HISTORY/BACKGROUND:

Truist Arena has hosted graduation ceremonies for several years. The arena provides adequate graduate and family seating. Truist Arena also provides additional safety measures for graduation ceremonies.

FISCAL/BUDGETARY IMPACT:

\$20,250.00 per year for three graduation ceremonies. Total cost of \$60,750.00 over three years.

RECOMMENDATION:

Approval of the contract between the Kenton County School District and SMG/ASM Global Parent, Inc (Truist Arena) for the 2025, 2026, and 2027 KCSD high school graduation ceremonies.

CONTACT PERSON:

Tara Drysdale, Assistant Superintendent


Principal Administrator


District Administrator


Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.



TRUIST ARENA

USE LICENSE AGREEMENT

BY AND BETWEEN

**SMG d/b/a ASM GLOBAL PARENT, INC. AND KENTON COUNTY
SCHOOL DISTRICT**

DATED JULY 5, 2023

USE LICENSE AGREEMENT

THIS USE LICENSE AGREEMENT (together with the Exhibits attached hereto, the "**Agreement**") is dated as of the 5th day of July, 2023 by and between **SMG d/b/a ASM GLOBAL PARENT, INC.**, a Pennsylvania general partnership, with an address at **300 Four Falls Corporate Center, 300 Conshohocken State Road, Suite 450, West Conshohocken, PA 19428** ("**ASM GLOBAL**"), and **Kenton County School District**, whose current address is **1055 Eaton Drive, Fort Wright, KY 41017** (the "**Licensee**").

BACKGROUND

ASM GLOBAL is a party to a certain management agreement (the "**Management Agreement**") dated as of October 15, 2005 with Northern Kentucky University (the "**Owner**"), whereby ASM GLOBAL has been retained to act as Owner's managing agent in respect of a facility commonly known as Truist Arena at NKU (the "**Facility**"), located at 500 Nunn Drive, Highland Heights, Kentucky 41099, which is owned by Owner. Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Pursuant to the Management Agreement, ASM GLOBAL has the express authority to enter into agreements on Owner's behalf relating to the use of the Facility. Accordingly, ASM GLOBAL, as agent for Owner, desires to grant to Licensee, and Licensee hereby accepts from ASM GLOBAL, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

ASM GLOBAL is the manager of a facility commonly known as Truist Arena at Northern Kentucky University (the "**Facility**"), located at 500 Nunn Drive, Highland Heights, Kentucky 41099, which is owned by Northern Kentucky University (the "**Owner**"). Licensee desires to use all or a portion of the Facility, as set forth below, for the purposes stated herein. Accordingly, ASM GLOBAL desires to grant to Licensee, and Licensee hereby accepts from ASM GLOBAL, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Use of the Facility.

(a) ASM GLOBAL hereby grants Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on Exhibit A attached hereto (the "**Authorized Areas**"), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on Exhibit A (each such date and time, an "**Event**"). It is expressly understood by the parties hereto that the Facility shall be vacated by Licensee and all persons participating in or attending an Event hereunder on or prior to the end-time of the last Event listed on Exhibit A hereto (the "**Expiration Time**") and, as such, Licensee shall arrange to have all Events and activities related thereto cease within a reasonable time prior to the Expiration Time to allow ample time for the Facility to be completely vacated on or prior to the Expiration Time.

(b) In the event Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on Exhibit A, Licensee shall request from ASM GLOBAL prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay an amount equal to the sum of ASM GLOBAL's actual costs for performing its

obligations under this Agreement during the date(s) and time(s) requested, and a fee in an amount determined by ASM GLOBAL to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).

(c) Licensee acknowledges that, in connection with ASM GLOBAL's management and operation of the Facility, ASM GLOBAL utilizes the services of certain third-party independent contractors.

(d) Floor Plans, Descriptions, and Set-Up.

(i) Prior to the first Event, Licensee shall provide to ASM GLOBAL, for ASM GLOBAL's and/or the Central Campbell County Fire Marshall's approval, a copy of a full and complete floor plan for the Event. Based upon a review by ASM GLOBAL and/or such Fire Marshall of the foregoing plan, ASM GLOBAL may request Licensee, by written notice within ten (10) days after receiving the materials, to make such changes, deletions, and/or additions as ASM GLOBAL may, in its reasonable discretion, deem necessary or desirable.

