

## NEWPATHVR/RENEWVR DISTRIBUTION AGREEMENT

**Term:** This Agreement will be in effect for one year from the Effective Date (date Partner Agreement form is submitted) unless terminated earlier in accordance with the Agreement (“*Initial Term*”). This Agreement will automatically renew for successive one-year periods (each, a “*Renewal Term*” and together with the Initial Term, the “*Term*”) unless either party provides written notice to the other party of its election not to renew this Agreement at least 30 days prior to end of the Initial Term or the then-current Renewal Term.

**Territory:** Worldwide

**Exclusivity**  Non-Exclusive

### 1. DEFINITIONS

The following terms shall have the following meanings when used in the Agreement:

- 1.1 “*Affiliate*” of a party means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with that party. As used herein, “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of 50% or more of the voting equity securities or other equivalent voting interests of the entity.
- 1.2 “*Content Creator Brand Features*” means all trademarks, trade names, service marks, logos, designs, characters, artwork, domain names, and other distinctive brand features used to identify origin that are provided by Content Creator in connection with this Agreement or used by Content Creator in connection with the Product.
- 1.3 “*Device*” means a virtual reality hardware device that is approved or branded by NewPathVR, including, but not limited to, the Samsung Gear VR, Oculus Rift, and HTC Vive virtual reality headsets.
- 1.4 “*Distribution Network*” means the NewPathVR or RenewVR websites, publishing platform and all third party websites and app stores through which the Product may be distributed or made available by or for NewPathVR, including, without limitation, Steam Store, Viveport, Oculus Store, Google Play and Apple iTunes.
- 1.5 “*Marketing Materials*” means packaging, artwork, manuals, instructional materials, documentation, advertising copy and artwork, and any other marketing materials relating to the Product.
- 1.6 “*Net Revenues*” means all gross revenues received by NewPathVR from the sale of licenses to the Products under Section 2.2(a) and from the sale of any content, goods or services (virtual or otherwise, including in-app purchases) from within or for use with a Product, less (i) applicable taxes, and (ii) returns, rebates, charge-backs, fraudulent transaction amounts, and refunds. “Applicable taxes” do not include withholding taxes, which are addressed in Section 5.3(b).
- 1.7 “*Product*” means the software product identified on the Cover Section, including all updates, upgrades, patches, expansion packs, add-ons, additional levels, and in-Product purchases and content, but excluding sequels and prequels.
- 1.8 “*NewPathVR Brand Features*” means all trademarks, trade names, service marks, logos, designs, characters, artwork, domain names, and other distinctive brand features used to identify origin that is provided by NewPathVR in connection with this Agreement or used by NewPathVR in connection with the NewPathVR Properties.
- 1.9 “*NewPathVR Services*” means the services provided by NewPathVR associated with the distribution of the Product via the Distribution Network, including, but not limited to, advertising, marketing, live or in-person events, psychological consulting on experiences, distribution analytics, billing, and release of Product updates, which services may be changed from time to time in NewPathVR’s sole discretion.

- 1.10 ***“NewPathVR Properties”*** means each of the NewPathVR web sites, including RenewVR and pro.renewvr.com, publishing platforms and app store for virtual reality software and content for Devices. As of the date of this Agreement, categories include: 360° Video, Abstract, Addiction, Adventure, Art, Artist, Atmospheric, Biofeedback, Books, CBT, Children, Consciousness, Creativity, Dance, Depression, Drawing, Dreams, Education, Exploration, Exposure Therapy, Fantasy, Fitness, Gallery, Healing, Health, Hobby, Hospital, Inspiration, Instruments, Journey, Love, Maze, Meditation, Mindfulness, Movement, Music, Nature, Painting, Personal Development, Personal Growth, Psychedelic, Puzzle, Relaxation, Seniors, Singing, Skills Training, Sleep, Songs, Soothing, Spirituality, Sports, Story, Stress Relief, Therapy, Training, and TV and Movies.
- 1.11 ***“Supported Platform”*** means the virtual reality hardware platforms supported by NewPathVR, including, without limitation, Google Cardboard Samsung Gear VR, HTC Vive and Oculus Rift.

