

VRmagic All Terms In One (version 4.1)

Effective Date: June, 2020

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 SUBMMIT 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.**

VRmagic Software License (version 2.3)

Effective Date: February, 2017

THE TERMS AND CONDITIONS CONTAINED HEREIN CONSTITUTE A LEGALLY BINDING AGREEMENT BETWEEN YOU AND VRmagic, Inc. ("VRmagic") WITH RESPECT TO THE USE OF SOFTWARE OF VRMAGIC.

1. Definitions

"Authorized VRmagic Dealer" means a dealer authorized by VRmagic to sell the VRmagic products under the VRmagic™ brand.

"Software" means any computer code, software, computer instructions, computer program, middleware, and firmware, that VRmagic (or an Authorized VRmagic Dealer) delivered with any VRmagic Product you have purchased from VRmagic (or an Authorized VRmagic Dealer), including as pre-installed or to be installed on a VRmagic Product, or that VRmagic (or an Authorized VRmagic Dealer) delivers or has delivered to you, and any Updates of such Software that VRmagic has made available to you.

"Update" means incremental improvements to the Software, which VRmagic may release to you if you and VRmagic have entered into a separate written agreement for the provision of such Updates by VRmagic. An "Update" does not include any substantially new software ("New Product") even if the New Product includes some parts of the Software and it does not include any software having new features or functionalities that are different from the Software ("Upgrade"). This license does not cover New Products or Upgrades unless you and VRmagic expressly agree in writing that this License also covers any such Upgrade or New Product. VRmagic reserves the exclusive right to determine what is an Update and what is an Upgrade or a New Product.

"VRmagic Product" means a tangible equipment or hardware or other tangible product that you purchased from VRmagic or an Authorized VRmagic Dealer.

"You" shall mean the entity or organization that has purchased the VRmagic Product(s) from VRmagic or an Authorized VRmagic Dealer, including without limitation all employees, officers, agents, and contractors of such entity or organization.

2. License Grant

Subject to the terms and conditions of this Agreement, including without limitation Section 4 below, and payment by you to VRmagic (or an Authorized VRmagic Dealer) of the price for the VRmagic Product(s) with which the Software was delivered, VRmagic, Inc., a Delaware corporation, ("VRmagic") grants you a limited, non-exclusive, non-transferable, non-sublicensable, personal license to use, for your internal business activities only, the Software, solely in executable object code, and related explanatory written materials, (as that

term is defined below) on or with the VRmagic Product(s) during the term. You may not grant any sublicenses with respect to this license. You are not permitted to use the Software in any manner not expressly authorized by this Agreement. You acknowledge and agree that ownership of the Software and all subsequent copies thereof regardless of the form or media is held and owned exclusively by VRmagic GmbH, the parent company of VRmagic, Inc. The terms of this Agreement will govern any Software Updates provided by VRmagic that replace and/or supplement the original Software, unless such Update is accompanied by a separate license in which case the terms of that license will govern.

3. Term of Agreement

Unless terminated earlier as provided for herein, the term of your license is perpetual. This license will terminate automatically if you fail to comply with any of the terms, restrictions or obligations described herein or you fail to make any payment to VRmagic (or an Authorized VRmagic Dealer) when due, including without limitation payment of the price for the VRmagic Product(s) with which the Software was delivered. At termination or expiration you shall cease all use of the Software and destroy all full or partial copies of the Software.

