

VRmagic Inc. One-Year Limited Warranty and Additional Terms and Conditions (version 2.4)

Effective Date: March, 2017

1. This Warranty

During the warranty period (as specified below), VRmagic, Inc., a Delaware corporation (“VRmagic”) will repair or replace, at no charge to you, the VRmagic product sold to you by VRmagic or an authorized VRmagic dealer that proves not to be merchantable or not fit for the purpose specified in the end-user documentation provided by VRmagic with the VRmagic product or that proves defective in material or workmanship at the time of sale under conditions of normal and reasonable use and in accordance with any instructions or warnings attached to or furnished with the VRmagic product or that proves not to perform substantially in accordance with the end-user documentation provided by VRmagic with the VRmagic product. Any replacement or repaired product shall assume the identity of the original for purposes of this limited warranty. During the warranty period, you will also be entitled to any implied warranties allowed by applicable law that cannot be disclaimed by VRmagic under applicable law. If VRmagic elects not to replace or repair the defective VRmagic product within 30 days after receipt, VRMAGIC WILL REFUND TO YOU THE ACTUAL PURCHASE PRICE OF THE VRMAGIC PRODUCT. IF VRMAGIC DOES NOT REPLACE OR REPAIR THE DEFECTIVE PRODUCT, REFUND OF THE PURCHASE PRICE IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AND ANY OTHER WARRANTY.

2. Warranty Period

This limited warranty (and any other warranty) extends for ONE (1) calendar year beginning on the date of the original purchase of the VRmagic product , excluding each day that the product is out of your possession for replacement or repair. The remainder of the original warranty period applies to any replacement or repaired product delivered under this warranty.

ALL IMPLIED OR EXPRESS WARRANTIES THAT CANNOT BE DISCLAIMED HEREIN UNDER APPLICABLE LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE AND THE WARRANTY OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, SHALL BE LIMITED IN DURATION TO THE ONE-YEAR TERM OF THE ABOVE LIMITED WARRANTY PERIOD.

3. Who and What Product Is Covered; Software License

This limited warranty, including all other warranties not otherwise disclaimed, extends only to the original purchaser of the VRmagic product. This warranty is not transferable to any subsequent purchaser, consumer, user or other person. References to “you” and “your” in this limited warranty refer only to persons covered under this warranty. ALL OTHER PROVISIONS OF THIS DOCUMENT, INCLUDING THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS, APPLY TO YOU AND ANY OTHER PERSON WHO MAY ASSERT CLAIMS AGAINST VRMAGIC OR ITS AFFILIATES OR ITS SUPPLIERS.

A “VRmagic product” is a tangible product sold or distributed by VRmagic, Inc., a Delaware corporation, or a dealer authorized by VRmagic to sell the VRmagic products under the VRmagic™ brand. For purposes of this limited warranty and additional terms only, also all software and related documentation delivered by VRmagic or a dealer authorized by VRmagic, with the tangible VRmagic product, and any subsequent software updates or upgrades delivered to you by VRmagic, are also deemed “VRmagic products” provided however that any such software and documentation delivered to you is licensed to you on a non-exclusive basis by VRmagic, and subject to the terms and conditions set forth at <http://www.vrmagic.com/terms/VRmSoftwareLicense.pdf>, which shall govern your use of all such software and documentation. All such software and any upgrades and updates thereof are licensed to

you personally on a non-exclusive basis in object code only without any right to sublicense such software and without any right to modify or improve such software or to create derivative works thereof or to transfer any such software. For the purpose of this VRmagic Inc. One-Year Limited Warranty and Additional Terms only, also the services provided to you through VRmNet are deemed “VRmagic products”, provided however that such services are subject to the VRmNet Terms of Service (<http://www.vrmagic.com/terms/VRmNetTerms.pdf>) and the VRmagic Privacy Policy (<http://www.vrmagic.com/terms/PrivacyPolicy.pdf>), respectively. All such software, and all updates and upgrades thereof, and the related documentation are licensed to you by VRmagic and not sold to you. VRmagic Inc. is not the owner of such software and has no authority to transfer title to or ownership of such software, or any upgrades or updates thereof or any related documentation, or any of the underlying intellectual property rights. Instead, VRmagic Inc. only holds the right to grant non-exclusive licenses. VRmagic GmbH, a company located in Mannheim, Germany, is the exclusive owner of all right, title, and interest, including without limitation copyright and all other intellectual property rights, in and to all of the software, and all copies thereof. Ownership of all software and documentation and all intellectual property rights to all such software and documentation remains exclusively with VRmagic GmbH and in no event with you. All such software, and any copies thereof that you may make, are the intellectual property of and are owned exclusively by Licensor VRmagic GmbH. The source code and the structure, sequence or organization of the source code, are the valuable trade secrets and confidential information of VRmagic GmbH, and you may not, without the prior written consent of VRmagic Inc., distribute, transfer, or make any software available to any third party or place them in the public domain. All such software is protected by law, including without limitation United States copyright law. The software is not deemed to be part of any tangible product even if installed or stored thereon.

