



## **RED BULL ON-PREMISE AGREEMENT**

This SPONSORSHIP AGREEMENT (the "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023, with an effective date of July 1, 2022, (the "Effective Date") by and between **Red Bull North America, Inc.**, a California corporation ("Red Bull"), and the **City of Miami Beach, Florida**, a Florida municipal corporation (the "City"), each a "party" and collectively the "parties";

WHEREAS, the City owns, operates and controls the venues listed on Exhibit A (together with any future venues, that may be added to the scope of the Agreement by mutual agreement of the parties, and memorialized in writing by the parties (the "Venues") and Red Bull wishes to secure certain marketing/promotional benefits from the City and its Venues with respect to the Energy Drink category, as defined in Subsection 2(h); and

WHEREAS, as used herein, unless specifically delegating the authority to the City Commission, any references to the "City" shall require the action/approval of the City Manager on behalf of the City. Any references to the "City Manager" shall refer to the City Manager, as the executive director of the City. Any references to the "City Manager's designee" shall refer to the City's Communications Department Director as the City staff member who will be responsible for administering the Agreement, and with respect to inspection and audit functions, may include internal auditors or outside auditors retained by the City; and

WHEREAS, as used herein, the term "Affiliate" or "Affiliates" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by, or is under common Control with, such Person. For purposes hereof, the term "Control" (including the terms "controlled by" and "under common control with") shall mean possession of a Controlling Interest. "Controlling Interest" means the membership of greater than fifty percent (50%) of the voting equity interests in a Person or the ownership of greater than fifty percent (50%) of the votes necessary to elect a majority of the board of directors or other governing body of such Person. As referenced herein, "Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

NOW, THEREFORE, in consideration of the covenants and agreements set forth below, the parties hereby agree as follows:

1. Term. The "Term" of this Agreement shall commence on July 1, 2022 and remain in effect until June 30, 2027, unless terminated earlier in accordance with the terms herein, with each twelve-month period from the Effective Date, a "Contract Year".

2. Marketing Benefits. The City shall (and shall cause the Venues to) provide Red Bull with each of the promotional/marketing benefits described below with respect to the Energy Drink category (the "Marketing Benefits"):

(a) Distribution. Subject to the Permitted Exceptions delineated in Exhibit C, the City shall only distribute Red Bull Energy Drink, Red Bull Sugarfree and Red Bull Editions (the "Products") of the Energy Drink category at all service points of the Venues, including, without limitation: catering/conference services, beverage carts, vending and employee-only areas of the Venues.

(b) Visibility. The City agrees to prominently display a minimum of one Red Bull Display Equipment (as defined in Exhibit B) at each Venue, pursuant to the terms set forth on Exhibit B (the “Red Bull Display Equipment Terms & Conditions”). The City agrees to comply with the “Red Bull Display Equipment Terms & Conditions”.

(c) Menu Placement. The City shall list the Products in all of its menus at the Venues; provided, that, the City shall not make any product functionality, performance and/or similar claims with respect to the Products on its menus or any other promotional items.

(d) Perfect Serve. The City shall use reasonable efforts to serve the Products in a full, chilled can when ordered.

(e) Right Price. Each Venue shall be permitted to upcharge the resale price per can of Products at a price per can that does not exceed the price of the average imported beer; provided, however, that the maximum suggested retail price per can of Products shall not exceed \$10.00.

(f) Sampling Activations, as outlined in Exhibit C.

(g) Events. All marketing events and promotions shall be mutually agreed upon, in writing, by the City and Red Bull.

(h) Exclusivity. Except with respect to the Permitted Exceptions, delineated in Exhibit C, the City grants to Red Bull the exclusive right to sell beverages within the “Energy Drink” category with the City and within each Venue. As referenced in the Agreement “with the city” or “at the City” or “the City and the Venues”, as it relates to the City, shall refer to the use of the City’s rights of ways in connection with City-Sponsored Events or Special Event Permits issued to a third party. Subject to the exceptions delineated in this Agreement, the City and Venues shall not: (a) offer, distribute, sample, sell, feature or promote (or permit such activities by any third party) any Energy Drinks other than the Products; or (b) grant any promotional, advertising or marketing rights to any other manufacturer or distributor of Energy Drinks. “Energy Drink” means every beverage product which claims to improve personal energy, physical or cognitive performance, endurance, vitalization including, without limitation, any beverage (whether alcoholic, non-alcoholic, carbonated or non-carbonated) regardless of whether in ready-to-drink/consume, concentrate, powder, frozen, mixed with another beverage, or in any other format, and whether or not the product/beverage is manufactured, distributed, marketed, advertised or sold on the Effective Date or thereafter; provided, that the isotonic category of beverages shall be excluded from the exclusivity rights granted under this Agreement. Furthermore, the City will use commercially reasonable efforts to ensure that unauthorized Energy Drink sampling efforts are prohibited at the Venues. Red Bull agrees that the City is allowed competitive sponsor permit waivers to offer, distribute, sample, sell, feature or promote competing energy drink brands as outlined in Exhibit C.

(i) Additional Benefits. The City shall provide Red Bull with the additional benefits set forth in Exhibit C, attached hereto.

3. Purchase of Products. The City shall purchase the Products exclusively from an authorized Red Bull distributor of the City’s choice (each, an “Authorized Distributor”) pursuant to a separate agreement with the City (“Third-Party Products Distribution Agreement”). All Products shall be delivered in aluminum cans.

4. Payments; Rebates. Red Bull shall make the following payments and provide Products to the City as set forth below:

(a) (intentionally omitted)

(b) Complimentary Product Free of Charge (Charities/Employees/Consumers). With timing as agreed in writing (email OK) from time to time, Red Bull agrees to provide up to a total of 625 Cases for City employees (15,000 x 8.4 oz cans), and 1,250 Cases (30,000 x 8.4 oz cans) for Miami Beach consumers, with an estimated retail value of up to \$135,000.00, during the Term at no additional charge to City, provided, however, that the City will administer all requests through a central contact appointed in writing by the City Manager (email OK) so that City may prioritize the requests. The City acknowledges and agrees that unrequested Product in any Contract Year shall not be carried over to the subsequent Contract Year or be redeemable for cash payment. Product may be chosen from 4 SKU distribution.

