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Certain words are used with the specific meanings set out in the General Terms part of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/cloud-services/>, or in [the General Terms of Our Customer Terms](http://www.telstra.com.au/customer-terms/index.htm) at <http://www.telstra.com.au/customer-terms/business-government/index.htm>

# ABOUT THIS PART

## This is the VCE Cloud Services part of the Cloud Services section of Our Customer Terms. Depending on the nature of the products and services you are receiving under this Cloud Services section, provisions in other parts of the Cloud Services section, as well as in [the General Terms of Our Customer Terms](http://www.telstra.com.au/customer-terms/index.htm) at <http://www.telstra.com.au/customer-terms/business-government/index.htm>, may apply.

## See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of Our Customer Terms are to be read together.

## See section one of the General Terms part of the Cloud Services section for more detail on how the various parts of the Cloud Services section are to be read together.

# VCE Cloud Service

What is the VCE Cloud Service?

## The VCE Cloud Service (**Service**) is an integrated, cloud-based computing, network and storage solution, comprising various elements that you can choose from.

## The Service may include some or all of the following features (which may be revised by us from time to time in accordance with these Our Customer Terms), depending on your specific order with us:

|  |  |
| --- | --- |
| Feature | DESCRIPTION |
| Product | **VCE Product:** either the VCE VblockTM , VxRackTM or VxRailTM infrastructure platforms, where each product is a configured system of pre-selected hardware and software (including Third Party Software) and any accompanying documentation.**Custom Elements:** any custom or non-standard hardware or software elements additional to the standard features already incorporated in the VCE Product that we may be able to offer you from time to time.**Third Party Branded Products:** Products which are available for purchase or license from us that are manufactured, developed or made available by other companies and for use in conjunction with VCE Products |
| VCE Services | **VCE Core Support Services:** basic support services for hardware and software forming part of your Product.**VCE Support Services:** additionalservice management for your Product. **VCE Professional Services:** Product training and installation services. |

Eligibility

## The Services are not available to Telstra wholesale customers or for resale.

Changes

## In addition to our rights to vary Our Customer Terms, either of us may request changes to the scope of Services to be provided to you.

## If we both agree on the proposed changes then we will provide you with a document setting out the impact of the changes on the scope of your Services (including price) unless these details are already set out in your change request.

## If, in our reasonable opinion, we will need to undertake material effort to analyse and document the impact of the changes then we may charge you for undertaking this work. We will agree the prices for doing so with you separately prior to beginning work.

## If you agree on the impacts of the change request, we will perform the Services as varied by the requested change.

## This section does not limit our ability to:

### charge an early termination charge in accordance with paragraph 2.14; or

### change the VCE Support Services service levels.

Service pre-requisites

## You are responsible for obtaining and maintaining (at your cost) any carriage services required in order to use the Services.

## We can provide you with details of the minimum technical capabilities of the required carriage services on request.

## If you do not comply with clause 2.9 for any reason, the service you experience may be adversely affected and we may terminate your Service.

Term

## You have to take the Services for a minimum of 12 months.

## The actual term of your Service is set out in your application form or separate agreement with us (**Initial Term**). At the end of the Initial Term, your Service will continue on a month-to-month basis unless otherwise terminated by you or us, or if you let us know that you do not want it to continue beyond the Initial Term.

## If your Service is terminated in part or in whole before the end of your Initial Term for any reason other than our material breach, we may charge you the following early termination charges (**ETC**):

### VCE Product (Rental)

### ETC = The full amount remaining to be paid in respect of each Product at the date of termination (as set out in your applicable form or separate agreement with us).

### VCE Support Services

### ETC = 50% of the remaining amount to be paid in respect of each type of VCE Support Services to be terminated, calculated at the date of termination.

### You acknowledge that these ETC are a genuine pre-estimate of losses that we would incur as a result of the termination.

Third party suppliers

## You acknowledge and agree that we may use third party suppliers to provide or perform elements of the Service.

## You are also entitled to choose third party suppliers to supply some elements of the Service directly to you. We identify in this section of Our Customer Terms when that is the case, and if you do choose a third party to supply any such elements of the Service, we are not responsible for providing that element of the Service and your relationship with that third party is governed by your separate agreement with them.

# Product

Product

## The Product comprises the VCE Product and any Custom Elements and/or Third Party Branded Products.

## The VCE Product is the hardware and software infrastructure platform that you choose for the Services. Your application form will set out the details of the VCE Product you have selected.

## You may choose Custom Elements and Third Party Branded Products to form part of your Service in addition to the VCE Product. We will let you know what Custom Elements and Third Party Branded Products are available on request, and any Custom Elements or Third Party Branded Products you choose will be set out in your application form or separate agreement with us.