(ii) In addition to the floor plan delivered under clause (i) above prior to the first Event, Licensee shall provide to ASM GLOBAL, for ASM GLOBAL's review (and/or the review of any consultant or representative engaged by ASM GLOBAL), a copy of a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event.

(iii) Prior to the first Event, Licensee shall provide to ASM GLOBAL information relating to room or hall set-up(s), staging, event personnel requirements, and food and beverage requirements.

2. Purpose.

(a) The Facility is to be used solely for the purpose of **Kenton County School District Graduations**. Licensee shall not use the Facility, or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful purpose or in any manner so as to injure persons or property in, on, or near the Facility.

(b) As between ASM GLOBAL and Licensee, Licensee shall be liable for any and all losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and outside attorneys' fees) (collectively, the "**Losses**") occurring at the Facility (whether within or without an Authorized Area) caused to ASM GLOBAL, Owner and/or persons and/or property in, on, or near the Facility during the Term of this Agreement, by (i) Licensee's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "**Laws**") applicable to Licensee's performance of this Agreement and/or activities at the Facility, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligence or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 14(m) hereof (relating to intellectual property matters), Section 15 hereof (relating to the Civil Rights

Act), and Section 16 hereof (relating to the Americans with Disabilities Act). The foregoing assumption of liability set forth in this Section 2(b) shall not apply to any negligence or willful misconduct of ASM GLOBAL, Owner or their respective employees, representatives or contractors or to Losses resulting from any structural or premises-related defects of the Facility.

(c) Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with all Rules and Regulations for facility users, including fire, safety and health rules, as may be imposed from time to time by Company and/or local authorities **(Additional details as outlined in Exhibit C)**.

Licensee shall provide to Company, for Licensors' review and approval (i) a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event, and (ii) a Licensee Operations Plan in substantially the same form supplied by Licensors. Licensee shall update the Plan from time-to-time as may be necessary or appropriate to address any changes in operating conditions. Licensors reserves the right in its sole discretion to accept the Plan, or request modifications to ensure compliance with event rules imposed by the Licensors and all other applicable laws, regulations, codes, ordinances, orders or similar requirements.

Without limiting the foregoing, Licensee shall obtain prior written approval from ASM GLOBAL's General Manager at the Facility for any pyrotechnic displays which Licensee anticipates may be performed at the Facility during the term of this Agreement. Licensee agrees that it will not allow any officer, agent, employee, licensee or invitee at, in or about the Facility who shall, upon reasonable, non-discriminatory grounds, be objected to by ASM GLOBAL and such person's right to use the Facility may be revoked immediately by ASM GLOBAL.

3. Condition of Facility.

(a) Licensee acknowledges that Licensee has not inspected the Facility and that ASM GLOBAL represents that the licensed premises in their present condition are safe and suitable for the presentation of the event.

(b) ASM GLOBAL shall have the continuing obligation and responsibility to maintain and keep the Facility in compliance with all applicable laws and regulations and in good order and repair, normal wear and tear excepted; provided, however, that (i) the failure by ASM GLOBAL to accomplish the foregoing, said failure resulting from circumstances beyond the control of ASM GLOBAL, shall not be considered a breach of this Agreement by ASM GLOBAL, and (ii) any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, subcontractors or licensees shall be paid for by Licensee at the actual and documented cost of repair, normal wear and tear expected. Licensee shall have the right to inspect the Facility prior to and after the Event with a representative of ASM GLOBAL to identify any damages and/or pre-existing conditions. If such damages are not identified on the night of the Event, ASM GLOBAL shall provide written notice of any such damages with supporting documentation no later than forty-eight (48) hours following the Event. In no event shall Licensee be responsible for (w) pre-existing conditions, (x) damages not properly documented and noticed to Licensee in accordance with the prior sentence, (y) damages caused by any use or maintenance of the Facility by Owner, ASM GLOBAL or their respective

employees, agents or contractors or (z) damages caused by any event held by other licensees following Licensee's use of the Facility.

