

Terms of Service

E. Crane Computing ("E. Crane" or "our"), a New Hampshire limited partnership provides a platform for web-based source/version control (PowerVCS) to its subscribers (the "Subscribers" or "you" or "your") and their end users ("EUs"). Your use of all this platform is governed by this Terms of Service (the "Terms of Service") and our Acceptable Use Policy ("AUP") found at <http://www.ecrane.com/legal>.

1. Service. Subject to your satisfaction of our credit approval requirements, E. Crane agrees to provide PowerVCS source/version control service ("Service") specified when you complete and submit our online order form (the "Order Form").

2. Term. The initial term of your Service shall begin on the date (the "Service Commencement Date") that E. Crane generates an e-mail welcome message announcing the activation of the Service you ordered and shall continue for the number of months stated in the Order Form (the "Initial Term") for each such Service. Upon expiration of the Initial Term, this Terms of Service shall automatically renew for successive renewal terms of the same length as the Initial Term (each a "Renewal Term") unless you or E. Crane provides written notice of non-renewal at least thirty (30) days prior to the expiration of the Initial Term or Renewal Term, as the case may be. The Initial Term and any Renewal Term may be referred to collectively herein as the "Term."

4. Payment of Fees. The fee for PowerVCS is the "Recurring Fee" in your Order Form. Beginning on the Service Commencement Date, unless otherwise specified on your Order Form, you agree to pay the Recurring Fee in advance on the first day of each billing cycle (the "Due Date"), without invoice. The billing cycle for Recurring Fees is specified in the Order Form.

5. Indemnification. You agree to indemnify and hold harmless E. Crane, its affiliates, and each of their respective officers, directors, agents, partners, shareholders and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements ("Claims") of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to the Service, including without limitation

6. Disclaimer of Warranties.

E. CRANE MAKES NO ABSOLUTELY NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE. SPECIFICALLY E. CRANE DOES NOT WARRANT OR REPRESENT THAT THE

SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW E. CRANE DISCLAIMS ANY AND ALL WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. THE SERVICE ARE PROVIDED ON AN "AS IS" BASIS.

7. Limitation of Damages.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, OR FOR DAMAGES THAT COULD HAVE BEEN AVOIDED BY THE USE OF REASONABLE DILIGENCE, ARISING IN CONNECTION WITH THE TERMS OF SERVICE, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE TERMS OF SERVICE, THE MAXIMUM AGGREGATE LIABILITY OF E. CRANE, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, PARTNERS, SHAREHOLDERS AND EMPLOYEES, UNDER ANY THEORY OF LIABILITY (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND INFRINGEMENT) SHALL BE A PAYMENT OF MONEY NOT TO EXCEED THE AMOUNT OF FEES PAID BY YOU FOR THE SERVICE FOR THE THREE MONTHS PRIOR TO THE OCCURRENCE GIVING RISE TO THE CLAIM.

8. Termination.

(a) Termination by You. The Terms of Service may be terminated by you at any time as long as all Fees then due together with unpaid Recurring Fees for the remainder of the Initial Term or the Renewal Term, as the case may be, are fully paid on the business day following the termination date.

(b) Termination by E. Crane. The Terms of Service may be terminated by E. Crane prior to the expiration of the Initial Term or any Renewal Term without liability if you are overdue on the payment of any Fee.

9. Intellectual Property Use and Ownership. Neither party shall (i) use the other party's name, trademarks, trade names or logos in either its own legal name or in any fictitious or assumed name without the party's consent; (ii) knowingly remove or alter any logo, trademark, trade name, copyright, or other proprietary notice, legend, or symbol from any of the other party's products or documentation; or (iii) take any action, or intentionally omit to take any action that would jeopardize, limit, or interfere in any manner with the ownership of the other party's products, Service, documentation, or intellectual property. Title to and ownership of all copies of any products, Service, software, documentation, or Internet Service developed by or for E. Crane during the Term, whether in machine-readable or printed

form, and including without limitation any derivative works, compilations, or collective works thereof, and all related technical know-how, and all rights therein (including without limitation rights in patents, copyrights and trade secrets applicable thereto), are and shall remain the exclusive property of E. Crane and its suppliers. You shall not take any action to jeopardize, limit, or interfere in any manner with our ownership and rights therein.

10. Back Up Copy. You agree to maintain a current copy of all of your content hosted by E. Crane.

11. Notices. Notices to E. Crane shall be given by means of electronic mail to the e-mail address posted for customer support on <http://www.E.Crane.com/legal> Notices to you shall be given via electronic mail to the individual designated as the Primary Contact. Notices are deemed received on the day transmitted, or if that day is not a business day, on the first business day following the day transmitted.