(c) Marketing Payments. Subject to Section 7, Red Bull shall pay the City the following amounts (the “Marketing Payments”) to be paid in equal installments on or before the following “Payment Dates” (with the period in between each Payment Date below, an “Installment Period”) based on invoices to be submitted by the City:

Year	Invoice Date(s)	Payment Amount per Contract Year
Contract Year 1	July 1, 2022 or Date of Execution of Agreement	\$75,000
Contract Year 2	July 1, 2023	\$75,000
Contract Year 3	July 1, 2024	\$75,000
Contract Year 4	July 1, 2025	\$75,000
Contract Year 5	July 1, 2026	\$75,000

(d) Rebate Opportunity. Red Bull shall pay the City the rebate amounts set forth below, paid quarterly, within thirty (30) days from the end of each quarter (each quarter ending on the last day of each of the following months (September, December, March, June) based on invoices to be submitted by the City. This rebate amount shall apply to all Product that the City purchases directly from Red Bull, as well as on all Product purchased by/through any Red Bull Authorized Distributor, including Vending Machine sales as outlined in Exhibit B. Vending Machine sales shall also be reported and paid on a quarterly basis.

Contract Year	Quarterly Rebate Amount / Number of Quarterly Rebate Cases
Contract Year 1	\$5/case
Contract Year 2	\$5/case
Contract Year 3	\$5/case
Contract Year 4	\$5/case
Contract Year 5	\$5/case

(e) Additional Volume Bonus Rebate Opportunity. If the aggregate amount of cases of Products purchased by the City and all Venues from the applicable Authorized Distributor(s) including Vending Contractors, meets the targets set forth below for a particular Contract Year, then Red Bull shall pay the City the rebate amounts set forth below within thirty (30) days from the last day of each Contract Year based on invoices submitted by the City:

Contract Year	Yearly Case Sales Goal /Yearly Rebate Amount/Number of Yearly Rebate Cases
Contract Year 1	\$25,000 paid for the first 10,000 cases, and \$25,000 for each additional 5,000 cases
Contract Year 2	\$25,000 paid for the first 10,000 cases, and

	\$25,000 for each additional 5,000 cases	
Contract Year 3	\$25,000 paid for the first 10,000 cases, and \$25,000 for each additional 5,000 cases	
Contract Year 4	\$25,000 paid for the first 10,000 cases, and \$25,000 for each additional 5,000 cases	
Contract Year 5	\$25,000 paid for the first 10,000 cases, and \$25,000 for each additional 5,000 cases	

(f) Reports/Payments.

(1) Reports. Within sixty (60) days from the end of each quarter, Red Bull shall provide the City with a report identifying the number of purchases of Product made by the City and its Venues; identifying the origin of the orders by each Venue or Special Event Permit user; gross metered receipts, prices charged; together with the payments due to the City pursuant to the Agreement, together with the rebate payments due to the City pursuant to the Agreement, all certified to be correct by Red Bull. Payments to the City shall be grossed up to include any applicable government imposed sales and use taxes.

(2) Payments. Promptly following execution of this Agreement, Red Bull accounts payable will send an email to the City's designated email address inviting the City to set up an account with Red Bull's online system, including the submission of the City's Form W-9 (for domestic accounts only). Once registered, the City may then submit invoices through Red Bull's system. Red Bull shall issue a Form 1099, where applicable in connection with any payments made to a domestic account pursuant to this Agreement. Red Bull shall make all payments due to the City pursuant to this Agreement via electronic transfer to such bank account in the name of the City identified from time to time by the City in writing to Red Bull and verified by Red Bull upon receipt of a voided check or bank letter verifying such bank account.

(g) Use Fee/Tax. Red Bull shall include sales and use taxes with the payment of Commissions and other consideration or any other fees payable by Red Bull to the City under this Agreement, and be responsible for any deficiency amounts which may be due to the State of Florida Department of Revenue, including any associated penalties and interest. Red Bull shall not be charged by the City common area maintenance fees, taxes or other charges related to Red Bull's occupation of the space related to the Red Bull Display Equipment. Notwithstanding the foregoing, Red Bull shall be responsible for personal property taxes related to any Red Bull Display Equipment. Additionally, in the event that Miami-Dade County assesses ad-valorem taxes related to the use of spaces being occupied by Red Bull Display Equipment, Red Bull shall be responsible for paying or reimbursing the City for said taxes. The provisions of this Subsection (g) shall survive expiration or early termination of the Agreement.

5. Third Party Control of Venue. In the event that a third party secures control of any Venue for a special event, the City must use commercially reasonable efforts to ensure that such third party complies with the terms and conditions of this Agreement.

6. Audit and Inspections.

(a) Maintenance and Examination of Records. Red Bull shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, by the City Manager or designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross

receipts from the purchase of Products pursuant to the Agreement, received by Red Bull and by Red Bull's Authorized Distributor; expenses including, without limitation, Marketing Payments, Rebates, commissions and expenses, and profit and loss statements, and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

(b) Inspection and Audit. Red Bull shall maintain its financial records pertaining to its operations under the Agreement for a period of three (3) years after the conclusion of the Term, and such records shall be open and available to the City Manager or designee, as they may deem necessary. Red Bull shall maintain all such records at Red Bull's place of business; however, all such records shall be relocated, at Red Bull's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City Manager or designee that the City desires to review said records.

The City Manager or designee shall be entitled to audit Red Bull's records pertaining to its operation as often as it deems reasonably necessary throughout the Term of the Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the Term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Red Bull's statement of gross receipts for any year or years audited, in which case the firm shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until Red Bull has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. Nothing contained within this Section shall preclude the City's audit rights for resort tax collection purposes.

Red Bull shall submit at the end of each Contract Year, a certified audited annual statement of gross receipts related to the Agreement, in a form consistent with generally accepted accounting principles.

It is Red Bull's intent to stay informed of comments and suggestions by the City regarding Red Bull's performance under the Agreement. Within thirty (30) days after the end of each Contract Year, Red Bull and the City may meet to review the parties' performance under the Agreement. At the meeting, Red Bull and the City may discuss quality, operational, maintenance and any other issues regarding a party's performance under the Agreement.

(c) Inspector General Audit Rights.

