

# VDROOM SERVICES AGREEMENT

*Last Updated: December 28, 2018*

By clicking on the "I agree to the terms of the VDRoom Services Agreement" button, the Client (as defined below) is hereby accepting the terms of this Services Agreement (this "**Agreement**"), which is a binding and enforceable agreement between the Client and VDRoom Ltd., an Israeli company with offices at 7 Tnufa St., Petach Tikva, Israel (the "**Company**"), on behalf of itself and its affiliates. By accepting this Agreement according to the foregoing method (the "**Acceptance Date**"), the Client represents and warrants that s/he has the legal capacity to enter into this Agreement and to bind the applicable Property (as defined below). The Company and the Client shall each be referred to as a "**Party**" and together as the "**Parties**".

**WHEREAS**, the Company has experience in the development, management and support of various Virtual Reality ("**VR**") technology and products, including 360 VR content management systems (CMS), smart VR galleries, as well as marketing and promoting various venues and properties, including hotels, room accommodations, lodging and cruise; and

**WHEREAS**, the Client wishes to receive the Company's services, as further detailed herein;

**NOW THEREFORE**, in consideration of the mutual premises contained herein, and intending to be legally bound, the Parties hereto hereby declare and agree as follows:

## 1. **Definitions**

In addition to terms elsewhere defined in this Agreement, the following terms shall have the respective meanings ascribed to them below:

- 1.1. "**Client**" means the person or entity agreeing to the terms of this Agreement on the Acceptance Date, on behalf of themselves, a Property and/or a group of Properties.
- 1.2. "**Property**" means one (1) physical property owned or managed by the Client, or with respect to which the Client is permitted to engage with the Company, that is identified to the Company in writing on or promptly after the Acceptance Date.
- 1.3. "**Promotional Content**" means video, audio, graphics, texts, images, coupons, promotional codes and any other content provided by the Client to the Company for the purposes of promoting the Client's Property, websites (such as the Property Site), search results and/or listing page.
- 1.4. "**Property Site**" means the Clients' proprietary website of a specific Property.
- 1.5. "**Image(s)**" means (a) an image of a Property taken by the Company or its service providers with the use of VR technology, whether taken prior to or during the Term, or (b) a VR image of the Property owned by the Client and (i) provided by the Client to the Company, or (ii) that was downloaded or otherwise collected by the Company from a third party platform (e.g. Google Maps)(the "**Platform**") at the request of the Client.
- 1.6. "**Intellectual Property Rights**" mean (i) patents and patent applications throughout the world, including all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and re-examinations of any of the foregoing, all whether or not registered or capable of being registered; (ii) common law and statutory trade secrets and all other confidential or proprietary or useful information that has independent value, and all know-how, in each case whether or not reduced to a writing or other tangible form; (iii) all copyrights, whether arising under statutory or common law, whether registered or not; (iv) all trademarks, trade names, corporate names, company names, trade styles, service marks, certification marks, collective marks, logos, and other source of business identifiers, whether registered or not; (v) moral rights in those jurisdictions where such rights are recognized; (vi) any rights in source code, object code, mask works, databases, algorithms, formulae and processes; and (vii) all other intellectual property and proprietary rights, and all rights corresponding to the foregoing throughout the world.
- 1.7. "**VD Technology**" means (a) data, information, materials, methods, ideas, concepts, know-how, techniques, software, databases, websites developed by the Company and other technologies of the Company; (b) Images created by the Company upon the order of the Client; (c) customizations for customers, search technologies, management of online properties (such as the Property Site or its subdomains) and databases; (d) any revisions, corrections, modifications, enhancements, improvements, updates and/or upgrades to any of the foregoing, and any Intellectual Property Rights therein or related thereto.
- 1.8. "**Management Activities**" means activities, operations and any other measures taken by the Company, at the request of the Client, in connection with the management of 360 VR galleries, the Property Site (or any part thereof), managing 360 VR Images, as well as the import of Client's Images from Platforms, all primarily for the purpose of providing the Services and promoting the Client's Property.

