

## ARTIST VR LICENSE AGREEMENT

This Artist VR License Agreement (hereinafter “Agreement”) is entered into and effective as of April 1, 2020 (“Effective Date”) by and between you (hereinafter “Artist”), and Big Rock Creative LLC (hereinafter “BRC”), a Delaware Corporation with a principal place of business at 17216 Saticoy Street, #238, Van Nuys, CA 91406 (sometimes referred to hereinafter collectively as the “Parties”, and each individually, a “Party”).

**WHEREAS**, Artist is the creator, designer, and copyright owner of artwork as further identified on the Artist Participation Application submitted concurrently herewith (hereinafter, the “Artwork”);

**WHEREAS**, BRC is producing a virtual reality experience presently referred to as BRCvr (hereinafter, the “Experience”), which is a Recognized Universe of the Burning Man Multiverse, and BRC desires to create and/or use a three-dimensional model of the Artwork within the Experience (hereinafter “Content”); and

**WHEREAS**, Artist desires to grant BRC a license to create and/or use the Content and to publicly display, reproduce and distribute the Content within the Experience and in connection with the marketing and promotion thereof, as further set forth herein.

**NOW, THEREFORE**, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Artist and BRC agree as follows:

*We Need Your Permission to Include Your Artwork in Our World, To Allow Us and Burning Man Project to Promote the Experience, and To Allow Third Party Users to Record and Photograph Their Fun for Personal and Non-Commercial Use Only.*

**1. Term and Grant of License.**

(a) Artist hereby grants to BRC a non-exclusive, worldwide, royalty-free, non-transferable license to create and/or use the Content and to publicly display, reproduce and distribute the Content within the Experience throughout the Term (as hereinafter defined) and all renewals thereof. This license shall be irrevocable for a period of two (2) years following completion and approval of the Content (the “Term”). Thereafter, the Term of this Agreement shall be automatically renewed on an annual basis unless Artist sends written notice to BRC of Artist’s intention to terminate its license hereunder. Upon receipt of such written notice, BRC shall have thirty (30) days to remove the Content from the Experience.

(b) The Parties understand and agree that by virtue of the virtual reality platform in which the Content will be integrated, the rights heretofore granted to BRC and its licensees and

assignees by Artist shall include, without limitation, the following: (i) the right to photograph, film and/or record the Content, digitally or through any other electronic means; (ii) to gather and/or store digitally or through other electronic means, the recorded images of the Content; (iii) to copy recorded images of the Content or to reproduce images of the Content; and (iv) to duplicate, edit, alter or otherwise use recorded images and other reproductions of the Content in any manner and/or in any medium.

(c) Artist further grants BRC and third party beneficiary Burning Man Project, a California nonprofit public benefit corporation (“Burning Man”), a non-exclusive, worldwide, all languages, perpetual, irrevocable, royalty-free license to:

- i. publicly display any materials that use, depict or incorporate the Content;
- ii. promote or distribute the Experience via their respective communications channels, including but not limited to the websites [www.brcvr.org](http://www.brcvr.org) and [www.kindling.burningman.org](http://www.kindling.burningman.org), and on third party platforms, including but not limited to Altspace and Microsoft for hosting and promotional purposes; and
- iii. to copy, distribute, publicly display, transmit, and perform, digitally and otherwise, in any and all media, now known or hereafter discovered, the Content on their website, in connection with grant or other funding proposals or awards, on wall displays to be hung in BRC or Burning Man’s offices, and in projects and activities promoting BRC and/or Burning Man’s work.

The licenses granted under paragraph 1(c) hereunder are perpetual and irrevocable, and shall not terminate at the completion of the Term.

(d) Artist understands and acknowledges that the Experience is a virtual world that is ever evolving and will include user generated content, screencasts, photographs and videos captured by third party users that may be shared and displayed by third parties outside of BRC’s control. Artist hereby grants to BRC the right to sublicense to any third party participants utilizing the Experience the limited right to record, photograph, display and reproduce the Content for personal and/or non-commercial purposes only. Any third party usage outside of BRC’s control shall not be considered a breach of this Agreement, nor negate any of the rights granted hereunder. BRC will utilize the “safe harbor” provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512 (“DMCA”), in responding to any direct take-down requests where a third party user infringes on any copyrighted material, including but not limited to the Content, that is used for any purpose other than as expressly permitted herein.

***You Own Your Artwork AND the Digital Versions of Your Art.***

2. **Copyright Ownership.** As between Artist and BRC, Artist shall retain ownership of the Artwork and the Content created and licensed hereunder, including all copyrights associated therewith. To the extent BRC assists in the creation of a digital version or three-dimensional model of the Artwork, BRC acknowledges and agrees that the resulting Content has been

specially ordered or commissioned by Artist relevant to any contributions by BRC hereunder, and that the Content shall be considered a Work Made for Hire according to United States copyright law. To the extent that the Content is not deemed to be a Work Made for Hire, BRC hereby assigns to Artist all copyright interest to the Content. Notwithstanding the foregoing, to the extent Artist or BRC incorporate any creative elements from BRC's Toolkit ("Toolkit") into the Content, BRC shall retain ownership of those Toolkit elements, including all copyrights associated therewith, and hereby grants Artist a license to utilize the Toolkit in combination with the Content solely for use within the Experience. Except as expressly set forth herein, BRC reserves all rights with respect to the Toolkit.

