

LICENSE AGREEMENT

This License Agreement (“Agreement”) is made and entered into effective as of the _____ (“Effective Date”), by and between you as the Licensee as the user of Lozen Software (“Licensee”) and VirtualZ Computing Corporation (“VZC”). Licensee and VZC may be referred to in this Agreement, individually, as “Party” and, collectively, as “Parties”.

I. LICENSE AND SUPPORT

A. Licensed Products.

The “Licensed Products” are comprised of the executable code of VZC Lozen (the “Software”) and associated documentation and support guides (“Documentation”). The Licensed Products may be distributed with open-source components and programs necessary to operate Lozen. These open-source products are subject to their requisite license agreements as indicated in the distributions and are not part of the Licensed Products.

B. License Grant.

Upon payment of the License fee for the proper volume of data tier as found at <https://virtualzcomputing.com/lozen/pricing>, VZC grants a personal, non-exclusive, license to Licensee, its affiliates with more than 50% direct or common ownership, and third-party outsourcers, to install and use the Licensed Products solely for benefit of Licensee at the licensed location under Section 1.C below during the License Term. Licensee represents and warrants that it will not decompile, reverse engineer, or try to discover the human readable code of the Software in any way. The human readable code of the VZC software is confidential and trade secret of VZC.

C. Licensed Location.

You may run the Software on any Licensee owned platforms as described in the Documentation, including at a properly authorized outsourcer solely on Licensee’s behalf provided they meet all license and support requirements hereunder.

D. License Term.

Each license term under this Agreement will be for one (1) year starting from the Effective Date of this Agreement and each anniversary thereafter until terminated (“Term”). The Term will renew for an additional one-year (1) term and the requisite license fee will be due unless the Licensee notifies VZC at licensing@virtualzcomputing.com that the Software has been uninstalled, Licensed Products have been permanently deleted and Licensee has provided a final unaltered SMF report showing no further use after the end of the License Term and the total volume of data for the expiring Term. These requirements must be met within one (1) business day from the end of Term date.

E. Costs and Reporting.

The license costs will be as published at <https://virtualzcomputing.com/lozen/pricing> as of the initial download date for the first term or renewal date of your license. Licensee will select an initial tier license based on the expected bi-directional volume of data through the Software. This volume is measured and recorded in SMF data of your IBM z series system and can be accessed and monitored at any time by Licensee. VZC may request the unaltered SMF data at any time from Licensee but at a minimum once a year, typically within 30 days before or after renewal. Should Licensee have exceeded the Licensed volume of licensed data tier and Licensee is renewing at this higher tier, then Licensee will only be required to pay a true-up for a total of fifty percent (50%) of the highest tier achieved in the prior license Term plus the license fee for the renewal Term. If Licensee is not renewing the License or wishes to renew at the lower volume of data tier, then Licensee must pay the full true-up of the highest volume of data tier in the prior term.

F. Support.

- Support Generally.** Provided that Licensee is using the Software in accordance with the most current version of the Documentation and has met all the requirements in the Support Documentation provided to Licensee, VZC will provide support and Error correction as provided in this section. An “Error” is a failure of the Software to operate in accordance with Documentation or a defect in the Documentation to reasonably describe the installation or VZC’s intended operation of the Software. Licensee will submit all support and Error correction requests to support@virtualzcomputing.com including the information required in the Support Documentation, a detailed description of the nature of the Error or the support need, details of the operating environment and circumstances creating the Error, and the good faith prioritization of the Error from the following definitions: (1) “High Priority Error” means production use of the Software is not possible; (2) “Medium Priority Error” means production use of the software is possible but not error free, usability of the Software is significantly inhibited or reduced, or test/dev environment use not possible; or (3) “Low Priority Error” means operation of the software has a minor defect or performance impairment, or there is a defect in the Documentation.
- Response Times.** Provided that the support prerequisites are met, VZC will make good faith efforts to make an initial response from first report of 2 hours for High Priority Error, 24 hours of a Medium Priority Error and 3 business days of a Low Priority Error.