## 2. **GRANT OF RIGHTS**

- 2.1 ***Appointment of Agent.*** Content Creator hereby appoints NewPathVR as Content Creator’s authorized agent, with the powers reasonably necessary for NewPathVR’s exercise of its rights and performance of its obligations under this Agreement, and NewPathVR hereby accepts such appointment.
- 2.2 ***Exclusivity.*** Unless otherwise indicated on the cover page, the rights and licenses granted by Content Creator to NewPathVR under this Agreement are exclusive (even as to Content Creator).
- 2.3 ***Rights and Licenses.*** Content Creator hereby:
- a. authorizes NewPathVR to grant licenses of the Product directly and indirectly to end users via the Distribution Network and during the Term;
  - b. grants NewPathVR a license to reproduce, distribute, perform, and display the Product to persons who have purchased licenses pursuant to Section 2.2(a);
  - c. grants NewPathVR a license to modify and create derivative works of the Product, solely as necessary to make available and offer the Product via a Website; and
  - d. grants NewPathVR a license to: (i) use the Content Creator Brand Features in connection with NewPathVR’s rights and licenses under Section 2.1 and 2.2 in all media now known or hereafter devised, and (ii) prepare Marketing Materials (incorporating any content from the Product and information, text, screenshots, video and other content submitted to NewPathVR) relating to the Product and reproduce, distribute, display, and perform any Marketing Materials based on the Product.
- 2.4 ***Third Parties.*** Content Creator agrees that NewPathVR may use its contractors and Affiliates for the purposes of exercising its rights and licenses set forth above in Section 2.2, with the understanding that all revenue collected by such contractors and Affiliates (if any) pursuant to 2.2(a) will be deemed to be collected by NewPathVR for purposes of Section 5.1.
- 2.5 ***Grants.*** Content Creator agrees that NewPathVR may grant its employees and internal contractors the right to use, perform and display the Product for testing and evaluation purposes, which shall be on a royalty-free basis, and may grant end users free or trial licenses to the Product, as determined by NewPathVR in consultation with Content Creator.

## 3. **END USER LICENSING OBLIGATIONS**

- 3.1 ***NewPathVR.*** NewPathVR will include its end-user license rights provisions governing the NewPathVR Services and NewPathVR Properties in its Terms of Service (“***TOS***”, which NewPathVR may update from time to time), and the license to the NewPathVR Services granted to each end user will be granted by NewPathVR via such provisions.

- 3.2 Content Creator EULA. Content Creator will include its end-user license rights provisions governing the Product in its end user license agreement (“**Content Creator EULA**”), and the license granted to each end user will be granted by Content Creator via such provisions. If Content Creator does not require any end user to agree to the Content Creator EULA, then (without limiting any NewPathVR remedies) the license terms applicable to Products in the TOS (“**NewPathVR-Provided Terms**”) will apply to the end user with respect to the Product and such license terms will constitute the “Content Creator EULA”. NewPathVR may update the NewPathVR-Provided Terms from time to time. In all instances, the Product license rights granted to each end user will be granted by Content Creator. The Content Creator EULA must include, at a minimum, substantively the same terms as the NewPathVR-Provided Terms.
- 3.3 Delivery of Content Creator EULA. The Content Creator EULA must be submitted to NewPathVR in the form required by NewPathVR so that it may be displayed to consumers. NewPathVR shall have no responsibility or obligation to review the Content Creator EULA. The eventual acceptance of the Content Creator EULA by end users is a contractual obligation solely between the Content Creator and the end user.

