

VCE Support Services Terms Exhibit

This Support Services Terms Exhibit (this “**Exhibit**”) sets forth the terms governing the provision of Support Services by VCE to end users, customers, partners and resellers, as applicable, who have purchased or are otherwise entitled to receive such Support Services (collectively “End User”) and is incorporated into such parties’ purchasing agreement with VCE (the “Agreement”) by this reference. All capitalized terms not defined herein (including the attachments hereto) have the meaning stated in the Agreement. In the event of a conflict between the terms of this Exhibit and the Agreement, the terms of this Exhibit will govern over the Agreement.

1. SUPPORT SERVICES.

A. Scope of Support Services. Support Services consist of (i) using commercially reasonable efforts to remedy, or cause to be remedied, failures of supported Products to perform substantially in accordance with VCE’s applicable specifications described the applicable Support Service Descriptions and pursuant to the VCE Service Level Agreement stated in Attachment 2; (ii) providing English-language (or, where available, local language) help line service (via telephone or other electronic media); and (iii) providing, or enabling End User to download, Software Releases and Documentation updates made generally available by VCE as part of the Support Service for the applicable Product. VCE reserves the right to change the scope of the Support Services on sixty (60) days’ prior written notice to End User.

B. Additional Support. VCE reserves the right to charge for Support Services performed outside the scope of the applicable Support Services option purchased by End User as mutually agreed to by the Parties.

C. Re-Instatement of Support. If End User wishes to re-instate support for Product that is not then currently under Support Services, then (i) re-instatement will be subject to certification of the Products at VCE’s then current “Time and Materials Service” rates and conditions, and (ii) the new Support Services term must be for a minimum of 12 months. Once so certified, Support Services will commence upon payment to VCE of (i) the charge for the above described Time and Materials Service; (ii) the amount VCE would have normally charged had Support Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve (12) months of the newly commenced Support Services.

2. SUPPORT SERVICES EXCLUSIONS. Except to the extent that Support Services are independent of the Hardware’s location, VCE will have no obligation to provide Support Services with respect to Products outside the VCE service area or ancillary hardware and/or software purchased with the Product but are not part of the Product. Support Services do not apply to any Software other than the current and the prior two Software Releases. Support Services are subject to VCE’s then-current “Product Life Cycle” policy for the respective Product. In the event a Software issue cannot be reproduced at VCE’s facility or via remote access to End User’s facility, Support Services may be

severely affected or unavailable. Support Services do not include Hardware upgrades, if any, needed to utilize new features or functionality in a Software Release. Support Services do not include remedying problems that arise from (i) accident or neglect by End User, Reseller or any third party; (ii) any third party items or services with which the Product is used not otherwise supported under VCE’s Release Certification Matrix or other causes beyond VCE’s control; (iii) installation, operation or use not in accordance with VCE’s instructions or the applicable Documentation, including, but not limited to any modification, addition and/or development of code scripts by anyone other than VCE; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed, including the use of an external device attached to a Product or any device located inside the Product cabinet not otherwise part of the original Product configuration as provided by VCE; (v) modification, alteration or repair by anyone other than VCE or its authorized representatives; (vi) failure by End User to maintain a currently supported Software Release on a Product; or (vii) causes not attributable to normal wear and tear. If Products are not configured to meet VCE’s then-current guidelines for technical compatibility, VCE may limit diagnostic and corrective procedures to the issue that originates from such Products. VCE has no obligation whatsoever for (i) Software installed or used beyond the licensed use or outside the Product, (ii) Hardware which was moved from the Installation Site except in compliance with Section 4.F, Install Location (iii) Hardware or Software whose original identification marks have been altered or removed, or (iv) for any third party hardware, software or service. Removal or disablement of Hardware’s remote support capabilities during the support period must be in compliance with Section 4(G) below. Improper use or failure to use applicable Support Services tools will be subject to a surcharge in accordance with VCE’s then current standard rates.