(1) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(2) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of Red Bull, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to

detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

(3) Upon ten (10) days written notice to Red Bull, Red Bull shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of Red Bull its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(4) The Inspector General shall have the right to inspect and copy all documents and records in Red Bull's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

(5) Red Bull shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

- i. If this Agreement is completely or partially terminated, Red Bull shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- ii. Red Bull shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

(6) The provisions in this section shall apply to Red Bull, its officers, agents, employees, subcontractors and suppliers. Red Bull shall incorporate the provisions in this section in all subcontracts and all other agreements executed by Red Bull in connection with the performance of this Agreement.

(7) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by Red Bull or third parties.

7. Non-Performing Contract Year. In the event that the cumulative volume of cases of Product purchased by the City and the Venues from Red Bull during a particular Contract Year, materially decreases, by thirty percent (30%) or more, below the base volume of cases of Product purchased by the City and the Venues for the first Contract Year ("Base Contract Year") (a "Non-Performing Contract Year"), Red Bull shall be entitled to a reimbursement for the proportionate share of Marketing Payment previously advanced by Red Bull but not earned by the City. The amount of the Marketing Payment deemed earned by the City for the Non-Performing Contract Year shall be determined by multiplying the Marketing Payment amount by the fraction equal to the volume of cases purchased during the Non-Performing Contract Year,

divided by the number of cases of Product purchased during the Base Contract Year. The refund amount owed to Red Bull shall be the difference between the Marketing Payment and the amount of the Marketing Payment earned by the City for the Non-Performing Contract Year.

8. Employees and Independent Contractors.

(a) In connection with the performance of its responsibilities hereunder, Red Bull may hire its own employees who will be employees of Red Bull and not employees or agents of the City. Additionally, Red Bull's vendors (i.e., entities who provide Products and/or Vending Machines to Red Bull) shall not be considered agents or employees of the City. Red Bull shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to its employees and/or independent contractors.

(b) Red Bull shall ensure that all its employees, contractors and vendors while working at or within the Venues observe all the graces of personal grooming. Red Bull shall hire people to work in its operations who are neat, clean, well-groomed and shall comport themselves in a professional and courteous manner and ensure that its contractors and vendors comply with same.

(c) Level 1 Background Check Screening Process. With respect to any persons hired by Red Bull or contractor under Red Bull's control (collectively, "Red Bull personnel"), who provide services at the City's Venues, Red Bull shall conduct a full Level I criminal background screening check at its own expense on each of its employees and/or contractors engaged in providing services under this Agreement. The Level I background screening check shall be compliant with the requirements of Section 435.03, Florida Statutes, as may be amended from time to time, and must include, at minimum, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and local criminal records checks through local law enforcement agencies (collectively, the "Statutory Screening Standards"). Red Bull shall ensure that Red Bull personnel meet the Statutory Screening Standards prior to commencing to perform any work and/or services under this Agreement. Red Bull acknowledges that it has an ongoing duty to maintain and update these lists as new employees and/or contractors are hired and in the event that any previously screened employee and/or contractor fails to meet the Statutory Screening Standards. Red Bull agrees to notify the City immediately upon becoming aware that one of the Red Bull personnel who was previously certified as completing the background check and meeting the Statutory Screening standards is subsequently arrested or convicted of any disqualifying offense. Failure by Red Bull to notify the City of such arrest or conviction within two business days of being put on notice shall constitute grounds for the City, at its sole option, to place Red Bull in default. Red Bull shall defend, indemnify and hold the City, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees) or claims for injury or damages arising out of its failure to comply with this requirement. Red Bull shall employ personnel competent to perform the work specified herein. The City reserves the right to request the removal of Red Bull's personnel from performing services under this Agreement where Red Bull's personnel's performance or actions are deemed, at the sole discretion of the City Manager's designee, to be inappropriate or disrespectful of the City's property or policies. Red Bull's personnel must wear photo identification at all times. Notwithstanding the foregoing, Red Bull's Authorized Distributors shall be responsible for complying with these Statutory Screening Standards under their separate agreement with the City. If Red Bull materially fails to comply with this provision the City may default Red Bull pursuant to Section 9 herein.

9. Default/Termination. Subsections (a) through (c) shall constitute events of default under this Agreement. An event of default by Red Bull shall entitle City to exercise any and all remedies described as City's remedies under this Agreement including, but not limited to, those set forth in Subsection (d). An

event of default by City shall entitle Red Bull to exercise any and all remedies described as Red Bull's remedies under this Agreement including, but not limited to, those set forth in Subsection (e).

(a) Bankruptcy. If either the City or Red Bull shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

(b) Default in Payment. Any payment which Red Bull is required to make to City which is not paid on within thirty (30) days of its due date, such payment shall be subject to interest at the rate of eighteen percent (18%) per annum. If such failure continues thirty (30) days after written notice thereof from the City, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

(c) Non-Monetary Default. In the event that Red Bull or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Red Bull cures any default pursuant to this Subsection, it shall promptly provide City with written notice of same.

(d) City's Remedies for Red Bull's Default. If any of the events of default, as set forth in this Section 9, shall occur, the City may, after notice (if required) and the expiration of cure periods (as provided above), at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Red Bull a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Red Bull. On the date so specified, Red Bull shall then quit and surrender the Venues to City pursuant to the provisions of Subsection (g). Upon the termination of this Agreement, all rights and interest of Red Bull in and to the Venues and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Red Bull under this Agreement. In addition to the rights set forth above, City shall have the rights to pursue any and all of the following:

(1) the right to injunction or other similar relief available to it under Florida law against Red Bull; and/or

(2) the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Red Bull's default.

(e) If an event of default by the City, as set forth in this Section 9, shall occur, Red Bull may, after notice (if required) and the expiration of the cure periods (as provided above), at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said

termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Red Bull specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Red Bull shall quit and surrender the Venues to the City pursuant to the provisions of Subsection (g). Upon any termination of this Agreement under this Subsection, Red Bull shall be entitled to collect the proportionate share of any previously advanced but unearned Marketing Payments, as described in Section 4, for the remainder of the Contract Year for the effective date of the termination. The amount of such reimbursement will be the result of multiplying, the total amount of the Marketing Payment to the City in the Contract Year in which the Agreement is terminated by a fraction, the numerator of which is the number of months remaining in the Contract Year in which the Agreement is terminated, at the time such termination occurs, and the denominator of which is 12 (twelve). **Red Bull's sole remedy for a breach of contract by the City shall be to terminate the Agreement and collect the proportionate share of the unearned Marketing Payments.**

(f) Termination for Convenience/Partial Termination.

