

FIRST AMENDATORY AGREEMENT

THIS FIRST AMENDATORY AGREEMENT (referred to as “Amendatory Agreement”, “First Amendatory Agreement” or “Amendment”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the “City”), and **AXS GROUP, LLC**, a Delaware limited liability company, whose address for notice purposes is 425 West 11th Street, Suite 100, Los Angeles, CA 90015 (“AXS” and, together with the City, the “Parties”).

BACKGROUND:

WHEREAS, the City and AXS entered into that certain Agreement, dated December 8, 2019 (the “Agreement”), authorizing AXS to provide ticketing services on behalf of the City for events at designated City venues; and

WHEREAS, the City declared a state of local disaster emergency on March 12, 2020 pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020 on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020 due to the COVID-19 crisis;

WHEREAS, the parties expressly acknowledge that State and local health and safety restrictions (as herein defined) applicable to the facilities described in the Agreement are on-going to ensure public safety in connection with use of city venues;

WHEREAS, the COVID-19 crisis and State and local measures implemented to promote public safety have resulted in postponement or cancellation of numerous ticketed events and performances previously scheduled to occur in city venues;

WHEREAS, AXS shall seek to minimize nonessential expenses incurred related to the Agreement while health and safety restrictions affect City Venues as defined in the Agreement; and

WHEREAS, the City and AXS benefit by amending the Agreement as it will provide clarity concerning the Parties’ respective responsibilities; enable the City and AXS to control costs pursuant to the Agreement; and help promote continuity of services by AXS pursuant to the Agreement during and upon the conclusion of the health and safety restrictions period.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in the Agreement and herein contained the parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

2. In response to the COVID-19 crisis, the City and AXS hereby agree to modify the Agreement to account for the temporary closure of and/or attendance restrictions at certain city venues beginning on March 13, 2020, and continuing through and beyond the date of this Amendment, as well as any extension(s) or reinstatement(s) thereof, and any and all federal, state, and/or local limitations on mass or other public gatherings that render use of city venues implicated by this Agreement commercially impractical or financially impacted (“Health and Safety Restrictions Period”). The City shall send AXS written notice at the conclusion of the Health and Safety Restrictions Period (“Reopening Notice”). If the Health and Safety Restrictions Period continues from the date of this Amendment and has not concluded by September 30, 2021, or if different types of costs or expense directly caused by the Health and Safety Restrictions Period are incurred by AXS or City in connection with the Agreement than the financial commitments addressed in this Amendment, the City and AXS shall work together in good faith to negotiate any additional, mutually-agreeable modifications of the Agreement.

3. The following language shall be added as a new section 39:

“39. **HEALTH AND SAFETY RESTRICTIONS PERIOD.** Notwithstanding anything contained in this Agreement to the contrary, for the duration of the Health and Safety Restrictions Period as defined in the First Amendatory Agreement, City and AXS agree as follows: AXS shall manage costs during the Health and Safety Restrictions Period to ensure expenses in connection with the Agreement are minimized as described in **Exhibit F** which is attached hereto and incorporated herein by this reference. If necessary expenses in connection with this Agreement during the Health and Safety Restrictions Period are identified that are not described in **Exhibit F**, such costs may be approved in advance writing by the Director. Should AXS incur costs to a party other than the City during the Health and Safety Restrictions Period that are not described in **Exhibit F** or approved in advance writing by the Director, notwithstanding anything in this Agreement to the contrary, such amounts shall not be the responsibility of the City pursuant to the Agreement and shall not be considered valid expenses during or subsequent to the Health and Safety Restrictions Period.”

4. This Amendment is intended to preserve the parties’ rights and obligations for activities conducted during the Health and Safety Restrictions Period and to promote continuity of services after the Health and Safety Restrictions Period. To effect such intent, a new section 40 shall be added to the Agreement as follows:

“40. **FORCE MAJEURE:** Notwithstanding anything contained in the Agreement to the contrary, AXS agrees not to seek reimbursement of any monies, to terminate, or to suspend the Agreement or any of its contractual obligations thereunder in connection

with any reduction in ticketed events in City venues during the Health and Safety Restrictions Period. AXS shall continue to provide services for events scheduled to occur during or after the Health and Safety Restrictions Period in accordance with the terms of the Agreement.”

5. A new Section 41 shall be added to the Agreement as follows:

“41. **GUARANTEED PAYMENTS:** Notwithstanding anything contained in this Agreement, during calendar year 2020 the City’s Minimum Guaranteed Payment and Gap Payment described in **Exhibit B** shall not apply. The Parties agree that the City’s Minimum Guaranteed Payment and Gap Payment obligation shall resume (subject to proration as described in this Amendment) in 2021 and subsequent years during the Term. For purposes of clarity, revenue from tickets sold or rebooked in 2021 shall be considered ‘Ticket Fees’ in connection with calculating the 2021 Minimum Guaranteed Payment.”