(c) Licensee shall not make any alterations or improvements to the Facility without the prior written consent of ASM GLOBAL. Any alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of ASM GLOBAL, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of the Event, or (ii) become the property of ASM GLOBAL. ASM GLOBAL may, at its election, accept delivery of property addressed to Licensee only as a service to Licensee, and Licensee will indemnify, defend, and hold harmless ASM GLOBAL for any loss or damage to such property in the receipt, handling, care, and custody of such property at any time, except to the extent such loss or damage arises out of the negligence or willful misconduct of ASM GLOBAL, or its respective employees, agents, representatives or contractors.

4. Term of License. The license granted in Section 1 above will be effective as of the date and time set forth on Exhibit A and will continue in effect, unless earlier terminated as set forth in Section 12, until the date and time set forth on Exhibit A.

5. License Fee, Merchandising Fee, Broadcast Fee, and Reimbursable Service Expenses and Complimentary Tickets. In consideration of the grant of the license in Section 1 above, Licensee shall pay to ASM GLOBAL a license fee, merchandising fee, broadcast fee, and shall reimburse ASM GLOBAL for certain service expenditures, all as calculated in accordance with the provisions set forth below and in accordance with generally accepted accounting principles, consistently applied:

(a) License Fee. Licensee shall pay a license fee (the "License Fee") equal to **Six Thousand Seven Hundred Fifty Dollars (\$6,750) per graduation per year – totaling three (3) graduations at Twenty Thousand Two Hundred Fifty Dollars (\$20,250) total. (Additional details as outlined in Exhibit B)**

(b) Merchandising Fee. A merchandising fee (the "Merchandising Fee") equal to **Twenty-five Percent (25%)** of gross novelty and merchandising revenue, **Ten (10%)** on recorded material, less all applicable taxes, credit card commissions and bootleg security, if requested, generated in connection with the Event shall be retained by Licensor. Facility to sell. **(Additional details as outlined in Exhibit B)**

(c) Broadcast Fee. Licensee warrants that event will not be broadcast.

(d) Reimbursable Service Expenses.

(i) ASM GLOBAL shall provide, as required for each Event, the following services (collectively, the "Services"), the expenditures for which are reimbursable by Licensee to ASM GLOBAL ("Reimbursable Service Expenses"): ticket takers, box office services, ticket seller labor, ushers, supervisors, and receptionists; medical services for Event attendees, which services shall include ambulances, doctors, nurses, operations, supervisors, and paramedics; food and beverage services; security personnel; utilities, including electricity, gas, lighting, water, heating, ventilating, air conditioning, hot and cold water facilities, and waste removal services; electricians and mechanical plant staff; custodial services; scoreboard operations; audio services; and special facilities, equipment and materials, or extra services furnished by ASM GLOBAL at the request of Licensee. Notwithstanding anything contained herein to the contrary, in the event state, local

officials, or the university enact guidelines involving COVID 19, all additional costs to facilitate these guidelines should be considered reimbursable expenses to Truist Arena. **(Additional details as outlined in Exhibit B)**

(ii) ASM GLOBAL shall determine the level of staffing for such Services at the Event. Licensee acknowledges and understands that many of the Services are contracted services, the costs of which are subject to change. Licensee shall reimburse ASM GLOBAL for actual costs incurred by ASM GLOBAL in connection with the Services as provided in Section 6 below. ASM GLOBAL shall be responsible for preparing and implementing a security plan to protect all persons within the Facility and areas adjacent thereto (e.g. parking lots, plaza areas, etc.), and ASM GLOBAL shall hire, direct, supervise and assume responsibility for all personnel. ASM GLOBAL agrees and acknowledges that at no time and under no circumstances shall Licensee be liable or responsible for the activities and/or actions of the parties providing such security services.

(e) Complimentary Tickets. In addition to the License Fee, Merchandising Fee, Broadcast Fee and Reimbursable Service Expenses, complimentary tickets for promotional purposes shall be available as follows:

(i) ASM GLOBAL shall be entitled to **Thirty (30)** tickets at no charge.