(1) Termination for Convenience by the City. The City may also, for its convenience and without cause, terminate the Agreement at any time during the term by giving written notice to Red Bull of such termination; which shall become effective within one (1) year following receipt by Red Bull of such notice. Additionally, in the event of a public health, welfare or safety concern, as determined by the City Manager, in the City Manager's sole discretion, the City Manager, pursuant to a verbal or written notification to Red Bull, may immediately suspend the services under this Agreement for a time certain. If the Agreement is terminated for convenience by the City, Red Bull shall be reimbursed for all Monetary Funding previously advanced by Red Bull but not earned by City pursuant to the terms of this Agreement, calculated by multiplying the total amount of such funds paid to City in the contract Year in which the Agreement is terminated by a fraction, the numerator of which is the number of months remaining in the contract Year in which the Agreement is terminated, on the date of termination, and the denominator of which is twelve (12); following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

(2) Red Bull acknowledges that the City, at the City's sole discretion, may close all or a portion of the Venues. In such a case, then the parties agree that the portion of the Agreement referencing said individual Venue shall be partially terminated for convenience, without cause and without penalty to either party, and only as to the Venues, or portion thereof, which have been closed; provided, however, that Red Bull would be entitled to a reimbursement, calculated pursuant to Section 7, in the event that the Contract Year during the closure becomes a Non-Performing Contract Year.

(3) Except as provided in the preceding Subsections (1) and (2), in the event of termination or partial termination by City of the Agreement pursuant to this Subsection, Red Bull herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants, and employees (including, but not limited to, claims for interference in business or damages for interruption of services or interference of Red Bull's operations).

(g) Surrender of Venues. At the expiration of this Agreement, or in the event of termination or partial termination of the Agreement, Red Bull shall surrender any Venues in which Red Bull has installed Red Bull Display Equipment in the same condition as the Venues were prior to the Effective Date of this Agreement, reasonable wear and tear excepted. Red Bull shall remove all of its Red Bull Display Equipment and any and all other equipment, fixtures, personal property, etc. installed by Red Bull upon thirty (30) days written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Red Bull's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Venues (or portions thereof) after termination (or partial

termination) of the Agreement shall constitute trespass by the Red Bull and may be prosecuted as such. In addition, the Red Bull shall pay to the City one thousand dollars (\$1,000.00) per day as liquidated damages for such trespass and holding over.

(h) Remedies in the event of a Default. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL RED BULL OR THE CITY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS. HOWEVER, NOTHING IN THIS PARAGRAPH SHALL BE DEEMED TO EXCLUDE OR LIMIT ANY LIABILITY UNDER ANY APPLICABLE LAW OR STATUTE WHICH SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED.

10. Trademarks. Neither the City nor Red Bull may use the other's trademarks, any logos, designs or slogans related to Red Bull Products, venues, brands or operations of the other without express prior written consent of the other party. No joint Red Bull/City logo shall be created pursuant to this Agreement.

11. Representations & Warranties. Red Bull and the City each represent and warrant to the other that: (a) it has all necessary power and legal authority to enter into and perform its obligations hereunder; and (b) it is not party to any other written or oral agreement that conflicts with such party's obligations to the other or restricts such party's performance of this Agreement.

12. No Partnership. This Agreement is not intended to (and does not) create an agency, joint venture, partnership or similar relationship between the parties. Each party will act solely as an independent contractor and neither party will have the right to act for or bind the other party in any way.

13. Extension; Right of First Refusal. (Intentionally Omitted)

14. Indemnification. Red Bull shall defend, indemnify and hold harmless the City, and its officers, employees, agents, and contractors from and against any and all demands, actions, damages, losses, and liability claims made by a third party, and costs and expenses related thereto, including reasonable attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, (collectively "Losses") arising from or related to: (i) Red Bull's breach of its representations or warranties (or those of its employees, contractors or agents); (ii) Red Bull's negligence or willful misconduct (or those of its employees, contractors or agents); (iii) Red Bull's infringement or alleged infringement of a third party's intellectual property rights; and/or (iv) the consumption of the Products as delivered. This section shall survive the expiration or other termination of this Agreement.

15. Insurance Requirements.

Red Bull shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement.

(a) Commercial General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products, completed operations and contractual liability for indemnification obligations under an "insured contract."

(b) Workers Compensation Insurance and Employers Liability Insurance shall be provided as required under the Laws of the State of Florida.

(c) Automobile Insurance for any vehicles used for, or associated with Red Bull's operations shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and City Manager's designee, respectively. All policies must provide ten (10) days written notice of cancellation to both the City's Risk Manager and City Manager's designee to the extent provided under the policies or at law (to be submitted to the addresses set forth in Section 23 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

(d) Certificates must be sent directly to [certificates-miamibeach@riskworks.com](mailto:certificates-miamibeach@riskworks.com). Please ask vendors to include the following information when sending the insurance certificates:

- Include the Contract's # and Red Bull's name in the subject line of the email.
- COI must include that the City of Miami Beach is an "Additional Insured" with respect to the General Liability coverage.
- Certificate Holder on all COI shall read:  
City of Miami Beach  
c/o Exigis Insurance Compliant Services  
P.O. Box 947  
Murrieta, CA 92564

(e) **Failure to procure or maintain the required insurance program shall, at the City's discretion, either (i) constitute an automatic default of the Agreement under which the City may, upon written notice to Red Bull and following 10 days for Red Bull to cure, immediately terminate the Agreement; or (ii) the City, in its sole discretion, may, following written notice to Red Bull and 10 days for Red Bull to cure, obtain the insurance itself, in which case said insurance shall be charged back to Red Bull.**

(f) Prior to the Commencement Date of this Agreement, Red Bull shall provide City with a Certificate of Insurance for each such policy. Said policies of insurance shall be primary to and contributing with any other insurance maintained by Red Bull or City.

Red Bull shall give the City prompt written notice of any incident, occurrence, claim settlement or judgment against such insurance which may diminish the protection such insurance affords the City.

(g) Subrogation. The terms of insurance policies referred to herein shall preclude subrogation claims against Red Bull, the City and their respective officers, employees, and agents.

16. Limitation of City's Liability. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000.00. Red Bull hereby expresses its willingness to enter into this Agreement with Red Bull's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00.