6. A new Section 42 shall be added to the Agreement as follows:

“42. **TICKET SALES GUARANTEE:** Notwithstanding anything contained in this Agreement, during calendar year 2020 AXS’s Ticket Sales Guarantee described in **Exhibit B** shall not apply. The Parties agree that AXS’s Ticket Sales Guarantee shall resume (subject to proration as described in this Amendment) in 2021 and subsequent years during the Term. For purposes of clarity, tickets sold or rebooked in 2021 shall be considered ‘tickets sold’ in connection with calculating the 2021 Ticket Sales Guarantee.”

7. A new Section 43 shall be added to the Agreement as follows:

“43. **MARKETPLACE SPONSORSHIP PAYMENT:** Notwithstanding anything contained in this Agreement, AXS shall not be obligated to pay to City in January 2021 a Marketplace Sponsorship Payment as otherwise required by **Exhibit B**. The parties agree that AXS shall resume timely payment of Marketplace Sponsorship Payments beginning with the January 2022 payment and make all subsequent annual payments in accordance with **Exhibit B**.”

8. A new Section 44 shall be added to the Agreement as follows:

“44. **OTHER 2020 MODIFIED PAYMENTS:** Notwithstanding anything contained in this Agreement to the contrary, and as consideration for reduced commercial activity pursuant to the Agreement in 2020, AXS shall not be obligated to provide, in calendar year 2020 only, an allowance to City for its Annual Infrastructure Improvement Contribution (“Capital Improvement Obligation”) or provide, also in calendar year 2020 only, the

required Annual Community Outreach Program Funds (“Outreach Obligation”). The parties agree that AXS’ Capital Improvement Obligation and Outreach Obligation shall resume (subject to proration as described in this Amendment) in 2021 and continue throughout the remainder of the Term.”

9. Exhibit A, Section (N), entitled “**Refunds; Relocated Events**”, shall be amended in subsection (a) by deletion of “The refund and/or exchange policy for postponed or modified events (e.g. substitute acts) shall be mutually determined the City Tenant and City on a case-by-case basis.” which shall be replaced with the following:

“Refunds, if any, for postponed, rescheduled or modified events (e.g. substitute acts) shall be mutually determined by AXS and the City Tenant, and be subject to and conditioned upon written approval of City prior to issuance.”

10. Exhibit B, Section (B)(4), entitled Digital Value-Added Services Credit shall be amended by addition of the following after the third sentence:

“Notwithstanding the foregoing or anything contained herein, since there is no unused portion of the Digital Value-Added Services Credit from the 2020 calendar year, and in fact there were digital services costs in excess of the 2020 Digital Value-Added Services Credit (the “2020 Excess Costs Amount”), beginning on January 1, 2021, the Digital Value-Added Services Credit shall resume, but for 2021 shall be reduced by the 2020 Excess Costs Amount, to account for the overage of expenses in the 2020 calendar year.”

11. Except as otherwise described in this Amendment, and beginning in calendar year 2021, the parties agree that after the Reopening Notice has been issued, the parties shall set forth a proration schedule in accord with the below to account for certain payments or credits owing for the calendar year of the Reopening Notice, to account for the fact that the Reopening Notice is not likely to be issued on a January 1, and therefore the payments and credits which were accounted for during that calendar year basis will need to be adjusted to reflect that some payments and credits after the Reopening Notice will occur during or be payable with respect to a partial year rather than a full calendar year. If the Reopening Notice is issued before July 1, 2021, the Minimum Guaranteed Payment, Ticket Sales Guaranty, Capital Improvement Obligation and Outreach Obligation shall be equal to 50% of the amounts stated in the Agreement. If the Reopening notice is issued before October 1, 2021, the Minimum Guaranteed Payment, Ticket Sales Guaranty, Capital Improvement Obligation and Outreach Obligation shall be equal to 25% of the amounts stated in the Agreement.

12. The parties recognize and expressly agree that certain services, consistent with Exhibit A, may be requested by City prior to the Reopening Notice. AXS shall perform such

services, consistent with the terms of the Agreement, upon City's direction during the Health and Safety Restrictions Period.

13. AXS consents to the use of electronic signatures by the City. This First Amendatory Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this First Amendatory Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this First Amendatory Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the basis that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

13. The Parties agree that this First Amendatory Agreement shall be deemed effective as of August 1, 2020.

14. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

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Contract Control Number: THTRS-202157343-01/ THTRS-201952501-01
Contractor Name: AXS Group, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

THTRS-202157343-01/ THTRS-201952501-01
AXS Group, LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

THTRS-202157343-01/ THTRS-201952501-01
AXS Group, LLC

By: Victoria von Szeliski

Name: Victoria von Szeliski
(please print)

Title: SVP Business Affairs & General Counsel
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit F

-None