

Virtuozzo End-User License Agreement

UPDATED MAY 2021

This End-User License Agreement (this “Agreement”) is a legal contract between you, as either an individual or an Entity (as defined below), and Virtuozzo International GmbH (“Virtuozzo”). Read the terms and conditions of this agreement carefully before downloading, installing, obtaining a license key, or otherwise accessing or using virtuozzo’s proprietary software accompanied by this agreement (the “software”). The software is copyrighted and it is licensed to you under this agreement, not sold to you. By downloading, installing, obtaining a license key, or otherwise accessing or using the software, you acknowledge that you have read this agreement, that you understand it, and that you accept and agree to be bound by its terms. If you are accepting this agreement on behalf of a company, organization, educational institution, or agency, instrumentality or department of a government (an “entity”) as its authorized legal representative, then you represent and warrant that you have the power and authority to bind such entity to these terms, and references to “you” herein refer to both you, the individual end user, and the entity on whose behalf you are accepting this agreement. If at any time you are not willing to be bound by the terms of this agreement, you should click the “i do not accept” or similar button, terminate the download and/or installation process, immediately cease and refrain from accessing or using the software and delete any copies you may have. This agreement, along with any additional terms or policies incorporated herein by reference, represents the entire agreement between you and Virtuozzo concerning the software, and this agreement supersedes and replaces any prior proposal, representation, or understanding you may have had with Virtuozzo relating to the software, whether orally or in writing.

1. License.

1.1. Grant of License. Subject to your full and ongoing compliance with the terms and conditions of this Agreement, including without limitation payment of all applicable license fees, the applicable Virtuozzo entity from which you obtained the Software hereby grants to you, and you accept, a personal, limited, nonexclusive, non-transferable (except as set forth in **Section 1.5** below), non-assignable, revocable license to use the Software during the Term (as defined below) in machine-readable, object code form only, and the user manuals accompanying the Software (the “Documentation”), only as authorized in this Agreement. For purposes of this Agreement, the “Software” includes any updates, enhancements, modifications, revisions, or additions to the Software made by Virtuozzo and made available to end-users. Notwithstanding the foregoing, Virtuozzo shall be under no obligation to provide any updates, enhancements, modifications, revisions, or additions to the Software.

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temporary or permanent memory of an Authorized Device. Installation of the Software on a network server solely for distribution to other computers is not “use” of the Software, and is permitted, provided that you have a valid license key for each Authorized Device on which the Software is installed. The Software may not be used on, distributed to, or installed on a greater number of computers than you have license keys. If you use or distribute the Software to multiple users, you must ensure that the number of Authorized Devices does not exceed the number of license keys you have obtained, or you will be in breach of this Agreement and such use and distribution is unlicensed.

1.3. Evaluation Licenses. In the event you obtained a trial or evaluation version of the Software, it will come with a trial activation key that activates the Software for a limited time period (the “Trial Period”). You may use the Software during the Trial Period for internal non-commercial purposes, solely to evaluate the suitability of the Software for your needs. Upon the expiration of the Trial Period you must either purchase an activation key or destroy the Software, Documentation, all backup copies thereof, and all trial activation keys that you have obtained. If you do not purchase an activation key prior to the expiration of the Trial Period, this Agreement, and all your rights and licenses hereunder will terminate at the expiration of the Trial Period.

1.4. Copies and Modifications. Except and solely to the extent that such a restriction is prohibited under applicable law, you may not reverse engineer, decompile, disassemble, or otherwise translate the Software or any license keys you have obtained. You may not modify or adapt the Software or any license keys that you have obtained in any way. Any such copies of the Software, Documentation, or license keys shall include any copyright or other proprietary notices that were included on such materials when you first received them. Except as authorized in this Section, no copies of the Software, Documentation, or license keys, or any portions thereof, may be made by you or any person under your authority or control.

1.5. Assignment of Rights. You will not sublicense, lease, rent, or lend your rights in the Software, Documentation, or license keys, as granted by this Agreement, without prior written consent of Virtuozzo, except that you may transfer this Agreement in full in connection with the sale of all or substantially all of the assets related to this Agreement, provided that the assignee assumes all of your obligations hereunder, and the licenses granted hereunder will only extend to use of the Software on the Authorized Device on which the Software was installed immediately prior to the assignment. Virtuozzo may assign this Agreement without limitation. Any assignment in violation of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

1.6 Support and Maintenance Services; Updates; Upgrades. Virtuozzo will not provide any support or maintenance services under this Agreement. You acknowledge that Virtuozzo has no express or implied obligation to announce or make available any updates, enhancements, modifications, revisions, or additions to the Software and that this Agreement does not give you any rights in or to any of the foregoing. Virtuozzo may offer support and/or maintenance services separately. If you have purchased Virtuozzo support and/or maintenance services with the Software, these services are provided to you under the terms and conditions accompanying the applicable service. Any supplemental software

code or related materials that Virtuozzo provides to you as part of any support and/or maintenance services are considered part of the Software and are subject to the terms and conditions of this Agreement. If you purchase an upgrade (a new version of the Software) from a perpetual license to a newer version of the perpetual license, then your license keys to the prior perpetual license will continue to operate. However, if you purchase an upgrade from a perpetual license to a term-based license, then the license keys to the perpetual license will terminate upon activation of the term-based license.

