

RED BULL PRODUCT DISTRIBUTION AGREEMENT

This RED BULL PRODUCT DISTRIBUTION 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 Distribution Company, Inc.**, a Delaware corporation ("Distributor"), 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 ("List of Venues", each a "Venue", and collectively the "Venues"), together with any Future Venues (as defined in Exhibit A) that may be added to the scope of the agreement between Red Bull North America, Inc. ("Red Bull") and the City, pursuant to which Red Bull has secured certain marketing/promotional benefits from the City and its Venues with respect to Red Bull Products, as defined in Subsection 2(a) herein (the "Red Bull Agreement"); 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.

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. Purchase and Distribution of Products.

(a) Purchase of Products. The City may purchase from Distributor Red Bull Energy Drink, Red Bull Sugar Free, Red Bull Editions and such other Red Bull products as made available by Red Bull from time to time (collectively, the "Products") at the price negotiated between City and Red Bull under the Red Bull Agreement, as more particularly set forth in the Red Bull Agreement. Distributor shall deliver the Products to the Venues as outlined in Exhibit A.. All Products shall be delivered in shrink-wrapped cardboard cases of aluminum cans.

(b) Invoices.

Invoices shall be sent to the City to the following address:

City of Miami Beach
Attn: Matt Kenny – Marketing and Communications
1700 Convention Center Drive
Miami Beach, FL
33139, USA

At the City's sole and absolute discretion, the City shall make all payments due to Distributor via check or via electronic transfer to such bank account in the name of the Distributor identified from time to time by the Distributor in writing to the City and verified by the City upon receipt of a voided check or bank letter verifying such bank account.

(c) Use Fee/Tax. Distributor acknowledges that the City is a municipal corporation, organized under the laws of the State of Florida and, as such, is exempt from payment of sales tax in connection with the purchase of Products from Distributor.

3. Audit and Inspections.

(a) Maintenance and Examination of Records. Distributor 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 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. Distributor 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. Distributor shall maintain all such records at Distributor's place of business; however, all such records shall be relocated, at Distributor'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.

(c) The City Manager or designee shall be entitled to audit Distributor'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 Distributor'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 Distributor 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.

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

(e) 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 Distributor, 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 Distributor, Distributor 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 Distributor 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 Distributor'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) Distributor 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, Distributor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

- ii. Distributor 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 Distributor, its officers, agents, employees, subcontractors and suppliers. Distributor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by Distributor 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 Distributor or third parties.

4. Employees and Independent Contractors.

(a) In connection with the performance of its responsibilities hereunder, Distributor may hire its own employees who will be employees of Distributor and not employees or agents of the City. Additionally, Distributor's vendors (i.e., entities who provide Products to Distributor) shall not be considered agents or employees of the City. Distributor 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) Distributor shall ensure that all its employees, contractors and vendors while working at or within the Venues observe all the graces of personal grooming. Distributor shall hire people to work in its vending operation 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. Distributor 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"). Distributor shall ensure that each employee and/or contractor meets the Statutory Screening Standards prior to commencing to perform any work and/or services under this Agreement. Distributor 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. Distributor agrees to notify the City immediately upon becoming aware that one of its employees and/or contractors 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 Distributor to notify the City of such arrest or conviction within two business days of being put on notice or within thirty (30) days of the occurrence of qualifying arrest resulting in charges or conviction, shall constitute grounds for the City, at its sole option, to place Distributor in default. Distributor 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. Distributor shall employ personnel competent to perform the work specified herein. The City reserves the right to request the removal of Distributor's employee from performing services under this Agreement where the employee'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. Distributor's personnel must wear photo identification at all times.

(d) If Distributor materially fails to comply with the provisions of this Section, the City may default Distributor pursuant to Section 5 herein.

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

(a) Bankruptcy. If either the City or Distributor 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 the City is required to make to Distributor which is not paid on within thirty (30) days of its due date, such payment shall be subject to interest at the rate of twelve percent (12%) per annum.

(c) Non-Monetary Default. In the event that Distributor 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 Distributor cures any default pursuant to this Subsection, it shall promptly provide City with written notice of same.

(d) City's Remedies for Distributor's Default. If any of the events of default, as set forth in this Section 5, 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 Distributor 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 Distributor. On the date so specified, Distributor 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 Distributor in and to the Venues and to this Agreement, and every part thereof, shall

cease and terminate. 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 Distributor; 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 Distributor's default.

(e) If an event of default by the City, as set forth in this Section 5, shall occur, Distributor 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. Upon any termination of this Agreement under this Subsection, Distributor shall be entitled to collect any outstanding payments due to Distributor in connection with the sale and delivery of Product ordered by the City pursuant to this Agreement through the date of termination. **Distributor's sole remedy for a breach of contract by the City shall be to terminate the Agreement and collect any balance owed to Distributor in connection with the sale and delivery of Product ordered by the City pursuant to this Agreement.**

(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 Distributor of such termination; which shall become effective within thirty days (30) days following receipt by Distributor of such notice, or such other longer period of time as the City may determine in the notice of termination ("Notice of Termination"). During the period of time set forth in the Notice of Termination, the City, at its option, may not purchase any Product. 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 Distributor, may immediately suspend the services under this Agreement for a time certain. If the Agreement is terminated for convenience by the City, the City shall pay Distributor any outstanding payments due to Distributor in connection with the sale and delivery of Products ordered by the City pursuant to this Agreement through the date of termination; 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) Distributor 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.