Accordingly, and notwithstanding any other term or condition of this Agreement, Red Bull hereby agrees that the City shall not be liable to Red Bull for damages in an amount in excess of \$10,000.00 for any action for breach of contract or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

17. Laws. In its performance of the Services, Red Bull shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

18. No Discrimination. In connection with the performance of the Services, Red Bull shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, with respect to its activities within the City of Miami Beach, Red Bull shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, public services, and in connection with its membership or policies because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, hair texture and/or hairstyle, domestic partner status, labor organization membership, familial situation, or political affiliation.

19. Reserved.

20. Red Bull's Compliance with Public Records Law.

(a) Red Bull shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(b) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(c) Pursuant to Section 119.0701 of the Florida Statutes, if Red Bull meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Red Bull shall:

(1) Keep and maintain public records required by the City to perform the service;

(2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if Red Bull does not transfer the records to the City;

(4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of Red Bull or keep and maintain public records required by the City to perform the service. If Red Bull transfers all public records to the City upon completion of the Agreement, Red Bull shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Red Bull keeps and maintains public records upon completion of the Agreement, Red Bull shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(d) Request for Records; Noncompliance.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Red Bull of the request, and Red Bull must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Red Bull's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

(3) If Red Bull fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

(e) Civil Action.

(1) If a civil action is filed against a Red Bull to compel production of public records relating to the City's contract for services, the court shall assess and award against Red Bull the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that Red Bull unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that Red Bull has not complied with the request, to the City and to Red Bull.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Red Bull at Red Bull's address listed on its contract with the City or to Red Bull's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(3) If Red Bull complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

**(f) IF RED BULL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR AS TO RED BULL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411**

## 21. Force Majeure.

(a) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of Red Bull or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.

(b) If the City or Red Bull's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.

(c) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.

(d) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.

(e) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than ninety (90) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Red Bull of such termination. If the Agreement is terminated pursuant to this section, Red Bull shall be paid for any outstanding invoices and shall also be entitled to collect the proportionate share of any previously advanced but unearned Marketing Payments for the remainder of the Contract Year for the effective date of the termination. The amount of such reimbursement will be the result of multiplying, the total amount of the Marketing Payment to the City in the Contract Year in which the Agreement is terminated by a fraction, the numerator of which is the number of months remaining in the Contract Year in which the Agreement is terminated, at the time such

termination occurs, and the denominator of which is 12 (twelve), following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

(f) Waiver of Loss from Hazards. Each party hereby expressly waives all claims against the other for loss or damage sustained by it resulting from a Force Majeure event, and each party hereby expressly waives all rights, claims, and demands against the other and forever releases and discharges the other from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

## 22. E-Verify.

(a) To the extent that Red Bull provides labor, supplies, or services under this Agreement, Red Bull shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Red Bull shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, as related to this Agreement Red Bull shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If Red Bull enters into a contract with an approved subcontractor, the subcontractor must provide Red Bull with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Red Bull shall maintain a copy of such affidavit for the duration of the contract or such other extended period as may be required under this Agreement.

### (b) TERMINATION RIGHTS.

(1) If the City has a good faith belief that Red Bull has knowingly violated Section 448.09(1), Florida Statutes, which prohibits any person from knowingly employing, hiring, recruiting, or referring an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States, the City shall terminate this Agreement with Red Bull for cause, and the City shall thereafter have or owe no further obligation or liability to Red Bull.

(2) If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 1(a), but Red Bull otherwise complied with such subsection, the City will promptly notify Red Bull and order Red Bull to immediately terminate the contract with the subcontractor. Red Bull's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate Red Bull's contract for cause.

(3) A contract terminated under the foregoing Subsection (b)(1) or (b)(2) is not in breach of contract and may not be considered as such.

(4) The City or Red Bull or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (b)(1) or (b)(2) no later than 20 calendar days after the date on which the contract was terminated.

(5) If the City terminates the Agreement with Red Bull under the foregoing Subsection (b)(1), Red Bull may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.

(6) Red Bull is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 22.

23. Notices. All notices from the City to the Red Bull shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to the Red Bull at the following address:

Red Bull North America, Inc.  
1630 Stewart Street  
Santa Monica, CA 90404  
Attention: General Counsel  
E-Mail: legal@us.redbull.com

\*\*\*\*

All notices from the Red Bull to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail, return receipt requested, to the City of Miami Beach at the following addresses:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attention: Matt Kenny – Marketing and Communications Department Assistant Director  
E-Mail: MattKenny@miamibeachfl.gov

With copies to:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attention: City Manager

Red Bull and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing. Notwithstanding the foregoing, operational notifications, that are not of a nature seeking to have the other party placed in default, may be provided to the other party via e-mail.

24. Miscellaneous.

(a) Amendments. This Agreement may only be amended by mutual written agreement between the parties. Unless specifically delegating the authority to the City Commission, the City Manager shall be authorized to execute any amendments to the Agreement on behalf of the City.

(b) No Waiver. The failure of either party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.

(c) Assignments. A party may not assign this Agreement without the prior written consent of the other.

(d) Law/Venue. This Agreement, and the parties' conduct arising out of or related to it, shall be governed by Florida law, without regard to its choice of law rules. Venue for any action to enforce the terms and conditions of the Agreement shall be in Miami-Dade County, Florida.

(e) Attorneys' Fees. If it becomes necessary for City or Red Bull to enforce their respective rights under this Agreement or any part hereof through litigation, Red Bull and City agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such litigation, including a reasonable attorneys' fee and costs, for all trial and appellate proceedings.