4. Warranty Exclusions and Disclaimers

OTHER THAN AS EXPRESSLY SET FORTH IN THE ABOVE LIMITED WARRANTY, VRMAGIC DOES NOT EXTEND ANY EXPRESS OR WRITTEN WARRANTIES, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMS ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF NON-INFRINGEMENT, WITH RESPECT TO ALL PERSONS.

Any other warranty not expressly set forth herein that VRmagic is found by a competent court not to have disclaimed but to have extended to you, whether express or implied, shall be limited to, shall be subject to and shall be qualified by the knowledge of VRmagic. The knowledge of VRmagic is limited to the actual knowledge of VRmagic’s officers at the time such warranty is first given.

The above limited warranty, and any other warranty not expressly set forth herein that VRmagic is found by a competent court not to have disclaimed, expressly excludes, and does not cover, any defects or damages resulting from any of the conditions described below under the heading **“You Will Have No Benefits under This Limited Warranty If Any of the Following Conditions Apply”**.

5. Exclusive Remedy

The VRmagic product is covered only by the above limited warranty. This limited warranty allocates the risk of failure of the VRmagic product and unknown and undeterminable risks between you and VRmagic. This allocation, which is intended to protect VRmagic against unknown and undeterminable risks, is recognized by you and is reflected in the purchase price. You will follow and observe all instructions and warnings attached to or furnished with the VRmagic product.

THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY FOR YOU AND SUBSEQUENT PURCHASERS, CONSUMERS, USERS AND ANY OTHER PERSON AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THEREFORE, IF VRMAGIC DOES NOT REPLACE OR REPAIR THE DEFECTIVE PRODUCT, REFUND OF THE PURCHASE PRICE IS YOUR SOLE AND EXCLUSIVE REMEDY AND VRMAGIC WILL ONLY REFUND THE PURCHASE PRICE IF THE PRODUCT IS RETURNED BY YOU TO VRMAGIC, AT VRMAGIC’S EXPENSE.

For the avoidance of doubt, no warranty is given or made with respect to any VRmagic product by anyone other than VRmagic Inc.

6. What VRmagic Will Not Do

VRmagic will not repair any product if it elects to replace the product.

VRmagic will either repair the defective product where the product is located or will arrange for shipment, at its expense, of the defective product to VRmagic for repair or replacement. VRmagic will not pay transportation charges of the defective VRmagic product from you to VRmagic if you ship the defective product to VRmagic on your own (unless expressly requested by VRmagic). VRmagic will only bear the cost of shipping the defective product to VRmagic and the replacement or repaired product provided for under this limited warranty back to you, provided VRmagic elects to repair or replace the defective product and VRmagic arranges for such shipments.

VRmagic neither assumes nor authorizes any other person or entity to assume for it any other obligation or liability beyond that which is expressly provided for in this limited warranty. This limited warranty does not apply to any products, parts, accessories, installations or attachments not sold or distributed by VRmagic or an authorized VRmagic dealer under the VRmagic™ brand. The warranty of the manufacturer of these products shall apply and be exclusive.

If a product is returned to VRmagic, but the problem with the product is not covered under the terms and conditions of this limited warranty, you will be notified and the product will be returned to you and you will be responsible for all shipping charges.

7. What You Must Do

Notify VRmagic in writing of the defect claimed under this warranty together with proof of purchase from VRmagic or an authorized VRmagic dealer. All warranty claims must be submitted to VRmagic at the address below or electronically to the email-address below. You will need to also provide the address of the location of the defective product, daytime phone number, email address, a complete description of the problem and a copy of the proof of purchase.

Please direct questions concerning this warranty to:

Email: service@vrmagic.com

VRmagic Inc.