#### 4. **MARKETING & SUPPORT**

- 4.1 Marketing Materials. Content Creator (or the third party on Content Creator’s behalf) shall create Marketing Materials and deliver such Marketing Materials to NewPathVR promptly upon NewPathVR’s written request (“**Content Creator Marketing Materials**”) or provided on the RenewVR or NewPathVR website under Partner Program. NewPathVR may use Content Creator Marketing Materials in substantially the same form as Content Creator has provided or approved. Content Creator agrees that NewPathVR may distribute the Product to media outlets for preview or review of the Product. Such copies may be provided free of charge.
- 4.2 Support. NewPathVR will be responsible for all billing questions from end users and for support concerning the NewPathVR Properties and NewPathVR Services. Content Creator shall be responsible for all support obligations relating to the Product, including but not limited to, end user customer support, bug fixes, live operations support, and general technical support, and shall perform such support services in a first-class, timely manner. Content Creator will provide (to end users as well as to NewPathVR) at least the same level of support that it provides to the end user and distribution partners for its other products but not less than reasonable support. Content Creator shall provide all necessary assistance and consultation requested by NewPathVR.
- 4.3 Product Revenue Models. Content Creator may implement in-Product purchases, in-Product advertising or any other revenue model within the Product only using means that are approved in writing by NewPathVR.
- 4.4 Product Categories. NewPathVR is free to determine within the NewPathVR Properties and the Distribution Network the category (or categories) in which the Product will be made available. NewPathVR may also move the Product into different categories from time to time. NewPathVR does not guarantee or promise in which category (or categories) the Product will be offered or made available.

#### 5. **FINANCIAL TERMS AND ACCOUNTING**

- 5.1 NewPathVR Fees. NewPathVR shall retain fees as consideration for the services rendered by NewPathVR under by purchasing those on the NewPathVR or RenewVR websites. Marketing services will be delivered as determined by the marketing packaged purchased.
- 5.2 Payment. Content Creator must pay for marketing services 30 days or more in advance to ensure placement at the time they desire. The schedule may dictate availability.
- 5.3 Taxes.
- a. Sales Taxes. In the event that the sale or delivery of any Product to any end user is subject to any sales, use, goods and services, value-added, or other similar tax (other than Content Creator income

taxes), under applicable law, responsibility for the collection and remittance of that tax for sales of the Product to end-users will be determined by NewPathVR and remitted by NewPathVR to relevant competent authorities. Content Creator shall indemnify and hold NewPathVR harmless against any claims by any tax authority for any underpayment of any sales, use, goods and services, value added or other tax or levy, and any penalties and/or interest thereon.

b. Withholding Taxes. If any remittance made by NewPathVR to Content Creator is subject to any withholding or similar tax, the full amount of that withholding or similar tax shall be solely for Content Creator's account and will not reduce the amount to which NewPathVR is entitled on that transaction. If NewPathVR reasonably believes that such tax is due, NewPathVR will deduct the full amount of such withholding or similar tax from the gross amount owed to Content Creator and will pay the full amount withheld over to the competent tax authorities. NewPathVR will apply a reduced rate of withholding tax, if any, provided for in any applicable income tax treaty only if Content Creator furnish NewPathVR with such documentation required under that income tax treaty or otherwise satisfactory to NewPathVR, sufficient to establish Content Creator's entitlement to the benefit of that reduced rate of withholding tax. Upon Content Creator's timely request to NewPathVR in writing, using means reasonably designated by NewPathVR, NewPathVR will use commercially practical efforts to report to Content Creator the amount of NewPathVR's payment of withholding or similar taxes to the competent tax authorities on Content Creator's behalf. Content Creator will indemnify and hold NewPathVR harmless against any and all claims by any competent tax authority for any underpayment of any such withholding or similar taxes, and any penalties and/or interest thereon, including, but not limited to, underpayments attributable to any erroneous claim or representation by Content Creator as to Content Creator's entitlement to, or Content Creator's disqualification for, the benefit of a reduced rate of withholding tax.