\*SIGNATURE PAGE TO FOLLOW\*

**CITY OF MIAMI BEACH**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**RED BULL NORTH AMERICA, INC.**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

## EXHIBIT A

### List of Venues

#### 1. Venues.

- Miami Beach Convention Center/Carl Fisher Clubhouse
- Miami Beach Golf Club
- Normandy Shores Golf Club
- Miami Beach Bandshell (formerly the North Beach Bandshell)
- All existing City of Miami Beach Parks and Recreation facilities
  - Flamingo Park Tennis Center
  - Miami Beach Tennis Center
  - Muss Park
  - North Shore Park
  - Normandy Isle Park
  - Scott Rakow Youth Center
- All existing public City of Miami Beach Parking Garages (directly operated by the City or by a third party who, is contractually authorized to operate and manage the garage on behalf of the City via a management or concession agreement, as described in Exhibit A-1, attached hereto, as may be amended from time to time).
- Beachfront concessions operated by Boucher Brothers Miami Beach, LLC (21st St, 46th St, South Pointe Park, Lummus Park, North Beach Oceanside Park, Allison Park and Ocean Terrace (as stipulated under the Boucher Brothers agreement); provided, however, such locations will remain subject to the terms and conditions of the Agreement if the City's agreement with Boucher Brothers Miami Beach expires or terminates during the Term.
- South Pointe Café (Pavilion Building at South Pointe Park)
- All internal City Departments
- Any future City owned or operated golf courses, parks and recreational facilities, tennis centers, parking garages\* beachfront concessions and internal City Departments or expansion of existing Venues where the City is the owner and operator ("Future Venues"), unless otherwise not permitted under a Third-Party Agreement, as defined below.
- Additional Venues may be added by mutual agreement of the parties.

#### 2. Permitted Exceptions.

Venues shall NOT include any City of Miami Beach property including City-owned land, buildings, structures, and/or other facilities thereon (collectively "City Property") that is operated by a third party, pursuant to a public/private partnership, Development Agreement, Concession Agreement, Lease, Operation and Management Agreement, License, Use Agreement, Easement Agreement, Revocable Permit, Sidewalk Café Permit or any other form of agreement (collectively, "Third-Party Agreements"); in which case such, such City Property or Third-Party Agreements will not be subject to the exclusivity rights granted to Red Bull under this Agreement ("Permitted Exceptions"). Additional Venues may be added by mutual agreement of the parties, and as may be permitted under Third Party Agreements.

## EXHIBIT A-1

### List of City Garages

1. 7<sup>th</sup> Street Garage, 200 7<sup>th</sup> Street (G1)
2. 12<sup>th</sup> Street Garage, 512 12<sup>th</sup> Street (G2)
3. 13<sup>th</sup> Street Garage, 1301 Collins Avenue (G3)
4. Anchor Garage, 1557 Washington Avenue (G4)
5. 17<sup>th</sup> Street Garage, 640 17<sup>th</sup> Street (G5)
6. 42<sup>nd</sup> Street Garage, 400 West 42<sup>nd</sup> Street (G6)
7. City Hall Garage, 1755 Meridian Avenue (G7)
8. 5<sup>th</sup> & Alton Garage, 550 Lenox Avenue (G8)\*
9. Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue (G9)
10. Sunset Harbor Garage, 1900 Bay Road (G10)
11. Convention Center Garage, 1901 Convention Center Drive (G11)
12. Collins Park Garage, 340 23<sup>rd</sup> Street (G12)

\*Please note that the City Garage described in the foregoing Section 8 (G8) is part of a public private project pursuant to a Third-Party Agreement; therefore the installation of Vending Machines at G8 will not be permitted unless the private entity that operates the project agrees.

## **EXHIBIT B**

### **Product List and Pricing**

The list of Products and any changes or updates to the Red Bull list of Products shall be provided to the City Manager's designee in writing (without the need to amend the Agreement) prior to implementing any change so that the City is aware of the list of available Products at all times. The initial Products list is attached hereto as Exhibit B-1.

Red Bull shall cause its Authorized Distributors to sell its Products to the City and all Venues covered by this Agreement at \$36 / case for 24 x 8.4 oz cans, provided however that, subject to the restrictions set forth in the following paragraph, Red Bull may at Red Bull's sole discretion change such pricing at any time and from time to time on 30 days written notice.

Upon the City's request, Red Bull shall substantiate the basis for any increase in the pricing, when the total increase exceeds 4% from the prior Year's price or cumulatively increases by more than 4% per Year. Any increases in the pricing for the Products, which exceed 4% from the prior Year's price or cumulatively increases by more than 4% per Year, shall require the prior written approval of the City Manager, which approval shall not be unreasonably withheld. If the parties cannot reach an agreement as to the price increases, either party may terminate the Agreement upon providing the other party with ninety (90) days written notice.

## EXHIBIT B

### Red Bull Display Equipment Terms & Conditions:

The following Terms and Conditions shall apply to all Red Bull display equipment, including, without limitation, Red Bull branded coolers, ice barrels, Edge Lit signs, metal back bar displays, chalkboards, and metal signs (the "Red Bull Display Equipment") and Vending Machines.

1. Red Bull Display Equipment will be placed at prominent locations at the Venues at the sole discretion of the City Manager or designee, but with meaningful consultation and input from the local Red Bull account manager. Red Bull, at the request of the City Manager or designee, shall remove or relocate Red Bull Display Equipment.

2. Red Bull shall retain ownership of all items of Red Bull Display Equipment that Red Bull owns or leases and permits the City (and the Venues) to use, and Red Bull shall be entitled to remove them upon the earlier of the conclusion of the Term or termination of this Agreement pursuant to Section 9(g) of the Agreement.

3. Service/maintenance. Red Bull shall, at no cost to the City, maintain any Red Bull Display Equipment in the City's or any Venue's possession, in good working order, and in good condition and repair, free of damage or graffiti, ordinary wear and tear excepted, including, without limitation, performing normal servicing and repairs, as needed. Red Bull will also provide the City with a telephone number to request emergency repairs and receive technical assistance related to the Red Bull Display Equipment after business hours. Red Bull will promptly respond to each City request within forty-eight (48) hours and will use reasonable efforts to remedy the related Red Bull Display Equipment problem as soon as possible, but no later than five (5) working days. Red Bull will notify the City should a maintenance issue with equipment not be remedied in a timely manner.

4. The City shall (and shall cause the Venues to) use Red Bull Display Equipment only to store and display Red Bull Products and shall not use Red Bull Display Equipment to store or display any other item or for any other purpose.

5. The City shall (and shall cause the Venues to) display on Red Bull Display Equipment in the City's or any Venue's possession only the proprietary marks which Red Bull may, from time to time, designate, and shall not alter or remove such marks, nor display other trademarks, service marks, trade names, words, designs, graphics, three-dimensional objects, symbols, logos, or other identifications mark or commercial symbol of any kind.

6. the City shall not (and shall cause the Venues not to) sell, lease, give away or otherwise dispose of or use any Red Bull Display Equipment for any purpose not permitted by these Terms & Conditions.