Customer Service
245 First Street, 18th floor
Cambridge, MA 02142
USA

8. You Will Have No Benefits under This Limited Warranty If Any of the Following Conditions Apply

The VRmagic product has been installed or used in disregard of any instructions or any warnings attached to or furnished with the product or the end-user documentation provided therewith. The VRmagic product has been subjected to abnormal or unreasonable use, abnormal conditions, overload, improper storage, unauthorized modification, unauthorized repair or tampering, neglect, misuse, abuse, accident, alteration, improper packaging, installation in an improper environment, or other acts which are not the fault of VRmagic, including damage caused by shipping. The VRmagic product has been damaged by external causes such as an accident, collision with an object, fire, flooding, sand, dirt, windstorm, lightning, earthquake or damage from exposure to weather conditions,

excess moisture, insects, an Act of God, battery leakage, theft, power surge, blown fuse, or improper use of an electrical source. VRmagic was not notified in writing by you of the alleged product defect within the limited warranty period or within fourteen (14) days after the expiration of the limited warranty period. The product is not a VRmagic product or was not purchased from VRmagic or an authorized VRmagic dealer, or the product serial number has been removed, defaced or altered. You cannot provide VRmagic with satisfactory proof of purchase from VRmagic or an authorized VRmagic dealer. Satisfactory proof of purchase is a dated bill of sale, invoice or dated itemized receipt.

9. Additional Terms If You Are A US Government Agency

If you are governmental, administrative or regulatory authority, body, agency or similar entity of the United States government, the following applies to you:

The software and documentation that is delivered to you by VRmagic are Commercial Items, as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions in VRmagic's standard non-exclusive end-user software license agreement which can be found at <http://www.vrmagic.com/terms/VRmSoftwareLicense.pdf>. Unpublished rights are reserved under the copyright laws of the United States. VRmagic Inc., Cambridge, MA.

10. Limitation of Liability and Exclusion of Statutory Remedies

THE MAXIMUM LIABILITY OF VRMAGIC AND ITS AFFILIATES AND ITS SUPPLIERS WITH RESPECT TO ALL APPLICABLE EXPRESS AND IMPLIED WARRANTIES SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE VRMAGIC PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VRMAGIC AND ITS AFFILIATES AND ITS SUPPLIERS SHALL HAVE NO LIABILITY FOR PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES RESULTING FROM THE PURCHASE OR USE OR NON-USE OF THE VRMAGIC PRODUCT OR ANY PART THEREOF, FROM ANY PRODUCT DEFECT, FROM ANY DAMAGE TO REAL OR PERSONAL PROPERTY, FROM ANY USE IN DISREGARD OF ANY INSTRUCTIONS OR ANY WARNINGS ATTACHED TO OR FURNISHED WITH THE PRODUCT, OR FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT LIABILITY, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND YOU HEREBY IRREVOCABLY WAIVE ALL CLAIMS TO THAT EFFECT. VRMAGIC AND ITS AFFILIATES AND ITS SUPPLIERS SHALL HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM ANY LOSS OF ANTICIPATED BENEFITS, ANY PROFITS, SAVINGS OR REVENUE, ANY BUSINESS INTERRUPTION DAMAGES, ANY LOSS OF TIME OR USE OF THE PRODUCT, ANY THIRD PARTY CLAIM, AND ANY INJURY TO PROPERTY, EVEN IF VRMAGIC KNEW OF THE POSSIBILITY OF SUCH DAMAGE.

11. Additional Terms Regarding Any Express Indemnification Obligations of VRmagic

To the extent VRmagic has expressly agreed with you in writing to indemnify you, defend you and/or hold you harmless from a third party claim related to any VRmagic product including without limitation any third party claim for infringement of a patent or other intellectual property right, the following additional terms shall apply:

1. You will not be entitled to be indemnified, held harmless or defended, unless you (i) give VRmagic prompt written notice, but in no event later than thirty (30) days after you have received notice thereof, of any action or proceeding or threatened action or proceeding, and the ground(s) asserted therefor, (ii) give VRmagic, in writing, the sole control of the defense of such action or proceeding and the authority to settle and compromise such action or proceeding (unless you are the U.S. government or any agency or instrumentality thereof), provided that

VRmagic will not settle or compromise any claim, action or proceeding unless VRmagic either obtains (1) your written consent which consent shall not be unreasonably withheld or delayed, or (2) with respect to a claim for monetary damages only, a complete release of liability for you and no admission of wrongdoing by you; and (iii) cooperate with VRmagic at VRmagic expense in its defense of such claims, action or proceeding.