2. Intellectual property and confidentiality.

2.1. Use Reporting, License Violations and Remedies. Virtuozzo reserves the right, and you authorize Virtuozzo, to gather data on key usage including license key numbers, Authorized Device IP addresses or other applicable device identifier (including MAC address or UDID), domain counts and other information deemed relevant, to ensure that our products are being used in accordance with the terms of this Agreement. Virtuozzo reserves the right to remedy violations of any of the terms of this Agreement immediately upon discovery, by charging the then current list price of unauthorized keys to the payment instrument used to make the original, authorized purchase, or by any other means necessary, including remotely disabling the Software. You agree not to block, electronically or otherwise, the transmission of data required for compliance with this Agreement. Any blocking of data required for compliance under this Agreement is considered to be violation of this Agreement and will result in immediate termination of this Agreement pursuant to **Section 4**.

2.2. License Expiration. Your license may include an expiration date that can result in the termination of the license. If your license key is stolen, or if you suspect any improper or illegal usage of your license outside of your control you should promptly notify Virtuozzo of such occurrence. A replacement license will be issued to you and the suspect license will be allowed to expire. For lease licenses, your monthly payment for each month must be processed prior to the expiration date in order for the license updates to be performed. For your convenience Virtuozzo may, but has no obligation to, provide license expiration warnings in the product interface. It is your responsibility to contact Virtuozzo regarding any potential expiration that you deem inappropriate. Virtuozzo shall not be liable for any damages or costs incurred in connection with the expired licenses.

2.3. Proprietary Rights to Software and Trademarks. You acknowledge that the Software and the Documentation are proprietary to Virtuozzo, and the Software and Documentation are protected under United States copyright and other intellectual property laws and international treaties. You further acknowledge and agree that, as between you and Virtuozzo, Virtuozzo and its third-party licensors own and shall continue to own all right, title, and interest in and to the Software and Documentation, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. Except for the limited, revocable license expressly granted to you herein, this Agreement does not grant you any ownership or other right or interest in or to the Software or the Documentation or any other intellectual property rights of Virtuozzo, whether by implication, estoppel, or otherwise. Any and all trademarks or service marks that Virtuozzo uses in connection with the Software or with services rendered by Virtuozzo are marks owned by Virtuozzo. This Agreement does not grant you any right, license, or interest in

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2.4. Confidentiality. You shall permit only authorized users, who possess rightfully obtained license keys, to use the Software or to view the Documentation. Except as expressly authorized by this Agreement, you shall not make available the Software, Documentation, or any license key to any third party, or use the Software, Documentation, or any license key for any purpose other than exercising rights expressly granted to you hereunder. You agree to cooperate with and assist Virtuozzo in identifying and preventing any unauthorized use, copying, or disclosure of the Software, Documentation, or any portion thereof.

2.5. Virtuozzo right to Use Data. Our use of personal data and our use of cookies are described in full in our [Privacy Policy](#) and [Cookies Policy](#). You agree that Virtuozzo may collect and use technical data and related information—including but not limited to technical information about your device, system and application software, and peripherals—that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the Software. Virtuozzo may use this information, to operate, provide, improve, and develop our products, services and technologies, to prevent or investigate fraudulent or inappropriate use of our products, services, and technologies, for research and development, and for the other purposes described in this Agreement (and the [Privacy Policy](#) and the [Cookies Policy](#)) or to you as part of our products and services. Virtuozzo's websites and online services may use "cookies," which enable you to personalize your experience on Virtuozzo's sites and provide information to Virtuozzo such as which websites have been visited and which ads and web searches are effective. If you want to disable cookies, check your browser settings.

2.6. Audit Rights. During the term of this Agreement and for two (2) years after termination or expiration of this Agreement, Virtuozzo may audit, upon written notice to you, your books, records, and computing devices to determine your compliance with this Agreement and your payment of the applicable license fees, if any, for the Software. In the event that any such audit reveals an underpayment by you of more than five percent (5%) of the license fees due to Virtuozzo in the period being audited, or that you have breached any term of this Agreement, then, in addition to any other rights and remedies Virtuozzo may have, you will promptly pay to Virtuozzo any underpayments plus the cost of the audit.