(ii) Licensee shall be entitled to **TBD (TBD)** tickets at no charge except those used in conjunction with marketing the event.

6. Payment Terms.

(a) License Fee and Merchandising Fee. The License Fee, Merchandising Fee, and Reimbursable Services Expenses, after applicable sales taxes are deducted, as set forth in Sections 5(a), (b), and (d) of this Agreement shall be paid by Licensee to Licensor at a final settlement to take place during or immediately after the conclusion of the Event (the "**Final Settlement**"). As soon as reasonably possible after the closing of the Facility box office for the Event, ASM GLOBAL shall furnish Licensee with a Final Settlement statement and box office statement, and settle with Licensee in accordance with this Agreement. Licensee agrees to pay ASM GLOBAL, at the time of Final Settlement, any amounts shown to be due ASM GLOBAL which were not paid to ASM GLOBAL by the application of box office receipts (if such receipts are held by ASM GLOBAL). ASM GLOBAL will remit to the appropriate taxing authority any sales tax due.

(b) Reimbursable Service Expenses. Based upon an expense report and customary backup documentation delivered by ASM GLOBAL (e.g. invoices, etc.), Licensee will reimburse ASM GLOBAL for all expenses directly incurred by ASM GLOBAL in connection with the reimbursable services expenses due ASM GLOBAL at Settlement on the night of the Event.

(c) Late Charges. If Licensee fails to pay any amounts when due under this Agreement, Licensee shall pay to ASM GLOBAL a late charge of 1.5% per month on the unpaid balance.

7. Revenues and Costs. ASM GLOBAL shall retain one hundred percent (100%) of all revenues generated in connection with parking lot fees, the sale of food and beverages at the Facility. **(Additional details as outlined in Exhibit B.)** In addition to payment of the Reimbursable Service Expenses above, Licensee shall bear all expenses incurred by Licensee in connection with the live performance of copyrighted materials in connection with the Event.

8. Records, Reports, and Audits.

(a) **Records.** Licensee shall maintain accurate books and records with respect to its activities at the Facility, including, but not limited to, the costs and revenues of each Event. Licensee shall keep and preserve such books and records at all times during the term of this Agreement and for at least three (3) years following the expiration or termination hereof.

(b) **Reports.** Licensee and ASM GLOBAL shall settle contractual obligations, the amount due to each party respectfully on the day of the revenue-generating event or another mutually agreed upon day. Each Statement shall detail with respect to ticket sales, all tickets sold and all amounts collected by Licensee, with all deductions (including sales tax, etc.) therefrom. Statements shall be deemed incontestable unless objected to by ASM GLOBAL, in writing, specifying the nature of and reasons for such objection, within twelve (12) months after receipt by ASM GLOBAL.

(c) **Audits.** Licensee shall give ASM GLOBAL and its representative's access to the books and records Licensee maintains pursuant to Section 9(a) above at any time when so requested by ASM GLOBAL. Licensee shall also provide, at Licensee's own expense, a copy of any such book or record upon request. To the extent that any Statement prepared by Licensee has become contestable, ASM GLOBAL shall have the right to cause nationally recognized independent auditors to audit all of the books and records of Licensee relating to such Statement. If any such audit demonstrates that the revenues or expenses reflected in any Statement are understated (in the case of revenues) or overstated (in the case of expenses), in either case by more than five percent (5%), Licensee shall pay to ASM GLOBAL the reasonable cost of such audit. In any event, Licensee shall promptly pay to ASM GLOBAL the portion of any License Fee, Merchandising Fee, or Broadcast Fee due to ASM GLOBAL as a consequence of such overstatement or understatement.

9. Taxes. ASM GLOBAL shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to any Event or any revenue received by, or payments made to, Licensee in respect of any Event, except (a) as otherwise provided by law or as specified herein; (b) as applicable to revenues in which Licensee does not participate or for which another party is already responsible for collecting and remitting such taxes (e.g. concessionaires, merchandise, vendors) or (c) to the extent ASM GLOBAL has collected such taxes and failed to remit same. Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee. The foregoing shall not imply that Licensee is liable for any property or real estate taxes or any other taxes based on the value of the Facility or arising out of ownership or management of the Facility by ASM GLOBAL and/or the Owner.