4. Restrictions

You may install and use the Software only on or with VRmagic Products. You may not deinstall any Software that is pre-installed on a VRmagic Product. Use of the Software is limited to the site where the VRmagic Product is located with which the Software is used. You may not license, market, distribute, sell, rent, lease, lend, redistribute, transfer, disclose, reproduce, copy or sublicense the Software or any portion thereof. You may not copy the Software except to make archival or backup copies, provided that the backup copy must include all copyright or other proprietary notices contained on the original. You may not copy the related explanatory written materials. You may not modify, reverse engineer, decompile, disassemble, translate, transform or create derivative works of the Software or attempt to do any of the foregoing, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not, and may not attempt to, discover or attempt to discover the source code of the Software or its structure, sequence or organization or any algorithms used, or disclose any of the foregoing to any third party. You may not transfer or assign this license or any other rights to, or make available or accessible, the Software and related explanatory written materials to another person or legal entity and any such transfer or assignment shall be void. You may not remove any product identification, trademark, copyright, patent or other notices or markings contained in or on the Software, or publish or disclose the results of any benchmarking or comparison of the features, functionalities or performance of the Software compared to any other software or system. You shall not allow any other person, including any employee of your company, to take any of the actions prohibited in this Section 4 above. Upon request by VRmagic, you shall certify to VRmagic that the use of the Software is and has been in material compliance with this Agreement.

5. Ownership Rights

The Software and related explanatory written materials are protected by United States copyright laws and international treaties. The source code of the Software is the trade secret of VRmagic GmbH, which owns and retains all right, title and interest in and to the Software and related explanatory written materials, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Your possession, installation, or use of the Software and related explanatory written materials does not transfer to you any title to the intellectual property in the Software and the related explanatory written materials, and you will not acquire any rights to the Software and to the related explanatory written materials except the limited right to use it as expressly set forth in this Agreement. VRmagic Inc. is authorized only to grant non-exclusive licenses for use of the Software on the terms set forth herein.

6. Security Measures.

VRmagic may include as part of the Software measures designed to prevent unlicensed use of the Software. Such measures may be technically implemented through authorization codes or license keys. The use of the Software may be limited to a certain period of time only by operation of such security measures. For example, a copy of the Software may be activated through use of a license key only after you have accepted the sublicense as provided for herein.

7. Exclusion of Warranties

EXCEPT AS EXPRESSLY PROVIDED BY VRMAGIC SEPARATELY UNDER AND SUBJECT TO THE TERMS OF ITS "VRMAGIC INC. ONE-YEAR LIMITED WARRANTY AND ADDITIONAL TERMS AND CONDITIONS", THE SOFTWARE IS PROVIDED AND LICENSED TO YOU "AS IS", AND ANY USE BY YOU OF THE SOFTWARE WILL BE AT YOUR SOLE RISK. VRMAGIC MAKES NO WARRANTIES RELATING TO THE SOFTWARE AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

8. Limitation of Liability.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL VRMAGIC BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF VRMAGIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. System Requirements

You shall be responsible for procuring the necessary VRmagic products and other equipment, to satisfy the technical requirements for use of the Software.

10. Technical Support

VRmagic shall have no obligation to provide any technical support or maintenance to you with respect to the Software unless you enter into a separate written agreement with VRmagic for such support.

11. Governing Law

This Agreement is governed by the law of the State of Delaware, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. You and VRmagic agree to submit to the exclusive jurisdiction of the competent courts of the State of Delaware, and the US District Court for the District of Delaware if such U.S. District Court has subject matter jurisdiction, with respect to any dispute concerning the Software or this license.

12. Severability

If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions of this Agreement shall not in any way be affected or impaired.

13. Entire Agreement

This Agreement, together with the "VRmagic Inc. One-Year Limited Warranty and Additional Terms" and, in the case that you are using VRmNet, the "VRmNet Terms of Service" as well as the VRmagic Privacy Policy (in their most

current version), form the entire agreement between you and VRmagic concerning the Software and all related explanatory written materials and supersedes any other prior or contemporaneous agreements or communications with respect to the Software and related explanatory materials, whether written or oral. This Agreement may not be modified except by a written amendment issued by a duly authorized representative of VRmagic. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by VRmagic or a duly authorized representative of VRmagic.

14. Waiver of Trial by Jury

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.

15. US. Government Agencies

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 set forth herein. Unpublished rights are reserved under the copyright laws of the United States. VRmagic, Inc., Cambridge, MA.

Should you have any questions concerning this Agreement, or if you desire to contact VRmagic for any reason, please write to VRmagic, Inc. at info@vrmagic.com.