3. License Fees. The Software will be available to you for use upon your receipt of one or more license keys. Upon acceptance of this Agreement, you may obtain one or more license keys by paying the requisite license fees, using the procedure set forth on Virtuozzo's web site. License fees for term-based licenses are due prior to the commencement of the applicable term, and may be re-billed to the payment instrument you used for your initial purchase upon the commencement of any renewal term. Your license to the Software will terminate automatically without notice if you notify Virtuozzo in advance that you do not intend to renew a term-based license or if you fail to pay a renewal fee for a term-based license. The license fees paid by you are paid in consideration of the license granted under this Agreement. License sales are final and Virtuozzo does not refund license fees under any circumstances. By accepting this Agreement you fully understand that once license fee

payment is made to Virtuozzo you will have no recourse for receiving a refund of any part of the fees.

4. Term and Termination. This Agreement is effective upon your acceptance of the Agreement, or upon your downloading, installing, accessing, and using the Software, even if you have not expressly accepted this Agreement. This Agreement shall continue in effect until expiration or termination as provided herein (the "Term"). Term-based licenses terminate upon the expiration of the prepaid term, unless you have paid all applicable fees to extend the term. Without prejudice to any other rights, this Agreement will terminate automatically without notice to you if you breach or fail to comply with any of the limitations or other requirements described herein, including the payment of any applicable fees, and you agree that in any such case Virtuozzo may, in addition to any other remedies it may have at law or in equity, remotely disable the Software. You may terminate this License Agreement at any time by providing written notice of your decision to terminate the Agreement to Virtuozzo and ceasing use of the Software and Documentation. Upon any termination or expiration of the Agreement for any reason, you agree to uninstall the Software and either return to Virtuozzo the Software, Documentation, all copies thereof, and all license keys that you have obtained, or to destroy all such materials and provide written verification of such destruction to Virtuozzo.

5. Indemnification. You will, at your own expense, indemnify and hold Virtuozzo, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including reasonable attorneys' fees (collectively, "Claims"), arising out of any use of the Package (as defined below) by you, any party related to you, or any party acting upon your authorization in a manner that is not expressly authorized by this Agreement.

6. Third Party Software. The Software which is distributed to you may include various third party software components or software services ("Third Party Software" and together with the Software, the "Package") which are provided under separate license terms (the "Third Party Terms"), as may be described in more detail in the "Notices.txt" file (if applicable) included in the Documentation. Information regarding Third Party Software included in the Package is also available on our website at www.virtuozzo.com. You are permitted to use the Third Party Software in conjunction with the Software, provided that such use is consistent with the terms of this Agreement. You may have broader rights to use the Third Party Software under the applicable Third Party Terms. Nothing in this Agreement is intended to impose further restrictions on your use of the Third Party Software in accordance with any Third Party Terms. The Software may also enable interoperation with certain other third party operating systems and applications. Virtuozzo does not provide you with any such third party licenses and it is solely your responsibility to obtain all necessary software licenses from respective vendors.

7. Disclaimer; limitation of liability.

7.1. Warranty disclaimer. The package and documentation are licensed "as is," and virtuozzo disclaims any and all other warranties, whether express, implied, or statutory including, without limitation, any implied warranties of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, timeliness, title, or non-infringement of third party

rights, to the fullest extent authorized by law. Without limiting the generality of the foregoing, virtuozzo expressly disclaims all warranties of any kind for the third party software, and does not warrant that the package will meet your requirements or that operation of the package will be uninterrupted, timely, secure, or error free, that defects or errors in the package will be corrected or that the package will be compatible with future virtuozzo products, or that any information or data stored or transmitted through the package will not be lost, corrupted or destroyed. You assume responsibility for selecting the package to achieve your intended results, and for the results obtained from your use of the package. You shall bear the entire risk as to the quality and the performance of the package.

7.2. Limitation of liability. In no event shall virtuozzo be liable to you or any party related to you for any indirect, incidental, consequential, special, exemplary, or punitive damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, loss of data or other such pecuniary loss), whether under a theory of contract, warranty, tort (including negligence), products liability, or otherwise, even if virtuozzo has been advised of the possibility of such damages. In no event will Virtuozzo's total aggregate and cumulative liability to you for any and all claims of any kind arising hereunder exceed the amount of license fees actually paid by you for the software giving rise to the claim in the twelve months preceding the claim. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

7.3. Certain limitations. Some jurisdictions do not allow the exclusion of or limitation or exclusion of certain types of warranties, damages, or liabilities, so the above exclusion and limitations may not apply to you, but in such a case the exclusions and limitations set forth in this section 7 shall be applied to the greatest extent enforceable under applicable law.