7. the City agrees that a breach of any of the above Terms & Conditions shall constitute a material breach of this Agreement.

8. (intentionally omitted)

#### 9. Equipment.

(a) Red Bull will loan to City, at no charge, appropriate Red Bull Display Equipment and Vending Machines for dispensing the Products at the Venues. The Red Bull Display Equipment and Vending Machines will be exclusively used to display and merchandise the Products as reasonably determined by Red Bull, at a location to be determined by the City, and City will not use the Red Bull Display Equipment or

Vending Machines to display, stock, advertise, sell or maintain any other products (including on the exterior of the Red Bull Display Equipment or Vending Machines). Title to such Red Bull Display Equipment and Vending Machines will remain vested in Red Bull or its affiliate and the City will permit Red Bull to arrange for removal of all Red Bull Display Equipment and Vending Machines upon expiration or earlier termination of this Agreement pursuant to Section 9(g) of the Agreement. To the extent that future technology enhancements, equipment platforms or products to support these platforms are substantially different in scope or composition compared to existing equipment components and products, Red Bull and City will work in good faith to negotiate the economic terms for implementation of the new technology equipment prior to implementation. If no agreement is reached, Red Bull shall continue to be responsible for maintaining the existing Red Bull Display Equipment and Vending Machines pursuant to the terms of the Agreement.

(b) **Vending Machines.** With respect to the vending machine equipment placed at the Venues, at the sole discretion of the City Manager or designee (the "Vending Machines"), Red Bull's Authorized Distributor will have the additional responsibility for (i) stocking the Vending Machines with the Products and (ii) collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for collected monies. Red Bull shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any Vending Machines.

(c) **Removal/Relocation of Red Bull Display Equipment and Vending Machines.** Red Bull acknowledges that there may be circumstances under which the City Manager may require the removal or relocation of any or all of the Red Bull Display Equipment and/or Vending Machines. As such, Red Bull agrees that any or all of its Red Bull Display Equipment will be removed by Red Bull from their approved locations upon fifteen (15) days written notice to Red Bull and said removal shall be done in compliance with the applicable section(s) as set forth herein, and without liability to the City. Red Bull's Authorized Distributor will be responsible for removing or relocating the Vending Machines that are placed on the Venues by the Authorized Distributor pursuant to the Third-Party Distributor Agreement.

(d) **Hurricane Evacuation Plan.** Red Bull agrees that upon the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management, it shall ensure that all exterior Red Bull Display Equipment shall be secured. Additionally, and notwithstanding the foregoing, Red Bull agrees that upon receipt of notification from the City Manager or designee, whether in writing or verbally, which may be communicated to Red Bull via telephone, fax and/or email, all exterior Red Bull Display Equipment shall be removed from their approved locations and stored at a private, off-site location, within 24 hours of said notification. Red Bull's Authorized Distributor will be responsible for complying with this subsection in connection with the Vending Machines placed on the City Venues by the Authorized Distributor pursuant to the Third-Party Distributor Agreement.

(e) **Red Bull's failure to remove the Red Bull Display Equipment, or any and all other items placed on the Venues by Red Bull upon notice from the City Manager or designee within the time period provided in this Subsection, may, at the City's sole discretion, constitute an automatic default of the Agreement under which the City may, upon written notice to Red Bull, immediately terminate this Agreement.**

(f) Electrical service, including maintenance of outlets, shall be provided by the City at the Venues at no cost to Red Bull, if and where feasible. No water service will be provided by the City in connection with the operation of Red Bull Display Equipment and Vending Machines under this Agreement.

If not currently existing, requests for installation of new and/or additional outlets shall be submitted in writing to the City Manager or designee, for review and approval. If approved by the City Manager or designee, installation of new and/or additionally outlets will be performed by the City and/or an electrical contractor approved by the City, in writing, to perform said work on the City's behalf, at Red Bull's sole cost

and expense.

(g) **Schedule of Operation.** The Red Bull Display Equipment and Vending Machines shall be made available to patrons twenty-four (24) hours a day, seven days a week, based on the particular hours of operation of each individual Venue, events of force majeure permitting.

(h) **Product Reallocation.** The City shall have the option of changing the Product type sold at the Venues or Vending Machines. For the sake of example, but without limitation, if the City shall be permitted to have a greater amount of one Product, or remove a certain Product and replace it with another available Product for the Venues, including Vending Machines as requested by the City.

**EXHIBIT B-1**

**8.4 OZ only**

Red Bull Energy Drink  
Red Bull Sugarfree  
Red Bull Yellow Edition  
Red Bull Red Edition  
Red Bull Blue Edition  
Red Bull Coconut Edition

## EXHIBIT C

### 1. Additional Benefits:

(a) Waiver of Special Event Permit and/or Permit Application Fees for Red Bull's use for up to two (2) mutually agreed upon events per Contract Year, based on availability and meeting all approvals as set forth in the City's Special Event Permit approval process. For purposes of the Special Event Permit and/or Permit Application Fee waiver, these Venues shall include public beachfront areas, and Parks and Recreation facilities where Special Events are permitted. The City shall only waive fees up to a maximum of \$25,000 per event, and solely for permit or square footage fees for which the City has no hard cost. All other costs and ancillary fees including, but not limited to, production, taxes, security, audio/visual, decoration, parking or food and beverage shall be the responsibility of Red Bull North America. Rights may not be transferred or assigned and do not carry over into future Contract Years.

b) Up to two (2) royalty free Product sampling permits per month, to a maximum of twenty-four (24) per Contract Year. Permit waiver shall only cover permit fee costs for which the City has no hard cost. If Red Bull North America does not use all twenty-four (24) permits by the end of the Contract Year, any remaining permits will not roll-over to the following Contract Year and will be forfeited. All other fees and costs of production, including, but not limited to, taxes, security, audio/visual, decoration or food and beverage shall be the responsibility of Red Bull North America. Rights may not be transferred or assigned and do not carry over into future Contract Years. For the first Contract Year, Red Bull acknowledges that it has already received, retroactively, two (2) of their sampling permits, in connection with the Red Bull's sampling activation on May 3-4, 2022. These rights may not be transferred or assigned and do not carry over into future Contract Years.