5.4 Audit. Content Creator will have the right during the Term and for one year after that to have an independent, nationally accredited third-party auditor to perform an audit of NewPathVR's financial books for the applicable "Audit Period" to verify that NewPathVR has complied with its obligations to pay the Content Creator Revenue under this Agreement. "Audit Period" means a period chosen by Content Creator that (a) ends on the date Content Creator first requests the audit, (b) begins no earlier than the end of the last audit (if any), and (c) is no longer than two years. The audit shall be performed during normal business hours at NewPathVR's offices. NewPathVR will reasonably cooperate with Content Creator's auditor in connection with the audit. Any information disclosed by NewPathVR to the third-party auditor during the course of the audit will be subject to a confidentiality agreement between NewPathVR and such auditor that is reasonably acceptable to NewPathVR, and no such information may be shared by the auditor with Content Creator other than whether or not NewPathVR complied with its revenue sharing obligations and, if not, the amount of the shortfall and the reason for any such shortfall. NewPathVR shall pay any undisputed amount of such shortfall within 30 days of receipt of auditor's report. If the shortfall exceeds \$10,000 and 10% of the Content Creator Revenue for the applicable period, NewPathVR will reimburse Content Creator for any reasonable costs of the audit. Audits will not occur more than once every calendar year. No audit may be conducted on a contingency fee basis.

5.5 Third Party Royalties. Content Creator acknowledges that Content Creator may be required to pay royalties concerning the Product to third parties (such as game engine providers).

## 6. **TERMINATION**

6.1 Termination for Breach. Either party may immediately terminate this Agreement in the event of a material breach by the other party that is not cured to the satisfaction of the other party within 30 days after receipt by the breaching party of written notice describing the breach.

6.2 Termination for Convenience. Without limiting its other rights or remedies under this Agreement, a party may terminate this Agreement for convenience at any time upon 90 days' written notice to the other party.

6.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason, (a) Content Creator shall cease all use of the NewPathVR Brand Features, and (b) NewPathVR may retain and use copies of the Product as necessary in order to support the Product and satisfy warranty and support claims and to exercise its rights in Section 2.2(b).

6.4 Survival. The following sections of this Agreement will survive any expiration or termination of this Agreement: Sections 1, 2.2(b), 2.3, 4.2, 4.3, 5.2 (with respect to any unpaid amounts that accrued during the term of the Agreement), 5.3, 5.4, 6.3, 6.4, 8.2, 8.3, and 9-14. Every license granted to an end user during the term and NewPathVR's rights under Section 2.2(b) will be perpetual, irrevocable, and survive any termination or expiration of this Agreement.

## 7. **PRODUCT REQUIREMENTS.**

7.1 NewPathVR Warnings. Content Creator shall incorporate any warnings, as directed by NewPathVR, which are required by NewPathVR's standard practices, as may be updated from time to time in NewPathVR's sole discretion.

7.2 VR Best Practices. Content Creator agrees to comply with any health and safety-related best practices (and all updates to it) that may be provided by NewPathVR from time to time or posted by NewPathVR on the NewPathVR Properties (as may be updated by NewPathVR from time to time). Content Creator agrees to promptly provide to NewPathVR any Product VR best practices information (including without limitation, information related to end user complaints) that may be requested by NewPathVR from time to time.

7.3 Testing. Content Creator will ensure that the Product complies with all technical (including Website compatibility) and safety requirements.

7.4 Content Creator Covenants. Content Creator will ensure that the Product: (i) does not violate any foreign, international, federal, state or local law or regulation; (ii) does not infringe, misappropriate or violate the copyright, trade secrets or other intellectual property or proprietary rights of any third party in any jurisdiction; (iii) does not violate or infringe upon any third party's privacy right, right of publicity, or any other right of any person or entity; (vi) is not unlawful, harmful, abusive, hateful, offensive, obscene, threatening, libelous or defamatory, and (v) does not contain a computer virus, cancelbot, Trojan Horse, worm or other harmful, disruptive or malicious software, component, code, or materials. Content Creator acknowledges that NewPathVR has no obligation to distribute or make available (and may discontinue distributing and making available) any Product which NewPathVR determines, in good faith, suffers from material performance problems or violates (or may violate) any of the foregoing.