8. General terms.

8.1. Feedback. If you provide any ideas, feedback, suggestions, materials, information, opinions, or other input to Virtuozzo ("Feedback"), regardless of any accompanying communication, Virtuozzo has no obligation to review, consider, or implement your Feedback, all such submissions are made on a non-confidential basis, Virtuozzo and its successors and assigns have an unconditional and unlimited right to use, reproduce, modify, and disclose such Feedback without any compensation or attribution, and you waive and agree not to assert any so-called "moral rights" you may have in the Feedback.

8.2. Governing Law and Choice of Forum. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Washington, without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this Agreement shall be resolved in the federal or state courts situated within the Western District of Washington. To the maximum extent permitted by law, you hereby consent to the jurisdiction and venue of such courts and waive any objections to the jurisdiction or venue of such courts. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

8.3. Severability. If any term or provision of this Agreement is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity or enforceability of the remaining terms and

provisions hereof or the validity or enforceability of the offending term or provision in any other situation. To the extent possible the provision will be interpreted and enforced to the greatest extent legally permissible in order to effectuate the original intent, and if no such interpretation or enforcement is legally permissible, shall be deemed severed from the Agreement.

8.4. Survival. Articles 3, 6, 8, and 9 of this Agreement and all Sections thereof, shall survive the termination or expiration of this Agreement, regardless of the cause for termination or expiration, and shall remain valid and binding indefinitely.

8.5. Headings. The Article and Section headings contained in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

8.6. No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

8.7. Amendment. Virtuozzo reserves the right, in its sole discretion, to amend this Agreement from time to time by posting an updated version of the Agreement on www.virtuozzo.com, provided that disputes arising hereunder will be resolved in accordance with the terms of the Agreement in effect at the time the dispute arose. We encourage you to review the published Agreement from time to time to make yourself aware of changes. Material changes to these terms will be effective upon the earlier of (i) your first use of the Software with actual knowledge of such change, or (ii) 30 days from publishing the amended Agreement on www.virtuozzo.com. If there is a conflict between this Agreement and the most current version of this Agreement, posted at www.virtuozzo.com, the most current version will prevail. Your use of the Software after the amended Agreement becomes effective constitutes your acceptance of the amended Agreement. If you do not accept amendments made to this Agreement, then it is your responsibility to terminate this Agreement pursuant to **Section 4**.

8.8. Taxes. You shall, in addition to the license fees required under this Agreement, pay all applicable sales, use, transfer, or other taxes and all duties, whether national, state, or local, however designated, that are levied or imposed by reason of the transaction contemplated under this Agreement, excluding income taxes on the net profits of Virtuozzo. You shall reimburse Virtuozzo for the amount of any such taxes or duties paid or incurred directly by Virtuozzo as a result of this transaction, and you agree that Virtuozzo may charge any such reimbursable taxes to the payment instrument you used for your initial payment.

8.9. Export Controls. You may not use, export, re-export, import, sell or transfer the Software except as authorized by United States (U.S.) law, the laws of the jurisdiction in which you obtained the Software, and any other applicable laws and regulations. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also acknowledge that the Software may be subject to other U.S. and

foreign laws and regulations governing the export of software by physical and electronic means. You agree to comply with all applicable U.S. and foreign laws that apply to Virtuozzo as well as end-user, end-use, and destination restrictions imposed by U.S. and/or foreign governments. You also agree that you will not use the Software for any purposes prohibited by U.S. law, including, without limitation, the development, design, manufacture or production of nuclear missiles, or chemical or biological weapons.

8.10. United States Government Use Rights. The Software as defined herein and any related technical data, including manuals and Documentation, are commercial as defined in the Federal Acquisition Regulation (FAR) at 2.101. If the Software is acquired by or on behalf of an agency, department, or other entity of the U.S. Government (“Government”), the use, duplication, reproduction, release, modification, disclosure, or transfer (“use”) of the Software, and any related technical data of any kind, including manuals and Documentation, no matter how received by the Government, is restricted by the terms and conditions of this Agreement in accordance with FAR 12.212 for civilian agencies, and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. All other use is prohibited.

8.11. Governing Language. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this Agreement shall govern.

8.12. Trademark Notice. The Virtuozzo logo, Virtuozzo, OpenVZ and CRIU are registered trademarks or trademarks of Virtuozzo International GmbH, in the United States and/or other countries. All other trademarks referenced in the Software or Documentation are the property of their respective owners.

8.13 Contact Information. You may contact Virtuozzo for more information about the Software, other Virtuozzo products and services at Virtuozzo International GmbH, Vordergasse 59, Schaffhausen, Switzerland, or by visiting our website: <https://www.virtuozzo.com:8443>.

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