

Terms Of Service

1. ACCEPTANCE OF TERMS

VCIT (“**VCIT**”, “**we**”, “**us**” or “**our**”) provides its services to you (“**you**” or “**your**”), subject to the terms and conditions set out in these Terms of Service the (“**TOS**”). By completing the account registration process and clicking the “I accept” button, you agree that you have read and understood, and agree to be bound by, these TOS without modification. VCIT reserves the right to change the TOS, at any time and from time to time, without notice to you. You are responsible for periodically accessing the TOS to review such changes by accessing the most current version of the TOS at <http://www.vcit.ca/legal/TermsOfService.pdf>. Your continued use of the Services (defined below) after any such posted changes will constitute your consent to and acceptance of such changes. In addition, you shall be subject to any rules posted on VCIT’s web portal applicable to the Services, which are hereby incorporated by reference into the TOS. You understand and agree that you will provide accurate and complete information about yourself and your organization as required by the registration process and that you are responsible for maintaining and updating said registration information. If you provide falsified, inaccurate, or incomplete registration information, VCIT has the right to terminate your Account and refuse any and all current or future use of the Services.

2. DESCRIPTION OF SERVICE

VCIT will provide a remotely accessible hosted computing environment, which includes the list of software and services outlined in your chosen subscription plan located at <http://www.vcit.ca/support/pricing.html> (the “**Services**”). You understand and agree that the Services may include certain communications from VCIT such as service announcements and administrative messages and that these communications are an integral part of the Services. You understand and agree that you are responsible for obtaining, maintaining and paying for all Internet and telecommunications connections, computer equipment, hardware and software needed to access and use the Services and your Account (defined below).

3. ACCOUNT SECURITY AND YOUR OBLIGATIONS

Subject to VCIT’s acceptance of your registration and your compliance with these TOS, you will receive a user account and password for your exclusive use (collectively your “**Account**”). You are responsible for the security and confidentiality of your Account and for use of the Services by yourself and any person who gains unauthorized access to your data or the Services as a result of your failure to use reasonable security precautions. VCIT is not responsible to you for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from VCIT’s failure to meet its security obligations stated in the TOS. You will notify VCIT immediately if you have reason to believe that the security of your Account, password or files have been breached or subject to unauthorized access or use. VCIT will not be liable for any loss or damage arising from your failure to comply with these above requirements.

4. FEES & PAYMENT

You agree to pay monthly fees specified in VCIT’s current fee schedule plus applicable taxes for access to and use of your Account and the Services as set out below:

- a) you will pay in advance Service Fees for the first month of your subscription prior to receiving your Account; and
- b) for each subsequent month of your subscription, you will be billed monthly in advance on or around the 15th calendar day of each month; and
- c) fees are due upon receipt

The Service Fees are subject to change at any time.

You agree to pay late payment charges assessed by VCIT on Service Fees that are overdue, at a rate of 1 % per month (12% per annum), on the total amount due but not paid, provided that if such rate is in excess of any allowable rate under laws applying to you, then you shall instead be charged the maximum rate that is permitted by such laws. You agree that if your Account is reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee.

Service Fees do not include taxes unless otherwise stated. You shall be responsible for all taxes applicable to the Services whether or not such amounts are itemized on your statement or charged to your Account.

VCIT may, without prior notice to you, cancel or suspend your access to and use of your Account and the Services for default in Service Fees payment, and in such event any information you have stored on VCIT servers may become unavailable for retrieval at a later date. If any amount is overdue by more than sixty days, VCIT reserves the right to refer overdue accounts to a third party for collection, and you agree to pay all costs incurred in the enforcement and collection of any delinquent amounts, including attorney fees and costs.

Terms Of Service

5. ACCEPTABLE USE POLICY

You will use the Services for the sole purpose of accessing the included software and services, and will not use the Services for any other purposes including, but not limited to, unlawful, prohibited, offensive, hateful, harmful, abusive, indecent, or objectionable activity, and you acknowledge and agree that such abuse of the Services constitutes a breach of these TOS. Under no circumstances shall VCIT be liable in any way for any such activity. Furthermore, VCIT reserves the right to disclose any information about your Account or use of your Account or the Services as necessary to satisfy any applicable law, regulation, legal process or order without notice to you.

6. SOFTWARE USED TO PROVIDE THE SERVICES

Software used to operate the Services (collectively "**Software**") is the copyrighted work of its respective owner(s). Your use of the Software is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("**License Agreement**"). You may not install or use any Software that is accompanied by or includes a License Agreement unless you first agree to the License Agreement terms. For any Software not accompanied by a license agreement, VCIT hereby grants to you, a limited, personal, non-transferable license to access and use the Software for the sole purpose of accessing and using your Account and the Services in accordance with the TOS, and for no other purpose provided that you keep intact all copyright and other proprietary notices. All Software is owned by its respective owner and is protected by copyright laws and international treaty provisions. Any reproduction or redistribution of the Software is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators may be prosecuted to the maximum extent possible. WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE SOFTWARE TO ANY OTHER COMPUTER, SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED. THE SOFTWARE IS WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THE LICENSE AGREEMENT. You acknowledge that the Software, and any accompanying documentation and/or technical information, is subject to applicable export control laws and regulations of the United States and/or Canada. You agree not to export or re-export the Software, directly or indirectly, to any countries that are subject to USA and/or Canadian export restrictions.

7. INDEMNITY

You agree to indemnify and hold VCIT, and its subsidiaries, affiliates, officers, agents, co-branders or other partners, employees and licensors harmless against any and all damages, liabilities, losses, costs and expenses (including without limitation reasonable legal fees and expenses) in connection with any claim or action any third party due to or arising out of your use of the Services, your connection to the Services, your violation of the TOS, or your violation of any rights of another. VCIT reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, but doing so will not excuse your indemnity obligations.