## 8. **POLICIES & PRIVACY**

8.1 Policy. NewPathVR may establish and may revise, policies that are generally applicable to Content Creators or to applications distributed by NewPathVR ("**NewPathVR Policies**"). Content Creator will comply with the NewPathVR Policies at all times during the term. NewPathVR will provide the Content Creator with no less than 30 days prior notice of any new or revised NewPathVR Policies, by sending such NewPathVR Policies to Content Creator or posting the same to NewPathVR's Content Creator site. Once that notice period has expired, such NewPathVR Policies will become effective and incorporated into this Agreement. If Content Creator objects to any new or revised NewPathVR Policies, Content Creator will have the right to terminate the Agreement by giving written notice during such notice period.

8.2 User Data.

a. "**User Data**" means any data, information, or content that is about or associated with a person, device or unique identifier (including anonymized or hashed user IDs) that Content Creator or third parties obtain from or through NewPathVR. User Data shall be deemed the Confidential Information of NewPathVR, provided that any restriction in this Section will control over any provision applicable to Confidential Information.

b. Restrictions. Content Creator may not use User Data for any purposes other than to provide the services related to the Product in connection with which the data was collected to the user from whom the data was collected. Notwithstanding the foregoing, Content Creator will not use the User Data: (i) for marketing or advertising purposes or to send communications to end users; or (ii) to ascertain the identity of end users. Content Creator may independently collect its own User Data but shall not collect any personal identifiable information, including, without

limitation, any information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.

- 8.3 *Performance Data.* Any metrics, information or material that relates to the performance, sales, downloads and installs of the Product and any other information that can be used to infer the foregoing (e.g., revenue numbers) (“*Performance Data*”) is the Confidential Information of both Content Creator and NewPathVR, and neither party will disclose Performance Data to any third party without the other party’s prior written approval.
- 8.4 *Privacy Policy.* Content Creator shall implement and publicly disclose an accurate and complete privacy policy explaining Content Creator’s practices regarding the collection, use and disclosure of data. Such privacy policy shall at all times comply with all applicable laws, and shall not conflict with this Agreement.

## 9. CONFIDENTIAL INFORMATION

- 9.1 Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains (“*Receiving Party*”) from the disclosing party (“*Disclosing Party*”) constitute the confidential property of the Disclosing Party (“*Confidential Information*”), provided that it is identified in writing as confidential at the time of disclosure (or, if disclosed verbally, is identified as confidential in writing within 30 days of the disclosure) or would reasonably be understood, given the nature of the information or the circumstances surrounding its disclosure, to be confidential. Without limiting the foregoing, the terms of this Agreement, the Content Creator Revenue paid with respect to a particular Product, and the report described in Section 5.2 shall be deemed Confidential Information of NewPathVR without any further marking or designation. Content Creator may, but is not required to, provide suggestions, comments, ideas, or know-how, in any form, to NewPathVR related to the NewPathVR Properties, NewPathVR Services, or other NewPathVR products, services or technology (“*feedback*”). Any such feedback shall not be considered Confidential Information and may be used for any purpose. There shall be no obligation to provide compensation for use of feedback.
- 9.2 Except as expressly authorized herein, the Receiving Party will not disclose any Confidential Information of the Disclosing Party. The Receiving Party will not use any Confidential Information of the Disclosing Party, except for the purposes of this Agreement. The Receiving Party’s nondisclosure and non-use obligations in this Section 9.2 shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).
- 9.3 The Receiving Party acknowledges that disclosure of Confidential Information may cause substantial harm for which damages alone may not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. Nothing in this Agreement will prohibit the Receiving Party from developing products, concepts, systems or techniques that are similar to or compete with any such concepts, systems or techniques described in the Confidential Information provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.
- 9.4 The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar or identical to the Confidential Information provided by the Disclosing Party. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

- 9.5 Upon termination or expiration of the Agreement for any reason, the Receiving Party shall promptly destroy or (if specifically requested) return to the Disclosing Party all documents or materials of any nature in the Receiving Party's possession, custody or control (regardless of the media in which such documents or materials are stored) that have been furnished by the Disclosing Party to the Receiving Party, or reproduced or developed by the Receiving Party based on the Disclosing Party's Confidential Information.