3. END USER RESPONSIBILITIES. By purchasing Support Services, End User agrees to the following:

A. Cooperation. End User will (i) complete reasonable efforts to troubleshoot issues with Products, promptly notify VCE when Products fail and provide VCE with sufficient details of the failure such that the failure can be reproduced by VCE; (ii) allow VCE or designated VCE service partners remote and on-site (when determined necessary by VCE) access to the Products to provide Support Services; and (iii) furnish

necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software and equipment reasonably required by VCE), information and assistance required to provide the Support Services.

B. Support Contacts. Unless a specific number of authorized contacts are indicated on the an Order, End User will designate in writing a reasonable number of authorized contacts, as determined by End User and VCE, who will initially report problems and coordinate Support Services from VCE. Each End User representative will be familiar with End User's requirements and will have the expertise and capabilities necessary to permit VCE, or designated VCE service partners, to fulfill its obligations. A change to the authorized support contacts by End User will be submitted to VCE in writing.

C. Regular Backups. As part of its obligation to mitigate damages, End User will take reasonable data back-up measures. In particular, End User will provide for a daily back-up process and back-up the relevant data before VCE performs any remedial, upgrade or other works on End User's production systems. To the extent VCE's liability for loss of data is not otherwise excluded under this Agreement, VCE will in case of data losses only be liable for the typical effort to recover the data which would have accrued if End User had appropriately backed up its data. Notwithstanding the foregoing, except for the purpose of backup, data transmission over IP networks or for migrating data and workloads, the attachment of external devices to the product is prohibited. No Support Services are provided for the external device or the Product as it relates to the external device.

D. Installation of Software Releases. Unless otherwise stated in a Service Description, VCE will provide Software Releases to End User and End User is solely responsible for installing and maintaining current VCE Software Releases for all Products.

E. Use and Training. End User is solely responsible for the use of Products by its personnel and will properly train its personnel in the proper use and application of the relevant Hardware and Software.

4. ADDITIONAL TERMS.

A. Maintenance Aids and Spare Parts for Hardware. VCE is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to End User, to enter the End User site, or to use remote means, to remove and/or disable maintenance aids and spare parts and End User will reasonably cooperate in this effort.

B. Support Tools. VCE may choose to make various Support Services tools available to assist End User in performing various maintenance or support related tasks. End User will use Support Services tools only in

accordance with terms under which VCE makes such available.

C. Hardware Replacements and Data Security Options. All replaced Product (or portions thereof) will be returned within ten (10) days in accordance with VCE's return materials authorization process. If such replaced Hardware is not returned, End User will be liable to pay VCE's then-current spare parts price for such item. End User is responsible for removing all data and information from any replaced parts, or any other items that End User releases to VCE as a trade-in or for disposal, before such are released to VCE and End User agreed to indemnify VCE for its failure to properly remove such data and information. VCE is not responsible for any information contained on such items notwithstanding anything to the contrary herein.

D. Proactive Product Changes. VCE may, at its expense, implement changes to the Products upon reasonable notice to End User (i) when such changes do not adversely affect interchangeability or performance of the Products; (ii) when VCE reasonably believes such changes are required for purposes of safety or reliability; or (iii) when VCE is required by law to do so. End User will give VCE reasonable access to the Products for such purposes.

E. Software Releases. Upon use of a Software Release, End User will remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party in accordance with all obligations of confidentiality between to VCE. Unless prohibited by the licensor, End User is authorized to retain a copy of each Software Release properly obtained by End User for End User's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. End User will use and deploy Software Releases strictly in accordance with terms of the original license for the Software. In the event VCE suspects any modification, addition and/or development of code scripts may be a cause of a reported problem, VCE reserves the right to request that same be removed to continue the receipt of Service.

F. Change of Hardware Location or Configuration. End User may change the Install Location or configuration of a Product that is under Support Services by VCE only after thirty (30) days written notice to VCE. If the new location is in a different country, then such move is subject to VCE's prior written approval. End User will promptly notify VCE of any changes to the configuration, or movement of the Hardware by anyone other than VCE or a party VCE has so designated. Unless approved, such activity will limit any Support Services to VCE's reasonable efforts only for the remainder of the Support Services term.