(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, Distributor 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 in its vending operations by Distributor or its vendors).

(g) Reserved.

(h) Remedies in the event of a Default. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL DISTRIBUTOR 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.

6. Trademarks. Neither the City nor Distributor may use the other’s trademarks, any logos, designs or slogans related to Distributor Products, venues, brands or operations of the other without express prior written consent of the other party.

7. Representations & Warranties. Distributor 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.

8. 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.

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

10. Indemnification. Distributor 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 Distributor’s: (i) breach of its representations or warranties (or those of its employees, contractors or agents, each as and when performing services or work in connection with this Agreement); (ii) negligence or willful misconduct (or those of its employees, contractors or agents); and/or (iii) infringement or alleged infringement of a third party’s intellectual property rights. This section shall survive the expiration or other termination of this Agreement.

11. Insurance Requirements.

Distributor 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 Distributor’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 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 19 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+ 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. Please ask vendors to include the following information when sending the insurance certificates:

- Include the Contract's # and Distributor'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 Distributor and following 10 days for Distributor to cure, immediately terminate the Agreement; or (ii) the City, in its sole discretion, may, following written notice to Distributor and 10 days for Distributor to cure, obtain the insurance itself, in which case said insurance shall be charged back to the Distributor.**

(f) Prior to the Commencement Date of this Agreement, Distributor 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 Distributor or City.

(g) Distributor 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.

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

12. 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 \$25,000.00. Distributor hereby expresses its willingness to enter into this Agreement with Distributor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$25,000.00.

Accordingly, and notwithstanding any other term or condition of this Agreement, Distributor hereby agrees that the City shall not be liable to Distributor for damages in an amount in excess of \$25,000.00 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.

13. Laws. In its performance of the Services, Distributor 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.

14. No Discrimination. In connection with the performance of the Services, Distributor 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, Distributor 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.

15. Reserved.

16. Distributor's Compliance with Public Records Law.

(a) Distributor 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 Distributor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Distributor 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 Distributor 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 Distributor or keep and maintain public records required by the City to perform the service. If Distributor transfers all public records to the City upon completion of the Agreement, Distributor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Distributor keeps and maintains public records upon completion of the Agreement, Distributor 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 Distributor of the request, and Distributor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(2) Distributor'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 Distributor 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 Distributor to compel production of public records relating to the City's contract for services, the court shall assess and award against Distributor the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that Distributor 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 Distributor has not complied with the request, to the City and to Distributor.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Distributor at Distributor's address listed on its contract with the City or to Distributor'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 Distributor 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 DISTRIBUTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR AS TO DISTRIBUTOR'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
PHONE: 305-673-7411

17. Force Majeure.

(a) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of Distributor 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 Distributor'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) 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 Distributor of such termination. If the Agreement is terminated pursuant to this section, Distributor shall be paid for any {RB00054012 V2}

outstanding invoices. 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.

18. E-Verify.

(a) To the extent that Distributor provides labor, supplies, or services under this Agreement, Distributor 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, Distributor 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, Distributor 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 Distributor enters into a contract with an approved subcontractor, the subcontractor must provide Distributor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Distributor 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 Distributor 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 Distributor for cause, and the City shall thereafter have or owe no further obligation or liability to Distributor.

(2) If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection (a), but Distributor otherwise complied with such subsection, the City will promptly notify Distributor and order Distributor to immediately terminate the contract with the subcontractor. Distributor's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate Distributor'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 Distributor 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 Distributor under the foregoing Subsection (b)(1), Distributor may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.

(6) Distributor is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 18.

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

Red Bull Distribution Company, Inc.
1630 Stewart Street
Santa Monica, CA 90404
Attn: General Counsel

All notices from the Distributor 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
E-Mail: MattKenny@miamibeachfl.gov

With copies to:

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

Distributor 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.

20. Miscellaneous.

(a) Entire Agreement/Amendments. This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties. 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 Distributor to enforce their respective rights under this Agreement or any part hereof through litigation, Distributor and City agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such {RB00054012 V2}

litigation, including a reasonable attorneys' fee and costs, for all trial and appellate proceedings.

CITY OF MIAMI BEACH, FLORIDA

By: _____
Name: _____
Date: _____

RED BULL DISTRIBUTION COMPANY, INC.

By: _____
Name: _____
Date: _____

EXHIBIT A

List of Venues

1. Venues.

- Miami Beach City Hall
- Miami Beach City Departments including those located outside City Hall (Police, Fire, Emergency Management, Property Management, etc.)
- 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 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 Development Agreement, public/private partnership, 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 City Property or Third-Party Agreements will not be subject to the exclusivity rights granted to Distributor 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.** 7th Street Garage, 200 7th Street (G1)
- 2.** 12th Street Garage, 512 12th Street (G2)
- 3.** 13th Street Garage, 1301 Collins Avenue (G3)
- 4.** Anchor Garage, 1557 Washington Avenue (G4)
- 5.** 17th Street Garage, 640 17th Street (G5)
- 6.** 42nd Street Garage, 400 West 42nd Street (G6)
- 7.** City Hall Garage, 1755 Meridian Avenue (G7)
- 8.** 5th & 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 23rd 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.