## 10. **REPRESENTATIONS AND WARRANTIES**

- 10.1 Content Creator represents and warrants that (i) neither the Product nor any Content Creator Marketing Materials or Content Creator Brand Features does or will infringe the intellectual property rights of any third party, entitle any third party to claim equitable remuneration, or violate applicable law, and (ii) the Product contains no malware, viruses, hacks, bots, Trojan horses, or other malicious code
- 10.2 NewPathVR represents and warrants that (i) the NewPathVR Properties (excluding Product, Content Creator Marketing Materials and all other software and content via the Website NewPathVR) does not and will not infringe the intellectual property rights of any third party, entitle any third party to claim equitable remuneration, or violate applicable law, and (ii) the NewPathVR Properties (excluding Product, Content Creator Marketing Materials and all other software and content via the Website) will not contains any malware, viruses, hacks, bots, Trojan horses, or other malicious code.
- 10.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTENT CREATOR MAY NEED LICENSES FROM THIRD PARTIES TO DEVELOP A PRODUCT FOR A WEBSITE. CONTENT CREATOR IS RESPONSIBLE FOR ACQUIRING SUCH THIRD PARTY LICENSES.

11. **INDEMNIFICATION.** Each party will indemnify, defend, and hold the other party, its parents, subsidiaries, Affiliates, licensors, licensees, directors, officers, employees, and agents harmless from and against any and all liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees), to the extent arising out of any third party claims related to any breach or alleged breach by such party of this Agreement or of any representation or warranty by such party herein. Neither party shall have any obligation to indemnify the other for intellectual property claims based on the combination of the products, services or functionality provided hereunder with any products, services or functionality provided by any other party, including those provided by the other party to this agreement. The indemnified party will notify the indemnifying party promptly of any claim for which it seeks indemnification and will permit the indemnifying party to control the defense of such claim with counsel chosen by the indemnifying party; provided, that the indemnifying party will not settle or resolve any such claim in a manner that imposes any liability or obligation on the indemnified party or affects the indemnified party's rights without obtaining the indemnified party's prior written approval. The indemnified party may, at its own expense, assist in defense of claims if it so chooses.

## 12. **LIMITATION OF LIABILITY**

- 12.1 EXCEPT FOR A PARTY'S OBLIGATIONS IN SECTION 9 (CONFIDENTIALITY) OR SECTION 11 (INDEMNIFICATION), NO PARTY WILL BE LIABLE TO THE OTHER, ITS AGENTS, LICENSEES, AND/OR CUSTOMERS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY IT, ITS AGENTS, LICENSEES, AND/OR CUSTOMERS OR OTHERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, AND BREACH OF WARRANTY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.
- 12.2 EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF ONE MILLION DOLLARS (USD \$1,000,000) OR THE AMOUNT ACTUALLY PAID OR PAYABLE BY NEWPATHVR TO CONTENT CREATOR UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING A CLAIM FOR DAMAGES.

### 13. **PROPRIETARY RIGHTS**

- 13.1 *Ownership.* NewPathVR retains all of its intellectual property rights in and to the NewPathVR Properties, NewPathVR Services and Marketing Materials created by NewPathVR (excluding the Content Creator Brand Features and the pre-existing material provided by Content Creator for inclusion in such Marketing Materials). Content Creator retains all of its intellectual property rights in and to the Product and Content Creator Marketing Materials. Except as expressly provided herein, nothing in this Agreement shall be construed as conferring any license under either party's intellectual property rights, whether by estoppel, implication or otherwise.
- 13.2 *Trademarks.* As between Content Creator and NewPathVR and except for the rights herein granted to NewPathVR, Content Creator shall retain all intellectual property rights in the Product and Content Creator Brand Features. NewPathVR will own all intellectual property rights in and to the Device, NewPathVR Properties, and NewPathVR Brand Features. Neither party will at any time during or after the Term of this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any mark belonging to or licensed to the other party.