10. Insurance.

(a) Licensee shall, at its own expense, secure prior to the first Event set forth on Exhibit A and shall keep in force at all times during the term of this Agreement:

(i) a commercial general liability insurance policy in form acceptable to ASM GLOBAL, including public liability and property damage, covering its activities hereunder, in an amount not less

than **One Million Dollars (\$1,000,000)** for bodily injury and **One Million Dollars (\$1,000,000)** for property damage, including blanket contractual liability, independent contractors, and products and completed operations. If the Event includes these activities, then the foregoing general liability insurance policy shall not contain exclusions from coverage relating to the following participants, legal liability activities or issues related to the Event hereunder: sporting events, high risk events (including, without limitation, rap concerts), performers, volunteers, animals, off-premise activities, and fireworks or other pyrotechnical devices;

(ii) comprehensive automotive bodily injury and property damage insurance in form acceptable to ASM GLOBAL for business use covering all vehicles operated by Licensee, its officers, directors, agents and employees in connection with its activities hereunder, whether owned by Licensee, ASM GLOBAL, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and

(iii) Applicable workers compensation insurance for Licensee's employees, as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (i) and (ii) above:

(i) ASM GLOBAL, Northern Kentucky University, its employees and their Board of Regents shall be named as additional insureds thereunder as respects the liabilities assumed herein by Licensee. Prior to the Event, Licensee shall deliver to ASM GLOBAL certificates of insurance evidencing the existence thereof, all in such form as ASM GLOBAL may reasonably require. In the event of a cancellation of Licensee's insurance, notice thereof will be provided in accordance with Licensee's policy provisions.

(ii) The coverage provided under such policies shall be occurrence-based, not claims made.

(iii) The coverage limits contained on such policies shall be on a per-occurrence basis only.

(iv) Licensee hereby acknowledges that the coverage limits contained in any policy, whether such limits are per occurrence or in the aggregate, shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 11 below.

(c) The terms of Licensee's and ASM GLOBAL's liability insurance policies shall preclude subrogation claims against Licensee and ASM GLOBAL and their respective officers, directors, employees, and agents.

11. Indemnification.

(a) Licensee shall indemnify, defend and hold harmless Licensor, ASM GLOBAL Parent, Inc., Northern Kentucky University and their respective officers, directors, agents, and employees (the "Indemnitees") from (i) the matters described in Section 2(b) hereof, and/or (ii) against any and all losses, liabilities, claims, damages and expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "Losses") occurring at the Facility (whether within or without an Authorized Area) caused to

Licensor, Owner and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any and all federal, state, foreign, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") applicable to Licensee's performance of this Agreement and/or activities at the Facility, including without limitation, health and safety laws, the Civil Rights Act, the American with Disabilities Act and intellectual property laws, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, (v) any and all rigging from or to the physical structure of the Facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the Event.

(b) ASM GLOBAL shall indemnify, defend and hold harmless Licensee, its parents and their respective officers, directors, agents, subcontractors and employees (the "Licensee Indemnitees") from and against any and all Losses arising from (i) the matters described in Section 1(d)(iii) hereof, (ii) the matters described in Section 2(b) hereof and/or (iii) personal or bodily injury to or death of persons or damage to the property of Licensee to the extent caused by negligent acts, errors and/or omissions or the willful misconduct of ASM GLOBAL, Owner or its officers, directors, agents, employees, subcontractors, licensees or invitees.

(c) The provisions set forth in subparagraphs 11(a) and 11(b) above shall survive termination or expiration of this Agreement.