VRmNet Terms of Service (version 1.0)

Effective Date: April, 2016

The following terms of service (“Terms”) cover your use and access to VRmNet. VRmagic’s Privacy Policy at <http://www.vrmagic.com/terms/PrivacyPolicy.pdf> explains how VRmagic collects and uses your information. By using VRmNet, you are agreeing to be bound by these Terms, and to review our Privacy Policy.

What is VRmNet or EyesiNet?

VRmNet or EyesiNet (“VRmNet”) is an optional addition available for VRmagic simulators. VRmNet provides comfortable access to and administration of your VRmagic simulator(s). Per default VRmNet is not available on VRmagic simulators. To make a simulator accessible through VRmNet, you must physically connect each simulator to the network and turn on VRmNet in the administration screen available after login as administrator. For the avoidance of doubt: every VRmagic simulator is fully functional without VRmNet.

VRmNet is provided “AS IS”

VRmagic tries to provide the best possible service and availability for VRmNet, but as common with services provided through the internet there are things we cannot guarantee. TO THE FULLEST EXTENT PERMITTED BY LAW, VRMAGIC MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT VRMNET. VRMNET IS PROVIDED “AS IS”. VRMAGIC ALSO DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT FOR VRMNET.

Limitation of Liability

To the fullest extent permitted by law, with the exception of any liability for VRmagic’s fraud, fraudulent misrepresentation, or gross negligence, VRMAGIC WILL IN NO EVENT BE LIABLE FOR: (I) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGE RESULTING FROM THE USE OF VRMNET, (II) ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS, RELATED TO VRMNET; REGARDLESS OF LEGAL THEORY.

Additionally, VRmagic will not be liable for aggregated liability for all claims relating to the use of VRmNet for more than what you paid to VRmagic for the use of VRmNet in the past 12 months.

VRmagic Privacy Policy (version 1.8)

Effective Date: June, 2020

The purpose of this privacy policy is to describe how VRmagic Inc. and VRmagic GmbH (“VRmagic”) collect, use and share information about you through our simulators and VRmNet (collectively referred to herein as “VRmagic simulators”). Please read this notice carefully to understand what we do. If you do not understand any aspects of our privacy policy, please feel free to contact us at: <https://www.vrmagic.com/contact/vrmagic/> or as described at the end of this policy. This privacy policy supersedes all previous agreements with respect to the subject matter hereof.

In order to use all functions of this simulator and VRmNet, your consent to this policy is necessary. You can withdraw your consent at any time, however, this will imply that you can no longer use this simulator.

1. Information that we collect

We collect information you provide to us, for example when a user account is created to use VRmagic simulators. This information includes at least your username which can be pseudonymized (e.g. “trainee00123”) and a password hash. It may also include optional details if entered by you or an educator: your real name, your class, unique identifiers like membership identification numbers for professional societies or institutions, or whether you are right or left handed. You or your educator can also provide your email address on a voluntary basis in order to receive email notifications from us. We also collect and store the results of your use of VRmagic simulators, such as the results of your simulated procedures and scoring results.

2. How we use and share your information

To Provide Products, Services, and Information. We collect information from you so that we can provide you with access to the information and services available using VRmagic simulators.

Sharing with Third Parties. We share your personal information and results with you, your teacher, institution, facility, employer or other organization for whom you train, work or otherwise provide services. If your institution is part of a network of organizations, your data might also be shared with educators of other institutions that are part of the same network (if you are unsure whether this is the case, please contact your educator about this, or send us an e-mail). We may provide information to third party service providers that help us operate and manage VRmagic simulators. These service providers will have access to your personal information in order to provide these services, but when this occurs we implement reasonable contractual and technical protections to limit their use of that information to helping us provide the service.

Aggregated and De-Identified Information. We may use and share aggregated and de-identified information relating to you and our other users. Your information may be combined with information of other users and provided to our customers and business partners to show aggregated results, scores and comparisons from use of VRmagic simulators. This information will be de-identified and will not include your name or other personal information from which third parties can determine your name or identity.