***You Retain VARA Rights to the Digital Versions of Your Artwork.***

3. **Visual Artists Rights Act.** Artist retains all rights under Section 106A of the Copyright Act of 1976 (the "Visual Artists Rights Act" or "VARA"), including the right to prevent the use of Artist's name as the author of the Content in the event of a distortion, mutilation, or other modification of the Content following approval hereunder which would be prejudicial to Artist's honor or reputation.

(a) Artist acknowledges and agrees that BRC may exhibit or showcase the Content in its sole discretion, or refrain from doing so, and may exhibit or showcase the Content in conjunction with, next to, or as a series or collection with other artwork submitted by artists without impacting any of Artist's rights under VARA.

(b) Artist agrees that neither BRC nor its agents shall be held responsible for any damage to or destruction of the Content within the Experience. Nothing herein supersedes or modifies Artist's rights as to third parties not acting on behalf of BRC.

***BRC Will Use Best Efforts to Provide Credit and Attribution.***

4. **Credit.** BRC will use its best efforts to provide Artist with a credit or attribution relevant to the Content incorporated into the Experience, by including a list of participating artists in the Artery Headquarters inside of the Experience, and on Burning Man's kindling website ([kindling.burningman.org](http://kindling.burningman.org)). To the extent BRC is unable to provide credit or attribution on the art piece itself by virtue of limitations within the platform, the parties agree that BRC will not be in breach of the Agreement, nor will it violate any rights of attribution under VARA or similar state laws.

***No Payments Are Owed; We Are Creating Something Cool  
As A Gift to Burners and Want You To Participate!***

5. **Payments.** Neither party shall owe the other party any payments of money for the Content or the rights granted by this Agreement.

*We Want You to Have Final Say Over Your Digital Artwork within the Experience If We Help You Create It.*

5. **Quality Control, Status and Input, and Approval Rights.** The parties recognize that they have a mutual interest in BRC's documentation of the Content for historical and archival purposes and to promote Artist's artistic vision. The Content shall be of a high quality, which is at least equal to comparable projects created by Artist and BRC. Artist and BRC shall have mutual approval rights with respect to the Content before it is incorporated into the Experience. The Content shall be shown to Artist for Artist's prior approval hereunder. Artist's approval shall not be unreasonably withheld or delayed and in the event of no response, shall be deemed given within five (5) calendar days following the date the Content is made available to Artist for approval. BRC's inadvertent, non-repetitive failure to obtain Artist's approval of the Content in advance of its incorporation into the Experience shall not be deemed a material breach hereof; provided, however, that upon receipt of written notice from Artist regarding any such failure, BRC shall use reasonable efforts to promptly correct such failure prospectively.

*Each Party Covers Their Own Expenses for this Collaboration.*

6. **Expenses.** Each party shall be solely responsible for his or her own expenses to exercise the rights granted by this Agreement and to fulfill his or her responsibilities under this Agreement.

*We Need Your Permission to Promote You in Connection with Your Artwork.*

7. **Publicity Rights.** BRC and Artist shall each have the non-exclusive right, but not the obligation, to use each other's name, approved likeness, and approved biographical material ("ID Materials") in connection with the rights granted by this Agreement. The parties shall have the right to approve any ID Materials selected by the other party provided that their consent to the ID Materials shall not be unreasonably withheld or delayed and shall be deemed given within five (5) days after the date such materials are made available to that party. ID Materials provided to BRC by the Artist shall be deemed approved. Either party's inadvertent, non-repetitive failure to obtain the other party's approval of the ID Materials shall not be deemed a material breach hereof; provided, however, that upon receipt of written notice from one party regarding any such failure, the other party hereunder shall use reasonable efforts to promptly correct such failure prospectively.

*No One Will Use the Other Party's Registered Trademarks Without Their Written Consent.*

8. **Trademark Rights.** The Parties hereunder acknowledge and agree that each Party may own certain common law and/or registered trademark rights, and that the other party has no proprietary rights to said common law and/or registered trademark rights, except with the Party's express written consent, and/or as expressly provided for in this Agreement. Such common law

and/or registered trademark rights and all goodwill associated with those rights shall inure solely to the benefit of the Party who owns said rights.

*Any Fundraising Within a Connected World or Portal  
the Artist Creates Requires Our Written Consent.*

9. **Fundraising.** Artist agrees that, at Burning Man's request, prior to engaging in any fundraising efforts within any world or portal the Artist creates inside of the Experience, they will need a separate written agreement from BRC. No fundraising will be permitted on the Playa.