8. NO RESALE OF SERVICE

You will not reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Services (including your Account password), use of the Services, or access to the Services.

9. GENERAL PRACTICES REGARDING USE AND STORAGE

You acknowledge and agree that VCIT may establish general practices and limits concerning use of the Services, including without limitation the maximum disk space that will be allotted on VCIT's servers for your Account, and the maximum network traffic consumed by your Account in a given period of time. You agree and understand that VCIT reserves the right to suspend your Account, or to delete data from your Account, if your Account data exceeds a reasonable size as determined by VCIT in its sole discretion. VCIT also reserves the right to suspend your Account if it is inactive for an extended period of time (as determined by VCIT in its sole discretion). You further acknowledge that VCIT reserves the right to modify these general practices and limits from time to time.

10. MODIFICATIONS TO SERVICES

VCIT reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You agree that VCIT shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services.

11. CONFIDENTIAL INFORMATION

"Confidential Information" means all information disclosed by one of us to the other, that the recipient should reasonably understand to be confidential, including (i) for you, all information transmitted to or from, or stored on, VCIT servers in our data center, (ii) for VCIT, unpublished pricing and other terms of service, audit or security reports, data center designs, internal security information, and (iii) for both of us, information that is marked or otherwise designated as confidential.

Terms Of Service

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, the exercise of our respective legal rights under the TOS, or as may be required by law enforcement or government agencies.

12. TERMINATION

You may terminate your Account or your use of the Services at any time for no cause on thirty days advanced written notice. Cancellation requests may only be submitted by an authorized signatory for your Account. Cancellation requests can be sent via email to cancellations@vcit.ca

You may terminate the agreement for breach if we materially fail to provide the Services as agreed and do not remedy that failure within ten days of our receiving your written notice describing the failure.

VCIT reserves the right to terminate or suspend your Account or your use of the Services immediately at any time and without prior notice if you breach these TOS, if you don't cooperate with our reasonable investigation of any suspected violation of the TOS, if the personal information you provided during registration is materially inaccurate or incomplete, if you do not have the legal right or authority to enter into the agreement, if your payment is overdue and you do not pay the overdue amount within thirty business days of our written notice, or for any other reason upon thirty days' notice to you.

Termination includes: (a) removal of access to all offerings within the Services, (b) deletion of your Account and all related information, files and content associated with or inside your Account (or any part thereof), and (c) barring further use of the Services. Further, you agree that all terminations for cause shall be made in VCIT's sole discretion and that VCIT shall not be liable to you or any third party for any termination of your Account or access to the Services.

13. VCIT'S PROPRIETARY RIGHTS

You acknowledge and agree that the Services and any necessary software used in connection with the Services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by VCIT, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Services or the Software, in whole or in part. VCIT grants you a personal, non-transferable and non-exclusive right and licence to use the object code of its Software on a single computer; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including without limitation for the purpose of obtaining unauthorized access to the Services. You agree not to access the Services by any means other than through the interface that is provided by VCIT for use in accessing the Services.

VCIT's business names, trade-marks and logos, and all related product and service names, marks and logos (the "**Marks**") are the property of VCIT or its third-party suppliers. You are not authorized to use any of the Marks in any advertising, marketing or any other commercial manner without VCIT's prior written consent.

14. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- a. YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. VCIT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b. WITHOUT LIMITING THE GENERALITY OF ANY OTHER WORDING IN THESE TOS, VCIT MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, COMPLETELY SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS OBTAINED AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, LOSS OF DATA

Terms Of Service

OR BUSINESS INTERRUPTION THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

- d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM VCIT OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TOS.

15. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT VCIT SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR OTHERWISE (EVEN IF VCIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) YOUR USE OR THE INABILITY TO USE THE SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES; OR (v) ANY OTHER MATTER RELATING TO THE SERVICES.

16. EXCLUSIONS AND LIMITATIONS

IN THE EVENT THAT VCIT IS FOUND LIABLE TO YOU FOR DAMAGES FOR ANY CAUSE WHATSOEVER, VCIT'S LIABILITY WILL BE LIMITED TO THE AMOUNT THAT YOU HAVE PAID FOR THE SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

17. NO THIRD PARTY BENEFICIARIES

You agree that, except as otherwise expressly provided in these TOS, there shall be no third party beneficiaries to this Agreement.

18. NOTICE

VCIT may provide you with notices, including those regarding changes to the TOS, by either email, regular mail, or postings on the Services.

19. GENERAL INFORMATION

This agreement is governed by the laws of the Province of British Columbia and the laws of Canada applicable therein and shall be deemed to have been made and completely performed in the Province of British Columbia. You hereby consent to the exclusive jurisdiction and venue of courts in British Columbia, Canada in all disputes arising out of or relating to the use of the Services. Use of the Services is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. You agree that no joint venture, partnership, employment, or agency relationship exists between you and VCIT as a result of this agreement or use of the Services. VCIT's performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement limits or restricts VCIT's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Services or information provided to or gathered by VCIT with respect to such use. If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect. Unless otherwise specified herein, this agreement constitutes the entire agreement between you and VCIT with respect to the Services and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and VCIT with respect to the Services. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. This agreement binds and enures to the benefit of the parties and their heirs, personal representatives, lawful successors and permitted assigns. You may not assign this agreement without VCIT's prior written consent (which shall be in VCIT's sole discretion), any purported assignment without such consent shall be void and of no force or effect.