Legal Proceedings. We will share personal information with third party companies, organizations or individuals outside of VRmagic if we have a good-faith belief that access, use, preservation or disclosure of the information is reasonably necessary to:

- Meet any applicable law, regulation, subpoena, legal process or enforceable governmental request.
- Enforce applicable Terms of Use, including investigation of potential violations.
- Detect, prevent, or otherwise address fraud, security or technical issues.

- Protect against harm to the rights, property or safety of VRmagic, our users, customers or the public as required or permitted by law.

Transfer in the Event of Sale or Change of Control. If the ownership of all or substantially all of our business changes or we otherwise transfer assets relating to our business to a third party, such as by merger, acquisition, bankruptcy proceeding or otherwise, we may transfer or sell your personal information to the new owner. In such a case, unless permitted otherwise by applicable law, your information would remain subject to the promises made in the applicable privacy policy unless you agree differently.

3. How long we store your data

Your data is stored on the simulator as long as the simulator is used by your institution. Should the data be under the control of VRmagic, it will be deleted 5 years after your last login. You may revoke your consent at any time with future effect. An informal email making this request is sufficient. The legality of the data processing carried out before the revocation remains unaffected by the revocation. You also have the right to have your personal data corrected, blocked or deleted as described below.

4. Access to your information and choices

You can access and update certain information we have relating to your account by signing into your account or contacting us at service@vrmagic.com.

5. Your rights as data subject

You have the right to information about how we process your data. Please contact us if you would like to get information specific to you. You have the right to have your data corrected or deleted or to have its processing restricted, although there might be prevailing contrary legal obligations which prevent us from correcting, deleting or restricting data upon your request. You will be notified if this is the case. You have the right to have a copy of your data transmitted to you. **You have the right to object to our use of your data in accordance with art. 21(1) and (2) GDPR regarding the use of direct marketing, if this use is based on legitimate interests as a legal basis.** You can direct such inquiries or requests through any channel available to you. However, if your inquiry is not transmitted in written form, we might ask you for proof of your identity in order to prevent fraud and impermissible transmission of personal data.

You have the right to lodge an official complaint against our use of your data with the data protection authorities.

6. Security of your information

We use industry standard physical, technical and administrative security measures and safeguards to protect the confidentiality and security of your personal information. However, since the Internet is not a 100% secure environment, we cannot guarantee, ensure, or warrant the security of any information you transmit to us. There is no guarantee that information may not be accessed, disclosed, altered, or destroyed by breach of any of our physical, technical, or managerial safeguards. It is your responsibility to protect the security of your login information. Please note that e-mails and other communications you send to us are not encrypted, and we strongly advise you not to communicate any confidential information through these means.

7. Consent to data processing in USA and Europe

VRmNet is operated and managed on servers located and operated in USA and Europe. By using and accessing VRmagic simulators, you agree and consent to the transfer to and processing of personal information on servers located in USA and Europe, and that the protection of such information may be different than required under the laws of your residence or location.

8. Changes to our Privacy Policy

Our privacy policy may change from time to time. We will not reduce your rights under this privacy policy without your consent in accordance with applicable law. We will post any privacy policy changes on this page and, if the changes are significant, we will provide a more prominent notice (including, for certain services, email notification of privacy policy changes). We will also keep prior versions of this privacy policy in an archive for your review.

9. Questions and how to contact us

If you have any questions, concerns, complaints or suggestions regarding our privacy policy or otherwise need to contact us, please contact us: <https://www.vrmagic.com/contact/vrmagic/>, email us at service@vrmagic.com, call us at (617) 444-8761 (US) or +49 (0)621 400416-0 (Germany) , or contact us by postal mail at one of the following addresses:

VRmagic Inc. 245 First Street, 18th floor, Cambridge, MA 02142, USA

VRmagic GmbH, Turley-Str. 20, 68167 Mannheim, Germany

As a data subject, you can also contact our data privacy officer with questions or complaints about our data processing through privacy@vrmagic.com.