### 2. Everything set forth in Section 2 of the Agreement and this Exhibit C applies to the following listed Venues, including for events taking place at those Venues –

Consumer-facing Venues:	Execution Mandated
Miami Beach Convention Center/Carl Fisher Clubhouse	Back of House (BOH) vending machine with min 4 SKU distribution (meaning Red Bull Energy Drink, Red Bull Sugar Free, Red Bull Tropical and 1 additional Red Bull Edition of the City's choosing)
Miami Beach Golf Club	4 SKU distribution
Flamingo Park Tennis Center	4 SKU distribution
Flamingo Park Aquatics Center	4 SKU distribution
North Shore Tennis Center	4 SKU distribution
Miami Beach Bandshell	4 SKU distribution
Normandy Shores Golf Club	4 SKU distribution
Beachfront concessions operated by Boucher Brothers Miami Beach LLC (21st St, 46th St, South Pointe Park, Lummus Park, North Beach Oceanside Park, Allison Park and Ocean Terrace (this one may be removed/modified under the agreement)	4 SKU distribution
<b>All City of Miami Beach Administrative Departments with the following City Departments housing the following described vending machines:</b>	
Police Department (address)	vending machine with min 4 SKU,

	served at subsidized rate
Fire Department (address)	vending machine with min 4 SKU, served at subsidized rate
Facilities and Fleet Management(address)	4 SKU distribution
<b>For the avoidance of doubt, the requirements set forth in Section 2 of the Agreement and this Exhibit C shall apply to the following City-sponsored events (City-Sponsored Events):</b>	
Miami Beach Live	high 5s @all POD (point of distribution) – See Section 2(b), (c), (d), right price and consumption activation
Culture Crawl	high 5s @all POD
Fire on the Fourth	high 5s @all POD
Veterans Day Parade	high 5s @all POD
<del>Summer Concert Series</del>	<del>high 5s @all POD</del>
Cinema Series at Soundscape Park	high 5s @all POD

For the avoidance of doubt, the above applies to private/buyout events taking place at the above consumer facing Venues. The above list allows Red Bull to activate at all of the above identified City-Sponsored events and spaces at Red Bull’s cost, under the title of “Official Energy Drink of Miami Beach”. The parties acknowledge and agree that none of the provisions of this Agreement shall be interpreted to prevent the City from being able to sell other non-competing sponsorships at all events City-wide and at all City-owned or operated properties.

### 3. Advertising & Sponsorship Rights:

(a) Recognition of Red Bull as the “Official Energy Drink Red Bull” of the City. Official status will give Official Status Recognition for City across all energy drink categories. Example: “Red Bull Official Energy Drink of Miami Beach”, or “Red Bull Official Energy Drink of South Beach”.

(b) Royalty free advertisement in any City-produced Event collateral produced for City-Produced Events as the “Official Energy Drink of Miami Beach”. This shall not include any naming or title sponsorship of City-Produced Events. As referred to herein a City-Produced Event shall mean any event where the City is the sole producer and the entity whose name is on the Special Event Permit;

(c) Minimum of one (1) royalty free Red Bull PSA or message per Contract Year to be shown on MBTV;

(d) Minimum of one (1) royalty free Red Bull PSA or message per Contract Year to be shown on the Miami Beach Trolley video screens;

(e) Red Bull shall have the right to modify, change, alter or remove its branding and promotional messages appearing on the signage once per month and any such changes or removal requested by Red Bull will be at Red Bull’s sole cost and expense.

(f) All PSA or other promotional messages shall require the prior written approval of the City Manager's designee.

**4. "Special Promotional Events, Public Special Events, Private Events and Charitable Events":**

(a) Special Promotional Events; Public Special Events

(1) The term "Special Promotional Events" shall refer to: concerts; theatrical or comedic performances; conventions; trade shows; religious events; athletic events; live performance events; sporting events; or other special events occurring at a Venue that are sponsored by a manufacturer, distributor, or marketer of Competitive Products under a sponsorship agreement with the owner or operator of the subject Special Promotional Event (not including in any instance the City or its affiliates or agents) and which do not require a Special Event Permit.

(2) The term "Public Special Events" shall refer to City-approved public events (i.e. where public access is allowed either via no cost or via pre-purchased ticket) held on City property, and permitted pursuant to the City's approved Special Event Permit process, as same may be amended from time to time during the Term of this Agreement, which may include, without limitation, the following events: Art Basel, Super Bowl, Orange Bowl, F1, and SOBEWFF.

(3) The term "Special/Public Promotional Events Exemptions" shall refer to those exceptions granted under the Agreement, for each Contract Year, to permit the following Special Promotional events at the following Venues:

- a. Three (3) events at the Miami Beach Golf Club
- b. Three (3) events at the Normandy Shores Golf Club
- c. Three (3) events at the Miami Beach Convention Center
- d. Three (3) additional Special Promotional Events or Public Special Events

(4) The City will provide Red Bull with no less than ten (10) calendar days prior written notice of each event which it intends to designate as a Special Promotional Event or other Public Special Event.

(5) The private, personal consumption of Competitive Products by athletes, coaching staff, musicians, actors, comedians, or other entertainment personalities appearing or performing for the City or at a Venue is allowed and will not require an exemption or other consent by Red Bull under the Agreement. The City shall use reasonable efforts to ensure that the consumption is limited to private areas or that the public consumption of the competitive product is not apparent from the exterior of the container/glass.

(b) Product availability at the City or Venues for private events. A private event at the City or a Venue shall mean the use of the City or a Venue, either through the rental of the Venue or through the issuance of a City-approved Special Event Permit, by a person(s) or business entity(ies) (such as a corporation) which is not open or accessible to the general public either free or via a purchased ticket. Product availability and exclusivity at private events shall be handled as follows: Competitive Energy Drink beverages may be distributed or sampled at no cost by the user of the City property or Venue for private events, provided that Products will continue to be the only Energy Drink beverage sold by the City or at the Venue, including the related concession operations at the Venue.

(c) Charitable Events. Product availability as it relates to charitable events (including, events produced by non-for-profit entities with valid tax exemption from the IRS) at Venues or at City-Permitted Special Events shall be handled as follows:

Competitive Energy Drink beverages may be distributed or sampled at no cost by the charitable organization using the City property or Venue, provided that Red Bull Products will continue to be the only Energy Drink beverage sold by the City or at the Venue, including the related concession operations at the Venue.