## 2. **The Services**

- 2.1. Company's Services. The Client hereby engages the Company to perform certain services during the Term (as defined below) as an independent contractor. The services are intended to promote the Client's Property, *inter alia*, by (a) enriching the visualization of the Client's Property; (b) creating Images of the Property with the use of VR

technology on demand; (c) creating smart 360 VR galleries; (d) performing Management Activities, (e) promoting the Client's listing page in leading reputable travel websites; (f) increasing the organic exposure to the Property Site and/or Images on search engines and leading reputable travel websites; and (g) providing certain hosting services (collectively, the "**Services**"). The Client will select the applicable Services in the following link: <https://www.vdroom-travel.com/pricing>

- 2.2. **Client's Cooperation**. The provision of the Services is subject to the Client's cooperation, including: (i) providing Company with Images; (ii) to the extent the Client's Images are displayed on any Platform, granting the Company all required access rights as to permit the Company to import, download, collect, use and modify the Client's Images; (iii) providing accurate and updated Promotional Content; (iv) permitting integrations of, or other interfaces between, the VD Technology with the Client's system and/or Property Site (e.g. booking systems and cookie usage); (v) obtaining any other required permissions, authorizations, permits or rights as to enable the Company to perform the Services.
- 2.3. **VR Equipment**. The Client acknowledges and agrees that VR equipment (such as VR glasses and/or headsets) is not provided in the scope of this Agreement.
- 2.4. **No Guarantee**. The Company cannot guarantee that it will be able to increase user engagement, conversion rates or Property bookings.

### **3. Consideration**

- 3.1. In consideration for the performance of the Services during the Initial Term (as defined below), the Client will pay the Company certain consideration in the amounts and according to the payment terms specified on the Company's website: <https://www.vdroom-travel.com/pricing> (the "**Consideration**"). During the Initial Term, the Consideration may be changed by the Parties' consent in writing. Additionally, the Consideration may be changed by the Company at its sole discretion upon each Renewal (as defined below).
- 3.2. The Consideration will be invoiced by the Company on a monthly basis, and payment of the Consideration will be due within thirty (30) days of delivery of the applicable invoice. The Parties agree that all past due amounts under this Agreement shall accrue interest on a daily basis until paid in full at the lesser of: (i) the rate of one and a half percent (1.5%) per month; or (ii) the highest amount permitted by applicable law.
- 3.3. All payments under the Agreement are exclusive of taxes applicable to the provision of the Services. The Client shall bear all value added, state, local, withholding, and other taxes or other charges applicable to this Agreement (but not any taxes based upon the Company's net income). The Client will pay any such taxes or charges no later than thirty (30) days after the Client's receipt of proper bills or statements from the Company or the taxing authorities. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, Client shall gross-up the payment under this Agreement by such amount as shall ensure that after such withholding or deduction the Company shall have received an amount equal to the payment otherwise required.

### **4. Term and Termination**

- 4.1. This Agreement shall commence on the Acceptance Date and shall remain in effect for a one (1) year period (the "**Initial Term**"). Thereafter, this Agreement will renew automatically for additional one (1) year periods (each, a "**Renewal**"), unless a Party gives the other Party at least thirty (30) days' prior written notice of its intention not to renew the Agreement (the Initial Term and any Renewals thereof shall be collectively referred to herein as the "**Term**").
- 4.2. The Client shall have the right to terminate this Agreement for cause as a result of the material failure of the Company to perform under this Agreement and to remedy such failure within thirty (30) days after written notice of such failure is given by the Client.
- 4.3. The Company shall have the right to terminate this Agreement for cause as a result of the material failure of the Client to perform under this Agreement and to remedy such failure within ten (10) days after written notice of such failure is given by the Company.
- 4.4. In the event that either Party becomes liquidated, dissolved, bankrupt or insolvent, whether voluntarily or involuntarily, or shall take any action to be so declared, the other Party shall have the right to immediately terminate this Agreement.
- 4.5. Upon termination or expiration of this Agreement: (i) the Company will discontinue the provision of Services hereunder and the licenses granted by the Company to the Client under Section 5 hereunder shall terminate; (ii) any sums paid by the Client until the date of termination are non-refundable, and the Client shall not be relieved of its duty to discharge in full all due sums owed to the Company under this Agreement until the date of termination or expiration hereof, which sums shall become immediately due and payable on the date of termination or expiration the Agreement; and (iii) if applicable, the Client may exercise its right under Section 5.8.
- 4.6. Any provision of this Agreement which by its nature and content survives termination or expiration shall survive termination or expiration of this Agreement.