12. Force Majeure. E. Crane shall not be in default under the Terms of Service if the failure to perform is due to any event beyond our control, including, without limitation, significant failure of a portion of the power grid, significant failure of the Internet, failure of network providers, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

13. Beta Account. If you were selected by E. Crane to use the Service on an experimental basis ("Beta Account Service") for a term ("Beta Term") as specified on the Order Form, your account is a "Beta Account". In consideration of E. Crane providing the Beta Account Service to you as a Beta Account, you agree to the following:

(i) Beta Account Service are provided to you on an AS IS, AT YOUR OWN RISK basis. There are no service level commitments that apply to Beta Account Service. YOU ARE STRONGLY DISCOURAGED FROM USING ACCOUNTS ON "BETA" PLANS OR PLATFORMS FOR HOSTING ANY PRODUCTION APPLICATIONS, PRODUCTION WEB SITES, OR FOR STORING SENSITIVE OR VALUABLE DATA. YOU HAVE THE SOLE RESPONSIBILITY FOR THE ADEQUATE PROTECTION AND BACK UP OF YOUR DATA. You hereby acknowledge that, because our Beta Account Service are an experimental offering, they will likely include errors and deficiencies that cannot or will not be corrected by E. Crane. E. Crane shall have no liability for the effects of any such errors or deficiencies nor any obligation to correct any such errors or deficiencies. E. Crane is under no obligation to provide the Beta Account Service commercially or to provide you with any updates, upgrades, fixes, or enhancements.

(ii) E. Crane may, but shall not be required to, change the Beta Account Service. E. Crane hereby notifies you that changes to Beta Account Service may not be compatible with the former Beta Account Service and that loss of functionality or interruption of service may occur as a result of such changes. YOU UNDERSTAND AND AGREE THAT E. CRANE SHALL NOT BE REQUIRED TO REMEDY NOR WILL IT BE LIABLE FOR SUCH INCOMPATIBILITIES, FUNCTIONALITY LOSSES, OR INTERRUPTIONS.

(iii) You agree to provide E. Crane promptly upon request with feedback as to your use of the Beta Account Service, any problems that you may experience, and ideas for enhancements which come to your attention during the Beta Term. You agree that E. Crane may contact you by telephone, electronic mail, or other means to solicit your feedback concerning your experiences with the Beta Account Service.

(iv) You hereby assign to E. Crane all worldwide right, title and interest to such enhancements and all property rights therein (the "Enhancements") including without limitation all patent, copyright, trade secret, mask work, trademark, moral right or other intellectual property rights. You agree to assist E. Crane, at our expense and in our discretion, in every proper way to enable E. Crane to obtain, perfect, maintain, defend and enforce our rights in and to all intellectual property rights in the Enhancements in any and all countries and territories, including without limitation disclosure to E. Crane of all pertinent information and data with respect thereto, and the execution, acknowledgment, and delivery to E. Crane of all applications, specifications, oaths, assignments and all other instruments which E. Crane deems necessary in order to apply for and obtain copyright registration, mask work registration, letters patent or other similar forms of protection and in order to assign and convey to E. Crane, its successors, assigns and nominees, sole and exclusive right, title, and interest in and to all Enhancements.

(v) Beta Account Service are E. Crane Confidential Information.

(vi) E. Crane may terminate some or all of the Beta Account Service or your Beta Account at any time by providing to you three (3) day's notice of such termination.

(vii) This Section of the Terms of Service applies only to Beta Accounts and supersedes any other Sections with conflicting terms.

14. Miscellaneous. The parties intend for their relationship to be that of independent contractors and not a partnership, joint venture, or employer/employee. Neither party will represent itself to be agent of the other. Neither party has the power or authority to bind the other in any agreement and will not represent to any person that it has such power or authority. The Terms of Service may be amended from time to time by E. Crane, in its discretion. Amendments to the Terms of Service are effective on the earlier of our notice to you that an amendment has been made, or the first day of the next Renewal Term. Terms of Service as amended are posted at <http://www.E.Crane.com/legal>. The terms on any purchase order or other business forms issued by you are not binding on E. Crane. A party's failure or

delay in enforcing any provision of the Terms of Service will not be deemed a waiver of that party's rights with respect to that provision or any other provision. A party's waiver of any of its rights under the Terms of Service is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether or not similar in nature. Captions in the Terms of Service are for the convenience of the parties and are not intended for interpretation. The following provisions will survive expiration or termination of the Terms of Service: Fees, indemnity obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, these miscellaneous provisions, and other provisions that by their nature are intended to survive termination. There are no third party beneficiaries to the Terms of Service. You may not transfer the Terms of Service without our prior written consent. Our approval for any assignment is contingent on the assignee meeting our credit approval criteria. E. Crane may assign the Terms of Service.