

# ARTIST VR LICENSE AGREEMENT

This Artist VR License Agreement (hereinafter “Agreement”) is entered into and effective as of April 1, 2023 (“Effective Date”) by and between you (hereinafter “Artist”), and Big Rock Creative, Inc. (hereinafter “BRC”), a Delaware Corporation with a principal place of business at 17216 Saticoy Street, #238, Van Nuys, CA 91406, and Duct Tape and Zip Ties, LLC, a subsidiary of BRC, (“DTZT”), a California limited liability company with a principal palace 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 will be producing various virtual reality experiences, including but not limited to BRCvr, Desert Arts Preview 2023, and other potential virtual reality events produced and/or sponsored in collaboration with the Burning Man Project and DTZT is producing the BRCvr Immersive Documentary Experience (hereinafter, collectively, the “Experiences”), and BRC and DTZT desires to create and/or incorporate a three-dimensional derivative work of the Artwork for use within the Experiences (hereinafter “Content”); and

**WHEREAS**, Artist desires to grant BRC a license to create the Content and to use, publicly display, reproduce and distribute the Content in connection with the Experiences and 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, BRC, and DTZT agree as follows:

## 1. Term and Grant of License.

(a) Artist hereby grants to BRC and DTZT a non-exclusive, worldwide, fully paid, royalty-free, non-transferable, irrevocable license to create the Content and to use, publicly display, reproduce and distribute the Content within the Experiences 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 and DTZT of Artist's intention to terminate its license hereunder. Upon receipt of such written notice, BRC and DTZT shall have thirty (30) days to remove the Content from any Experiences in which the Content has been previously incorporated.

(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, DTZT 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, DTZT, 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 platforms for hosting and promotional purposes;

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 BRCvr, Desert Arts Preview 2023, and other potential virtual reality events and worlds, 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 Experiences will be presented through virtual worlds hosted on various platforms, whether now known or hereafter devised, the nature of which is ever evolving and may include user generated content,

screencasts and videos captured by third party users that may be shared and displayed by third parties outside of BRC's and/or DTZT's control. Artist hereby grants to BRC and DTZT the right to sublicense the Content to Burning Man in accordance with paragraph 1(c) hereunder, and to sublicense to any third party participants utilizing the Experiences 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.

**2. Copyright Ownership.** Artist shall retain ownership of the Artwork and the Content created and licensed hereunder, including all copyrights associated therewith.

**3. Visual Artists Rights Act.** Except as expressly waived hereinbelow, 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 recognizes that BRC and DTZT are unable to provide any copyright notices or attribution for the Content within the Experiences, and Artist waives his or her rights of attribution under VARA or similar state laws. Notwithstanding the foregoing, BRC and DTZT may, but are not required to, provide a page on its website, [www.brcvr.org](http://www.brcvr.org) (or such other websites as BRC and/or DTZT may create in the future to promote the Experiences), providing the name of the Artist and the Artwork upon which the Content is based, with one external website link to be provided by Artist.

(b) Artist acknowledges and agrees that BRC and DTZT 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.

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

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

**5. 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.

**6. Publicity Rights.** BRC, DTZT, and Artist shall each have the non-exclusive right, but not the obligation, to use each other's name, likeness, and biographical material ("ID Materials") in connection with the rights granted by this Agreement.

**7. Warranties and Representations.**

(a) Artist hereby warrants and represents that Artist is free to enter into this Agreement, that Artist's Artwork is 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 and DTZT to incorporate the Content into the Experiences. 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 and DTZT hereby warrants and represents that they are free to enter into this Agreement, that their contribution to the Content, if any, will be original, and that they have obtained all necessary permissions, licenses, and releases to complete the Content and to incorporate the Content into the Experiences as set forth in this Agreement. BRC and DTZT further warrant and represent that their 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 their contribution to the Content, if any, will comply with all applicable laws and regulations.

**8. 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.

**9. 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.

10. **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 11(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.

## 11. **General.**

(a) **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Artist, BRC, and DTZT. 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 and DTZT may assign their rights under this Agreement in whole or in part provided that BRC and DTZT remains secondarily liable with respect to their 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 and DTZT.

(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 and/or DTZT hereunder shall simultaneously be sent electronically to Kinney Law, P.C., 8023 Beverly Blvd., Suite 1568, Los Angeles, CA 90048, Attn: Christiane C. Kinney, Esq. (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 in the form and clicking the Submittance 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>**

Alternatively, if Artist elects to Opt-Out of the Electronic Signature process, a hard copy of this agreement will be <sup>1</sup>provided for physical review and signature. 5