### **5. Intellectual Property Rights**

- 5.1. **Client IP**. As between the Parties, the Property Site, the Promotional Content and any other data provided by the

Client to the Company in order to provide the Services, including without limitation the Client's Images, are exclusively owned by the Client. The Client hereby grants the Company a perpetual right and license to copy, download, collect or otherwise use the Client's Images (whether displayed on the Property Site, applicable Platforms, listing pages or other websites) for the purpose of promoting the Property, providing and improving the Services and for any other business purpose of the Company. In this respect, the Client represents and warrants that (a) it is the sole owner of the Client's Images and/or Promotional Content, including any Intellectual Property Rights therein or related thereto; (b) Company's use of the Client's Images and/or Promotional Content as provided under this Section 5.1 shall not violate the rights of any third party, cause any conflicts with and/or raise any demand from the applicable Platforms; and (c) it shall assist the Company with any queries made by Platform providers with respect to the Company's permitted uses of the Client's Images and/or of the Promotional Content.

- 5.2. Company IP. The VD Technology which is used by the Company in providing the Services (including without limitation any Images created by the Company or its service providers) is exclusively owned by the Company.
- 5.3. License to Company Images. Subject to the payment of the Consideration, the Company hereby grants the Client, and the Client accepts, *during the Term*, a limited, revocable, non-exclusive, non-sublicensable, non-transferable license to display, publish and make available (without modification) any Images created by the Company or its service providers in one or all of the following: (a) the Client's Property Site, (b) Google Maps, and (c) any other listing page, website or platform for which the Company provided its prior written approval.
- 5.4. Use Restrictions. Except as explicitly permitted herein, without the prior written consent of the Company, the Client may not, nor permit anyone else to, directly or indirectly: (i) use, modify, revise, enhance, incorporate into or with other software, or create a derivative work of any part of the VD Technology or any Company Images; (ii) sell, resell, license (or sub-license), lease, assign, transfer, pledge, or share its rights under this Agreement with or to any third party; (iii) copy, distribute, publish or reproduce the VD Technology or any Company Images; (iv) use or permit the VD Technology or any Images created by the Company to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise; (v) disclose, publish or otherwise make publicly available the results of any benchmarking of any VR website developed by the Company in connection with the Services, or use such results for your own competing software development activities; (vi) disassemble, decompile, reverse engineer, or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the VD Technology, except to the extent otherwise permitted under applicable law in the jurisdiction of use, notwithstanding this prohibition; (vii) remove or otherwise alter any of the Company's trademarks, logos, copyrights or other proprietary notices or indicia, if any, fixed or attached to the VD Technology; (viii) ship, transfer or export the VD Technology into any country, make available or use it in any manner which is in violation of applicable export control laws, restrictions or regulations; (ix) disclose, provide or otherwise make available trade secrets contained within the VD Technology in any form to any third party; and/or (x) use the VD Technology or any Images created by the Company in violation of applicable laws, or in a manner which infringes third party rights (including without limitation, Intellectual Property Rights or privacy rights).
- 5.5. Analytics Ownership. The Company may collect, disclose, publish and use in any other manner any anonymous and non-identifiable information, which is derived from the use of its Services, in order to provide and improve Company's programs and services and for any legitimate business purposes. The Company shall remain the exclusive owner of any such information.
- 5.6. Feedback. If Client contacts the Company with feedback data (e.g., questions, comments, suggestions or the like) regarding the Services (collectively, "**Feedback**"), such Feedback shall be deemed non-confidential, and the Company shall have a non-exclusive, worldwide royalty-free and perpetual license to use or incorporate such Feedback into the VD Technology and/or other current or future products or services of the Company (without client's approval and without compensation to Client).
- 5.7. Opportunity to Purchase the Company Images. If this Agreement terminates after the Initial Period, for any reason other than the Client's breach under Section 4.3, the Client shall have the option to purchase a non-exclusive, non-transferable, non-sublicensable, *perpetual* license to use the Company's Images as a **standalone**, for any commercial or non-commercial purposes, for the Company's then-current standard rates as specified in on the Company's website: <https://www.vdroom-travel.com/pricing>. Such purchase will cancel and replace the license under Section 5.2.

## 6. Privacy

You acknowledge and agree that the Services may entail the use and processing of personally identifiable Information ("**PII**") by the Company. As the "controller" of such PII, you hereby agree to the terms and conditions of the Company's Data Processing Agreement ("**DPA**").