12. Default, Termination and Other Remedies.

(a) Default. Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails (A) to pay any amount due hereunder (including, without limitation, the Licensee Fee or the Reimbursable Service Expenses) when the same are required to be paid hereunder or (B) to provide the security required under Section 6(d) hereof by the date when due, (ii) Licensee or any of its officers, directors, employees or agents fails to perform or fulfill any other material term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days (or a reasonable period of time thereafter if a cure is not reasonably capable of being commenced within five (5) business days) after Licensee has been served with written notice of such default providing the particulars of such alleged default, or (iii) Licensee makes a general assignment for the benefit of creditors. ASM GLOBAL shall be in default under this Agreement if ASM GLOBAL fails to perform or fulfill any material term, covenant, or condition contained in this Agreement and ASM GLOBAL fails to commence a cure thereof within five (5) business days (or a reasonable period of time thereafter if a cure is not reasonably capable of being commenced within five (5) business days) after ASM GLOBAL has been served with written notice of such default providing the particulars of such alleged default or ASM GLOBAL makes a general assignment for the benefit of creditors. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding clause (ii) above, if the breach by a party or any of its officers, directors, employees, or agents of such other material term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, then the other party may, in its discretion, require that such breach be cured in less than five (5) business days or immediately.

(b) Termination by Reason of Default. Upon a default pursuant to Section 12(a) hereof, the non-breaching party may, at its option, upon written notice or demand upon the other party, cancel and terminate the license granted in Section 1 hereof and the obligations of the parties with respect thereto.

(c) Termination by Reason of Labor Dispute. In addition to the remedies provided elsewhere in this Agreement, ASM GLOBAL shall have the right to terminate this Agreement in the event that a dispute occurs between Licensee and its employees or between Licensee and any union or group of employees by reason of the union affiliation or lack of union affiliation of persons employed by Licensee or any one with whom Licensee contracts.

(d) Injunctive Relief. In addition to any other remedy available at law, equity, or otherwise, each party shall have the right to seek to enjoin any breach and/or obtain specific performance of this Agreement by Licensee upon meeting its burden of proof of such material breach as required by applicable statute or rule of law.

13. Representations and Warranties. Each party hereby represents and warrants to the other party, and agrees as follows:

(a) It has the full power and authority to enter into this Agreement and perform each of its obligations hereunder;

(b) It is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and

(c) No litigation or pending or threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other party under this Agreement.

14. Covenants. Licensee and/or ASM GLOBAL hereby covenant as follows:

(a) Licensee shall not occupy or use the Facility except as provided in this Agreement.

(b) Licensee shall comply with all legal requirements which arise in respect of the Facility and the use and occupation thereof.

(c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. "**Hazardous Material**" shall mean, without limitation, those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in any applicable state or federal environmental law.

(d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of ASM GLOBAL.

(e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of ASM GLOBAL.

(f) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of ASM GLOBAL.

(g) Licensee shall not operate any equipment or materials belonging to ASM GLOBAL without the prior written approval of ASM GLOBAL.

(h) Neither party, its officers, directors, employees, agents, members, nor other representatives shall "scalp" tickets for an Event, to the extent applicable. Licensee and its representatives may provide assistance to ASM GLOBAL in its efforts to control and prevent such ticket "scalping".

(i) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exitways shall be maintained in such manner as to be visible at all times.

(j) No collections, whether for charity or otherwise, shall be made, attempted, or announced at the Facility, without first having made a written request and received the prior written consent of ASM GLOBAL which consent shall not be unreasonably withheld if requested by the headline artist.

(k) Licensee shall abide by and conform to all rules and regulations adopted or prescribed by ASM GLOBAL which shall be posted or otherwise made available to Licensee in writing.

(l) Licensee shall not encumber, hypothecate, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of ASM GLOBAL.

(m) With respect to the Event, Licensee shall comply fully with any and all local, state, and federal laws, regulations, rules, constitutional provisions, common laws, and rights of others applicable to the live performance of copyrighted works of third parties (the "**Works**"), and to the protection of the intellectual property rights associated with such Works. The fees payable by Licensee under this Agreement do not include royalty, copyright or other payments which may be payable on behalf of third-party owners of such Works, and Licensee agrees hereby to make any and all such payments to third parties and/or clearinghouse agencies as may be necessary to lawfully perform any such Works. Licensee specifically agrees, undertakes, and assumes the responsibility to make any and all reports to such agencies and/or parties as applicable, including specifically by way of example only (and not by way of limitation) ASCAP, BMI, SESAC and other similar agencies. ASM GLOBAL acknowledges that Licensee currently reports and pays royalties to ASCAP, SESAC and BMI on a quarterly basis for all of its events through its membership in the trade association known as North American Concert Promoters Association and that Licensee reports and pays royalties to GMR directly. Licensee agrees to indemnify, defend, protect and hold harmless ASM GLOBAL and all other Indemnitees (as defined in this Agreement) of and from all and all manner of Losses arising in any way from the live performance of proprietary intellectual property of third parties (whether such claims are actual or threatened) under the copyright or other laws of the United States.