*What We Promise Each Other About the Rights We Are Granting.*

10. **Warranties and Representations.**

(a) Artist hereby warrants and represents that Artist is free to enter into this Agreement, that Artist's Artwork and the Content derived therefrom are original to Artist, and that Artist has the right to grant the rights to the Artwork granted by this Agreement. Artist further warrants and represents that he/she has obtained all necessary permissions, licenses, and releases to allow BRC to incorporate the Content into the Experience and to otherwise assist in the creation and completion of the Content as described in this Agreement. Artist further warrants and represents that the Artwork and the Content derived therefrom does not infringe upon, violate, or misappropriate any copyrights, patents, trade secrets, or any contractual, publicity, or proprietary rights of any kind, and that the Artwork and the Content derived therefrom comply with all applicable laws and regulations.

(b) BRC hereby warrants and represents that BRC is free to enter into this Agreement, that BRC's contribution to the Content, if any, will be original, and that BRC has obtained all necessary permissions, licenses, and releases to complete the Content and to incorporate the Content into the Experience as set forth in this Agreement. BRC further warrants and represents that BRC's contribution to the Content, if any, will be original, and will not infringe upon, violate, or misappropriate any copyrights, patents, trade secrets, or any contractual, publicity, or proprietary rights of any kind, and that BRC's contribution to the Content, if any, will comply with all applicable laws and regulations.

*If We Don't Abide By Our Promises, We Agree to Protect Each Other from Harm.*

11. **Indemnification.** Each party agrees to indemnify, defend, and hold harmless the other party for any loss, claim, cause of action, damages, liability, or expenses, including out-of-pocket court costs and reasonable attorney's fees actually incurred, resulting from the breach of any of the above agreements, covenants, representations or warranties by the indemnifying party hereunder.

*Legalese Our Lawyers Made Us Add for Our Protection and Yours.*

12. **Limitation of Liability.** NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.

*We Agree To Give Each Other a Heads Up and an Opportunity to Fix Any Mistakes First.*

13. **Notice and Cure.** No party hereto shall be deemed to be in breach of any of such party's obligations hereunder unless and until the party alleging breach shall have given the alleged breacher specific written notice, in accordance with paragraph 15(c) hereunder, of the nature of such breach and the alleged breacher shall have failed to cure said breach within thirty (30) days after the alleged breacher's receipt of such written notice; provided, however, that the foregoing right of cure shall not be applicable to any breach which cannot be cured.

*More Boilerplate Stuff From Our Lawyers.*

14. **General.**

(a) **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Artist and BRC. Neither party, by virtue of this Agreement, is authorized as an agent, employee or legal representative of the other. Except as specifically set forth herein, neither party shall have the power to control the activities and operations of the other and the status of each party is, and at all times will continue to be, that of independent contractors.

(b) **Assignability.** BRC may assign its rights under this Agreement in whole or in part provided that BRC remains secondarily liable with respect to its obligations to Artist hereunder. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Artist and the permitted successors and assigns of the BRC.

(c) **Notices.** All notices under this Agreement shall be given in writing via overnight mail to the addresses set forth above or such other address as either party may substitute by notice hereunder and all such notices given in accordance hereunder shall be deemed as given as of the date of receipt. Courtesy copies of any notices to BRC hereunder shall simultaneously be sent electronically to Kinney Law, P.C., 8391 Beverly Blvd., Suite 568, Los Angeles, CA 90048, Attn: Christiane C. Kinney, Esq. ([christiane@ckinneylaw.com](mailto:christiane@ckinneylaw.com)).

(d) **Headings.** The section headings in this Agreement are for identification purposes only and shall not affect the interpretation of this Agreement or any party hereof.

(e) **Interpretation.** In the case of uncertainty regarding the language in any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the party who caused the uncertainty to exist.

(f) **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

(g) **Waiver.** The waiver by either party of any breach of any provision of the Agreement by the other party shall not be construed to be either a waiver of that party's rights regarding any succeeding breach of any such provision or a waiver of the provision itself.

(h) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to this subject matter and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties, this Agreement may not be released, discharged or modified except by an instrument in writing signed by the parties.

(i) **Governing Law and Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the State of California and of the United States of America. Jurisdiction and venue for any action to enforce this Agreement shall be exclusively in the state courts located in Los Angeles, California.

**CONSENT TO ELECTRONIC SIGNATURE. By typing Artist's name and clicking the Acceptance Box, Artist hereby confirms that he/she has reviewed and accepts the terms of this Agreement, and further consents to have this transaction occur electronically.<sup>1</sup>**

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<sup>1</sup> Alternatively, if Artist elects to Opt-Out of the clickwrap Electronic Signature process, a hard copy of this agreement will be e-mailed to you so you can print it, sign it, and e-mail it back to use with your physical signature. Electronic submission of that physical signature by e-mail is agreeable by all parties.