## 7. Indemnification

The Client agrees to defend, indemnify and hold harmless the Company, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, and expenses (including but not limited to attorney's fees) arising from or related to (a) any unauthorized use of the VD Technology and/or the Company Images hereunder; (b) the Company's use of the Client's Images or Promotional Content hereunder, including any actual or alleged infringement of third party intellectual property rights by nature of their use by the Company; (c) any claim brought by third party Platform related

to the use of the Client's Images or Promotional Content (including with respect to moral rights and attribution), or in relation to the performance of Management Activities on the Client's behalf; and/or (d) Client's breach of his/her warranties hereunder, including any misrepresentation or fraud.

8. **Warranty Disclaimer.**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, (A) THE SERVICES (INCLUDING THE VD TECHNOLOGY AND ANY COMPANY IMAGES) ARE PROVIDED ON AN "AS IS" BASIS; AND THE COMPANY DOES NOT WARRANT THAT THEY WILL MEET CLIENT'S REQUIREMENTS OR THAT THEIR OPERATION WILL BE SECURED AT ALL TIMES, UNINTERRUPTED, ERROR-FREE, FREE OF VIRUSES, BUGS, WORMS, OTHER HARMFUL COMPONENTS OR OTHER PROGRAM LIMITATIONS; (B) COMPANY HERBY DISCLAIMS ALL EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, NON-INTERFERENCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

9. **Limitation of Liability.**

- 9.1. THE COMPANY AND ITS LICENSORS, AFFILIATES, DISTRIBUTORS AND RESELLERS SHALL NOT BE LIABLE WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, TO THE CLIENT OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS OR GOODWILL AND LOST OR DAMAGED DATA OR DOCUMENTATION), SUFFERED BY ANY PERSON, ARISING FROM, AND/OR RELATED TO, ANY USE OF OR INABILITY TO USE THE SERVICES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2. IN ANY CASE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND TO THE MAXIMUM EXTENT LEGALLY PERMISSIBLE, IF THE COMPANY, ITS LICENSORS, AFFILIATES, DISTRIBUTORS AND/OR RESELLERS ARE FOUND TO BE LIABLE BY A FINAL JUDICIAL RULING THEN THEIR LIABILITY TO THE CLIENT OR TO ANY THIRD PARTY FOR ALL DAMAGES OR LOSSES WHATSOEVER ARISING HEREUNDER OR IN CONNECTION WITH THE CLIENT'S USE OR INABILITY TO USE THE SERVICES, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO THE COMPANY UNDER THE SOW IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.
- 9.3. For clarity, all data and content, including but not limited to the Clients' Images and Promotional Content (including their legality and accuracy) that are provided by the Client to the Company, as well as the results and outcomes of their inclusion in the Property Site, listing pages and websites by the Company are in the exclusive responsibility of the Client. Similarly, Management Activities that were performed at the request and on behalf of the Client are in the exclusive responsibility of the Client.

10. **Miscellaneous**

(a) This Agreement (including the DPA and the order pages referenced herein) constitutes the full and entire understandings and agreements between the Parties with respect to the subject matter and replaces any previous oral or written agreement and/or communications between the Parties related to the Services. In the event of any conflict or inconsistency between the terms specified above and the terms and conditions of the DPA, the terms of the DPA shall control and govern; (b) this Agreement shall not be amended, modified or varied by any oral agreement or representation or otherwise then by written instrument executed by both Parties or their duly authorized representatives. Notwithstanding the foregoing, the Company may change the Consideration upon Renewal, as provided in the Agreement; (c) no failure, delay or forbearance of either Party in exercising any power or right hereunder shall in any way restrict or diminish such Party's rights and powers under this Agreement or operate as a waiver of any breach or non-performance by either Party of any of the terms or conditions hereof; (d) Client may not assign its rights or obligations under this Agreement without the prior written consent of the Company. The Company may assign its rights or obligations under this Agreement without the prior written consent of the Client; (e) the laws of the State of Israel shall apply to this Agreement, without reference to principles relating to conflict of laws, and any disputes in relation hereto will be handled by the competent courts of the Tel Aviv district, Israel; and (f) notices may be delivered by personal/courier delivery, facsimile or e-mail. Notices delivered personally or by courier shall be deemed given upon delivery. Notices by facsimile or e-mail shall be deemed given upon the receiving Party's confirmation of receipt. For additional information, comments and correspondence, please contact [customercare@vdroom-travel.com](mailto:customercare@vdroom-travel.com).

**I HAVE READ AND UNDERSTOOD THIS AGREEMENT (INCLUDING THE DPA) AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS.**