(n) Licensee shall not engage in the sale and/or distribution of food and/or beverages at the Facility.

(o) Licensee shall use the Facility's logo (the "**Facility Logo**") in all advertising controlled by or done on behalf of Licensee relating to an Event when applicable, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. Licensee's right to use the Facility Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by ASM GLOBAL in writing prior to the use thereof. In connection with Licensee's use of the Facility Logo as permitted in this Section 14(o), Licensee shall use only the form of the Facility Logo as provided by ASM GLOBAL to Licensee in any artwork or other depiction thereof.

15. Civil Rights Act. During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights.

16. Americans With Disabilities Act. With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended, and all similar applicable state and local laws (collectively, the "**ADA**"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, in connection with past shows, and generally accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA. Licensee makes no representations as to the adequacy of the Facility under the ADA for those requirements and services under the control of Owner or ASM GLOBAL. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges or sets up in the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for any violations of the ADA (other than those services or premises-related requirements under the control of ASM GLOBAL or Owner), including, without limitation, those that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.

17. Use of Information. Licensee hereby acknowledges and agrees that ASM GLOBAL shall not have the right to disclose to recognized industry sources that track event activity information relating to any Event, including, without limitation, the identity of performers or other participants of the Event, attendance figures, and gross ticket revenue for the Event without the prior written approval of Licensee and/or the headline artist of the Event.

18. Construction of this Agreement

(a) Choice of Law. This Agreement shall be deemed to be made, governed by, and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to the conflict of law principles thereof.

(b) Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

(c) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all of the representations, warranties, covenants, agreements, terms, provisions, and conditions relating to the rights and obligations of ASM GLOBAL and Licensee with respect to the Facility and the Event. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the parties hereto. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT NO OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE, OR SALES PERSON OF EITHER PARTY HERETO, OR OF THE OWNER OR ANY THIRD PARTY HAS THE AUTHORITY TO MAKE, HAS MADE, OR WILL BE DEEMED TO HAVE MADE, ANY REPRESENTATION, WARRANTY, COVENANT, AGREEMENT, GUARANTEE, OR PROMISE WITH RESPECT TO THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT. THE LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ANY ASSESSMENT OF THE FINANCIAL SUCCESS OR PERFORMANCE, AND/OR OTHER SUCCESS, OF THE EVENT IS SOLELY THAT OF THE LICENSEE'S OWN DETERMINATION AND JUDGMENT.**

(d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.

(e) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.

(f) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of ASM GLOBAL, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.

(g) Independent Contractor; No Partnership. ASM GLOBAL and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, ASM GLOBAL or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.

(h) Singular and Plural. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular.

19. Miscellaneous.

(a) Waiver. The failure of any party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any party to enforce any of such provisions, rights, or elections will not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

(b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred, except to a parent or an affiliate under common control, in any manner whatsoever by Licensee without the prior written consent of ASM GLOBAL. ASM GLOBAL shall be entitled to

assign its rights and obligations hereunder to Owner or to any other management company retained by Owner to manage the Facility, provided such party assumes the obligations hereunder in writing and in such event, ASM GLOBAL shall have no further liability to Licensee hereunder for the performance of any obligations or duties arising after the date of such assignment. To the extent Owner retains another management company to manage the Facility, any references to ASM GLOBAL herein shall be deemed changed to reference such management company, as independent contractor for Owner.