G. Remote Support Capability. As part of the Support Services, VCE makes various remote support capabilities available for certain Products in accordance

with its then current policies and procedures. VCE's Support Services fees are based on the availability and use of such remote support capabilities. End User has the option to disable (or otherwise not enable) remote support capabilities, but it will notify VCE thereof without undue delay. If End User chooses to disable (or not enable) the remote support features, then, with regard to all Products affected by such disablement (i) VCE may assess End User a surcharge in accordance with VCE's then current standard rates as on-site access will then be required; (ii) VCE has no further obligation in connection with the remote support features; and (iii) any agreed response times or other agreed service levels (if any) will no longer apply.

H Alterations and Attachments to Product. If End User introduces equipment not otherwise installed by VCE in the original Product configuration into the Product cabinet(s) or otherwise alter the Product, End User assumes full responsibility for all associated risks. VCE will not provide assistance with the testing, installing, configuring, or troubleshooting non-VCE supplied equipment. In the event VCE has not pre-approved such alteration in writing, or if End User fails to take appropriate corrective action described below, any agreed response times or other agreed service levels (if any) will no longer apply and Support Services may be suspended. If VCE concludes that the alteration and/or attachment may be adversely impacting the proper operation, functionality and/or performance of the Product, even if previously approved by VCE, Customer will be required to remove said equipment and restore the Product to its original condition as a pre-requisite of receiving any further Support Services from VCE. If removal of the non-VCE supplied equipment does not resolve the adverse affects and/or if there has been physical damage to the Product components, VCE may charge on a time and materials basis to rebuild and redeploy the Product to the condition as originally designed, delivered and deployed by VCE (or its partner). This work must be completed by VCE to VCE's satisfaction at the sole expense of the Customer before Support Services for the Product will be reinstated. In the event that VCE Support Services are suspended, Customer will not be entitled to an extension or refund.

I. Hardware Upgrades. Support Services for hardware upgrades installed into Hardware are coterminous with the Support Services that are then in effect for the Product into which such upgrades are installed.

J. Third Parties. By purchasing Support Services from VCE, End User expressly agrees VCE may use VCE affiliates or other sufficiently qualified subcontractors to provide services described in this Exhibit to End User, provided that VCE will remain responsible to End User for the performance thereof. The foregoing limitations will also apply in favor of VCE

and its suppliers.

5. SUPPORT SERVICES WARRANTY.

VCE will perform the Support Services in a professional manner in accordance with generally accepted industry standards. End User will notify VCE of any failure to so within ten (10) days after the date on which such failure first occurs. End User's exclusive remedy and VCE's entire liability under the foregoing warranty will be for VCE to, at its option, (i) use commercially reasonable efforts to (a) re-perform the deficient services within a reasonable time, or (b) replace any replacement parts which become defective during a period in which the Product containing the replacement part is covered by warranty or Support Services, or ninety (90) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, VCE is not able correct such deficiencies, then End User has the right to terminate for breach in accordance with section 6(C) of this Support Services Exhibit.

EXCEPT AS EXPRESSLY STATED IN THIS SUPPORT EXHIBIT, VCE MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES IN RELATION TO SUPPORT SERVICES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALINGS OR USAGE OF TRADE.

6. TERM AND TERMINATION.

A. Support Services Term. Support Services commence upon date of shipment and expire in accordance with the term stated on the applicable VCE Quote or corresponding bill of materials.

B. Termination for Convenience. Except as otherwise stated in this Exhibit, either party may terminate the Support Services for a Product(s) for its convenience upon ninety (90) days' prior written notice.

1. **By VCE.** If VCE terminates for its convenience, End User's sole and exclusive remedy and VCE's sole and exclusive obligation will be to refund to End User the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period.