### 14. **GENERAL PROVISIONS**

- 14.1 *Assignment.* Neither party may assign the Agreement or its rights or obligations hereunder without the other party's prior written consent, except that either party may assign the Agreement (in whole or in part) without consent to its Affiliates or pursuant to a transfer of all or substantially all of its business and assets, whether by merger, sale of assets, sale of stock, or otherwise or in connection with an acquisition, merger, or sale of assets, stock, or otherwise. Any attempted assignment or transfer in violation of the foregoing will be void. NewPathVR may delegate its obligations, in whole or in part, to Affiliates.
- 14.2 *No Obligation to Distribute.* NewPathVR shall have no obligation to distribute the Product, and NewPathVR does not guarantee that the Product will actually generate revenue.
- 14.3 *Independent Contractor.* Content Creator will have no power to bind NewPathVR or incur obligations on NewPathVR's behalf.
- 14.4 *Governing Law and Jurisdiction.* This Agreement and all related actions and proceedings shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the California state and United States federal courts located in San Francisco County, California, and each party hereby submits to the personal jurisdiction of such courts.
- 14.5 *End User Disputes.* NewPathVR may include in the TOS an arbitration provision that requires end users of Products to agree to binding arbitration with respect to claims against both NewPathVR and Content Creator. If (a) both NewPathVR and Content Creator are sued by a third party, (b) such suit relates to a Product, NewPathVR Properties, NewPathVR Services, Content Creator Brand Features, or NewPathVR Brand Features, and (c) NewPathVR has the right to compel arbitration with respect to such suit (e.g., such suit is filed by an end user who is subject to the TOS (and the TOS includes an arbitration provision)), Content Creator consents to the arbitration.
- 14.6 *Amendments; Waivers.* No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.
- 14.7 *Severability.* If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.



- 14.8 Notices. Any notice hereunder shall be in writing to the notice address set forth on the Cover Section and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. Mail (return receipt requested); or (iii) one (1) day after it is sent if by next day delivery by a major commercial delivery service.
- 14.9 Cumulative Remedies. Except as otherwise expressly provided in this Agreement, all remedies in this Agreement are cumulative and in addition to (not instead of) any other remedies available to a party at law or in equity. In the event of a claim by NewPathVR for loss or damages for which Content Creator is responsible, NewPathVR shall be entitled to adjust the amounts claimed against future or outstanding payments due, or which may become due, to Content Creator.
- 14.10 Force Majeure. Neither Party will be liable for any delay or default in the performance of its obligations if such delay or default is caused by conditions beyond its reasonable control, including fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures or acts of God (collectively, "**Force Majeure**"). If performance is delayed by more than 30 days as a result of any Force Majeure, the non-delayed Party will be entitled to terminate this Agreement by written notice delivered at any time before the other Party's resumption of performance of this Agreement.
- 14.11 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.
- 14.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement.
- 14.13 Export Compliance. Content Creator will comply, and will not cause NewPathVR to not comply (by for example, providing a Product to NewPathVR under this Agreement for which required export clearances have not been obtained), with all applicable export control laws of the United States and any other applicable governmental authority, including without limitation, the U.S. Export Administration Regulations.
- 14.14 Legal Advice. The relationship between Content Creator and NewPathVR established by this Agreement may have important legal consequences for Content Creator. Content Creator acknowledges and agrees that it is Content Creator's responsibility to consult with legal advisors concerning its rights and obligations hereunder.

*Checking the box that says "I have read and agree to the Partner Agreement" binds you to this agreement. Please download a copy of this agreement for your records.*