G. Feedback.

Part of this Agreement is to receive feedback for improvement, operability and utility of the Licensed Products. VZC may utilize any feedback received from Licensee without attribution, compensation or royalty and will be considered derivative works owned by VZC.

II. CONFIDENTIALITY AND PRIVACY

VZC privacy and confidentiality requirements to Licensee can be found at <https://virtualzcomputing.com/privacy-policy>. Further, by downloading, installing, or using the Licensed Products, Licensee agrees to keep the non-public Licensed Products strictly confidential including but not limited to the executable code, and Licensee will not or attempt reverse engineer, decompile, or otherwise discover the human readable code of the Software.

III. WARRANTY AND LIMITATION OF LIABILITY

A. Warranty.

VZC WARRANTS THAT IT HAS THE AUTHORITY TO DISTRIBUTE AND LICENSE THE VZC SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY OTHER WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES DISCLAIM ALL WARRANTIES, INCLUDING WITHOUT LIMITATION THAT THE LICENSED PRODUCTS WILL BE ERROR FREE. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE OPEN-SOURCE PRODUCTS ARE PROVIDED AS A CONVENIENCE "AS-IS" WITHOUT WARRANTY OF ANY KIND BY VZC AND SUBJECT EXCLUSIVELY TO THEIR APPLICABLE LICENSE AGREEMENTS.

B. Limitation of Liability.

EXCEPT FOR DAMAGES ARISING PURSUANT TO BREACHES OF SECTIONS 1.B (LICENSE GRANT), 1.C (LICENSED LOCATION), 1.D (LICENSE TERM) AND ARTICLE II (CONFIDENTIALITY AND PRIVACY), NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE SERVICES AND/OR PRODUCTS SUPPLIED HEREUNDER, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORSEEABLE. EXCEPT FOR ANY DAMAGES ARISING PURSUANT TO SECTIONS 1.B (LICENSE GRANT), 1.C (LICENSED LOCATION), 1.D (LICENSE TERM) ARTICLE II (CONFIDENTIALITY) AND SECTION III.A (WARRANTY), NEITHER PARTY WILL BE LIABLE FOR DIRECT DAMAGES.

IV. GENERAL PROVISIONS

A. Notice.

All notices, consents and other communications hereunder must be in writing by email to licensing@virtualzcomputing.com

B. Modification and Waiver.

No modification of this Agreement and no waiver of any breach of this Agreement will be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the Parties will be construed as a waiver of any subsequent breach of this Agreement.

C. Severability.

The provisions of this Agreement are severable. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions will in no way be affected or impaired thereby.

D. Survival of Certain Provisions.

In the event this Agreement is terminated, the provisions of SECTION I.E (COSTS AND REPORTING) Articles II (CONFIDENTIALITY AND PRIVACY), III (WARRANTY and LIMITATION OF LIABILITY), and IV (GENERAL PROVISIONS) of this Agreement will survive such termination.

E. Governing Law and Forum.

This Agreement will be construed as having been made in, and will be governed by the laws of the State of Minnesota, excluding any applicable conflict of law provision and under the exclusive jurisdiction of the state and federal courts of the State of Minnesota.

F. Remedies Upon Default.

In the event of breach by either Party, the non-breaching Party will be entitled to exercise any and all rights and remedies as will be available to it at law or in equity. The non-breaching Party may exercise remedies concurrently or separately, and the exercise of one remedy will not be deemed either an election of such remedy or a preclusion of the right to exercise any other remedy.

G. Entire Understanding.

This Agreement includes any properly executed attachments, including, but not limited to, exhibits, addenda, or amendments, now or hereafter attached hereto. In addition, this Agreement constitutes the exclusive and entire agreement between the Parties with respect to its subject matter and as of its date supersedes all prior or contemporaneous agreements, negotiations, representations, and proposals, written or oral, relating to its subject matter.

IN WITNESS WHEREOF, by the signatures of their duly authorized representatives below, Licensee and VZC, intending to be legally bound, agree to all of the provisions of this Agreement.

VirtualZ Computing Corporation
(VZC)

(Licensee)

Signature

Signature

End of Agreement