2. **By End User.** If End User terminates for its convenience, End User's sole and exclusive remedy and VCE's sole and exclusive obligation will be to grant End User a credit that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period. Such credit may only be used against future purchases of Products or Support Services from VCE and may be reduced to recapture unearned discounts (meaning discounts to Support Services fee

that were based on a End User obligation that can no longer be fulfilled due to the termination).

C. Termination for Breach. Either party may terminate the Support Services for a specific Product for cause due to a failure of the other party to comply with the terms of this Support Exhibit with regard to such Product, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If VCE terminates the Support Services for any Product(s) affected by such a failure by End User, such termination will be without further

liability for VCE and without any obligation to refund any fees already paid therefore. If End User terminates for VCE's breach, End User's sole and exclusive remedy and VCE's sole and exclusive obligation will be to either issue a credit for use against current or future purchases of Products or Support Services or grant a refund (as selected by End User) for that portion of any pre-paid Support Service fee that corresponds to the period between the effective date of the termination for breach and the end of the then current Support Services period.

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ATTACHMENT 1
SUPPORT SERVICE DESCRIPTION(S)

ATTACHMENT 2

VCE Response Time Service Level Agreement

VCE offers the following Response Time Service Level Agreement.

1. Definition of Severity Levels for Service Level Agreement

Severity 1	Severity 2	Severity 3	Severity 4
Customer operations are critically degraded, preventing Customer from performing essential business functions.	Customer operations are severely degraded, or significant aspects of the Customer's business operation are being negatively impacted by unacceptable system performance. Customer can continue to perform essential business functions.	Customer operations are impaired, however most business operations remain available and functional.	Customer operations are minimally impacted, this includes assistance with configurations, feature requests, and other non-critical questions.

2. Service Level Categories and Response Times

Severity	Time to Respond
Severity 1	30 min (7x24x365) *
Severity 2	2 hours (7x24x365) **
Severity 3	Next Business Day (local business hours)
Severity 4	Next Business Day (local business hours)

Exceptions:

* Severity 1 time to respond is 1 hour (7x24x365) for Vblock® System 100 family

** Severity 2 time to respond is 3 hours (7x24x365) for Vblock® System 100 family

3. Terms and Conditions

A. In the event that VCE fails to meet any Service Level specified above three (3) times in any twelve (12) month period, End User is eligible for, as its sole and exclusive remedy, an extension of Services Support for a period of thirty (30) days as provided below (each such credit a "Service Level Credit"). VCE will have no other liability or obligation under this Agreement for such a Service Level failure. To be eligible for a Service Level Credit, End User must notify VCE in writing within thirty (30) days of a failure to meet a Service Level, or such instance is waived. All Service Level Credits are cumulative.

B. VCE is not responsible or liable for any failure to meet the applicable Service Levels to the extent such failure arises out of any of the following (collectively, the "Service Level Exclusions"): (1) unavailability of Services Support on account of the following: (a) scheduled outages; (b) End User's acts or omissions; (c) failure of power, facilities, equipment, applications, systems or connections not provided by VCE and outside of VCE's reasonable control; (d) a software failure or defect; (e) a force majeure event; (f) User Hardware and/or third party equipment (not within VCE's sole control); (g) any breach of the Agreement by End User; (h) applying necessary security or application updates; and (i) a failure resulting from additional hardware, software or telecommunication resources required to meet User's needs, and User not having installed and/or agreed to pay for such additional resources. In addition to the Service Level Exclusions, false or erroneous information, whether as a result of errors by, or outages of, Service Level measurement systems will be disregarded when determining the applicability of affected Services.

C. All performance calculations and applicable Service Level Credits are based on VCE records and data. Support personnel shall use their generally acquired education, experience and specific knowledge resources made available from VCE and its suppliers to determine severity levels. Calculation of a Service Level commences upon VCE's receipt of a communication from End User regarding non-performance of a Product. Response to a particular trouble report from End User is defined as the implementation of a remote technical solution or the initiation of a telephone and/or electronic communication to End User by VCE (or its partner) personnel.