(c) Notices. Any notice, consent, or other communication given pursuant to this Agreement shall be in writing and shall be effective either (i) when delivered personally to the party for whom intended, (ii) upon delivery by overnight courier services that are generally recognized as reliable (e.g. FedEx or UPS), and the written records maintained by the courier shall be prima facie evidence of delivery, or (iii) on delivery (or attempted delivery) by certified or registered mail, return receipt requested, postage prepaid, as of the date shown by the return receipt; in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

If to ASM GLOBAL: ASM GLOBAL
 Truist Arena
 500 Nunn Drive
 Highland Heights, KY 41099
 Attention: General Manager

With a copy to: ASM GLOBAL
 300 Four Falls Corporate Center
 300 Conshohocken State Road, Suite 450
 West Conshohocken, PA 19428
 Attention: Director of Risk Management

If to Licensee: Kenton County School District
 1055 Eaton Drive
 Fort Wright, KY 41017
 Attention: Tara Drysdale

(d) Non-Exclusive Use. ASM GLOBAL shall have the right, in its sole discretion, to use or permit the use of any portion of the Facility other than the Authorized Areas to any person, firm or other entity regardless of the nature of the use of such other space, provided such other use does not unreasonably interfere with Licensee's use of the Facility hereunder.

(e) Force Majeure. If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of the parties, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions imposed by government and university officials, terrorist acts, strikes or labor disputes (though not of the employees of the Licensee), failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, then the parties shall be relieved of their respective obligations hereunder. In the event performance is excused in accordance with the foregoing provisions, Licensor shall refund to Licensee any deposits paid by Licensee, less any reasonable costs and expenses which have been incurred by Licensor up to the time further performance is excused.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first written above.

ASM GLOBAL, for Northern Kentucky University, owner of Truist Arena at NKU, 500 Nunn Drive, Highland Heights, KY 41099

By: _____

Name: Darren Stearns

Title: General Manager

Kenton County School District

By: _____

Name: _____

Title: _____

EXHIBIT A TO USE LICENSE AGREEMENT
Truist Arena at Northern Kentucky University

<u>Authorized Area</u>	<u>Day</u>	<u>Date</u>	<u>Time of Use</u>	<u>Purpose</u>
Arena, Dressing Rooms, Production Lot	Wednesday, Thursday, Friday	May 28, 29, & 30, 2025	TBD	Move-In Event and Move- Out
Arena, Dressing Rooms, Production Lot	Wednesday, Thursday, Friday	May 27, 28 & 29, 2026	TBD	Move-In Event and Move- Out
Arena, Dressing Rooms, Production Lot	Wednesday, Thursday, Friday	May 26, 27 & 28, 2027	TBD	Move-In Event and Move- Out

EXHIBIT B TO USE LICENSE AGREEMENT
Truist Arena at Northern Kentucky University

1. Additional Reimbursable Service Expenses. Based upon an expense report and customary backup documentation delivered by ASM GLOBAL (e.g. invoices, etc.), Licensee will reimburse ASM GLOBAL for all expenses directly incurred by ASM GLOBAL in connection with the reimbursable services expenses. Additional Reimbursable expenses include, but are not limited to: **TBD**
Notwithstanding anything contained herein to the contrary, in the event state, local officials, or the university enact guidelines involving COVID 19, all additional costs to facilitate these guidelines should be considered reimbursable expenses to Truist Arena.

2. Payment of License Fee, Merchandising Fee, and Broadcast Fee.

Fixed License Fee: The fixed License Fee set forth in Section 5(a) above shall be paid in accordance with the following schedule:

<u>Percentage Payable</u>	<u>Payment Due Date</u>
<u>2025</u>	
\$3,000	Deposit due by November 1, 2024
\$17,250	Thirty (30) days prior to start of the Event
<u>2026</u>	
\$3,000	Deposit due by November 1, 2025
\$17,250	Thirty (30) days prior to start of the Event
<u>2027</u>	
\$3,000	Deposit due by November 1, 2026
\$17,250	Thirty (30) days prior to start of the Event

Additional Deal Points:

- License Fee to include a rehearsal day for each ceremony on a day TBD.
- The Parking Fee based on the current NKU rates -
 - TBD in 2025
 - TBD in 2026
 - TBD in 2027
- Rental equipment not included in License Fee.
- Decorations not included in License Fee.
- Video Package of \$1,650 per graduation ceremony, which includes streaming of ceremony, is in addition to the License Fee, and shall be due one week prior to each graduation ceremony.