2. If you are enjoined from using any VRmagic product or any VRmagic product becomes, or in the reasonable opinion of VRmagic is likely to become, the subject of a claim involving infringement of a third party's intellectual property rights, VRmagic will have the right to (i) seek to procure, at no cost to you, the right to continue to use such VRmagic product, or (ii) replace or modify, at VRmagic's expense, such VRmagic product without a material loss of functionality, or (iii) require you to return VRmagic product, in which case VRmagic will refund the purchase price paid by you therefor as depreciated from the date of delivery of the VRmagic product to you on a straight-line thirty-six (36) month basis and you will promptly cease all uses of the VRmagic product and return such VRmagic product to VRmagic, at VRmagic's expense, upon VRmagic's demand, provided, however, that VRmagic will remain liable to you in respect of its express indemnification, hold harmless and/or defense obligations concerning a third party claim involving such infringement to the extent that you continue to have liability with respect to such third party claim after you have complied with the foregoing provisions.

3. You will not be entitled to be indemnified, held harmless or defended if the third party claim results from (i) a material modification or alteration, misapplication, misuse, unauthorized repair or improper installation of any VRmagic product done or made by persons other than VRmagic without VRmagic's written approval, (ii) your negligence, willful misconduct or bad faith or that of your employees or contractors or affiliates, (iii) any of the conditions set forth below under **"You Will Have No Benefits under This Limited Warranty If Any of the Following Conditions Apply"**, (iv) with respect to a third party claim of infringement of intellectual property rights, continuation of the allegedly infringing activity by you after VRmagic has notified you in writing to cease such activity or has provided you with a substitute or modification(s) that would have avoided the alleged infringement.

12. Miscellaneous

This is the entire warranty between VRmagic and you, and supersedes all prior and contemporaneous agreements or understandings, oral or written, relating to the VRmagic product or any warranty and all of the additional terms set forth herein, and no representation, promise or condition not contained herein or at <http://www.vrmagic.com/terms/VRmSoftwareLicense.pdf> shall modify or replace these terms. If any part of this limited warranty or these other terms is determined to be invalid or unenforceable under applicable law by a court, all of the remaining parts of this warranty shall remain fully enforceable. **UNLESS THE PARTIES HAVE AGREED OTHERWISE IN WRITING, THE SUBSTANTIVE LAWS OF THE STATE OF DELAWARE, SHALL CONTROL ALL ASPECTS OF THIS PRODUCT SALE AND SOFTWARE LICENSING, INCLUDING WITHOUT LIMITATION THE SCOPE OF THE WARRANTY OBLIGATIONS, WARRANTY DISCLAIMERS, THE EXCLUSIONS AND LIMITATIONS ON REMEDIES AND LIABILITY, THE SOFTWARE LICENSE AND THE LIMITATIONS ON ANY EXPRESS, WRITTEN INDEMNIFICATION, DEFENSE AND/OR HOLD HARMLESS OBLIGATIONS OF VRMAGIC WITH RESPECT TO THIRD PARTY CLAIMS. UNLESS THE PARTIES HAVE AGREED OTHERWISE IN WRITING, YOU AND VRMAGIC HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMPETENT COURTS OF THE STATE OF DELAWARE WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION RELATING DIRECTLY OR INDIRECTLY TO THIS PRODUCT SALE OR SOFTWARE LICENSING OR THE TERMS AND CONDITIONS SET FORTH HEREIN OR INCORPORATED BY REFERENCE HEREIN. IF YOU AND VRMAGIC HAVE AGREED ON AN EXCLUSIVE JURISDICTION OR VENUE FOR HEARING ANY DISPUTES, THEN YOU ALSO AGREE THAT VRMAGIC OR YOU MAY BRING ANY LAWSUIT OR ACTION RELATING TO SUCH DISPUTE IN THE U.S. DISTRICT COURT FOR THE DISTRICT IN WHICH THE VENUE IS LOCATED, PROVIDED SUCH U.S. DISTRICT COURT HAS SUBJECT MATTER JURISDICTION OVER THE DISPUTE. VRMAGIC AND YOU HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO HAVE ANY CONTROVERSY OR CLAIM AGAINST THE OTHER OR ANY AFFILIATE OF THE OTHER ARISING OUT OF OR RELATING TO THIS CONTRACT OR ANY TRANSACTION OR CONTRACT CONTEMPLATED BY THIS CONTRACT OR RELATED**

HERETO, INCLUDING WITHOUT LIMITATION ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT OR STATUTORY VIOLATION, BE HEARD OR DECIDED BY A JURY IN A TRIAL.