## **Charges**

## There are two options for you acquiring the Product you need for your Service:

### buy it from us: or

### rent it from us.

## If you buy your Product from us, the charges will be set out in your application form or separate agreement with us.

## If you choose to rent your Product from us, you will be required to enter into a separate agreement in relation to that rental, and the terms of that agreement will apply in addition to the terms that apply to the remainder of your Service.

Title and risk

## If you buy the Product from us:

### subject to paragraph 3.7(c), ownership of the Product only passes to you once you have paid us in full;

### risk in the Product passes from us to you on delivery; and

### you do not acquire title in any in any Third Party Software incorporated in the Product. Any Third Party Software in the Product will be licensed to you in accordance with paragraph 3.14.

## If you rent the Product from us:

### we retain ownership of the Product;

### risk in the Product passes from us to you on delivery; and

### you must not sell, dispose of or encumber the Product; and

### you must comply with the terms of the separate rental agreement in respect of the Product.

Delivery

## We will deliver any Product that you purchase or rent from us to your nominated address. We will try, but do not promise, to meet any indicative delivery date. If there’s a change in the original delivery date we will try to tell you.

## You acknowledge that:

* + - 1. you have examined the equipment before accepting delivery of the Product and satisfied yourself as to its condition; and
			2. you will only use the Product for your internal business purposes and in accordance with these terms.

## We reserve the right to repossess the Product, or suspend or terminate your Service, if you don’t pay the purchase price in full or fail to pay any rental charges. Reconnection fees and early termination charges may also apply.

Installation

## You are responsible for:

### ensuring the installation locations for the Product meet the hardware specifications (including for power and cooling), which we can provide you on request; and

### if you engage a third party (rather than us) to install the Product, paying any third parties you engage to install the Product.

Use of the Product and third party terms

## You must install any software, upgrades and patches as directed by us. If you do not, we may suspend your Service until you do, or may not be able to provide the VCE Support Services (and we are excused from doing so).

## Depending on the Products and scope of Services you choose, your Service may be subject to additional terms of use imposed by third party suppliers (**Licence Terms**). A copy of the Licence Terms can be found in the Vendor Terms and Conditions part of the Cloud Services section of Our Customer Terms.

## You must comply with the Licence Terms that apply to your Service.

## If you do not comply with the Licence Terms and you remain in breach after receiving notice from us or the software vendor that you are breaching the Licence Terms, we may immediately terminate your Service.

# VCE Core Support Services

General

## We automatically include the Core Support Services with the Products at no additional cost beyond the charges for the Products.

## In addition to the terms set out below, the VCE Core Support Services are subject to the VCE End User Licence Agreement (as described in section 3.14), and the VCE Product Life Cycle.

## The VCE Core Support Services comprise some or all of:

### access to the VCE web-based support portal;

### Advance replacement service;

### On-site support services;

### Escalation response; and

### Hardware and software end-of-life support,

### as further described below and as set out in your application form or separate agreement with us.

## VCE Core Support Services will be provided through VCE’s web-based portal, VCE Connect.

## We will:

### use reasonable commercial efforts to make available work-around solutions or patches to reported software problems using reasonable commercial efforts;

### make available a Release Certification Matrix on regular intervals through a Release Announcement; and

### provide new versions of the VCE Software and Third Party Software, where available and one copy of any accompanying documentation.

## You have certain obligations outlined below to assist us in providing the VCE Core Support Services. If you do not comply with your obligations, we will use reasonable efforts to continue to provide you with the VCE Core Support Services but may charge you an additional fee.

## If during the course of troubleshooting, we determine that an integration issue is due to a third party product, then on your request (and subject to any support agreement you have with the relevant third party supplier) we will assist you to open a case with the relevant third party supplier. To the extent possible, we will assist the third party supplier in resolving your issue.

## We will respond to problems raised through VCE Connect according to the following priority levels. For clarity, these priority levels do not apply to the VCE Support Services, and the priority levels for the VCE Support Services do not apply to the Core Support Services.

|  |  |  |
| --- | --- | --- |
| Priority Level | DESCRIPTION | Response time |
| Priority 1 | Your operations are critically degraded, preventing you from performing essential business functions | 30 minutes (24x7x365)(but 1 hour for Vblock Series 100 and VxRail VCE Products) |
| Priority 2 | Your operations are severely degraded, or significant aspects of your business operations are being negatively impacted by unacceptable system performance. You can continue to perform essential business functions. | 2 hours (24x7x365)(but 3 hours for Vblock Series 100 and VxRail VCE Products) |
| Priority 3 | Your operations are impaired, however most business operations remain available and functional. | Next Business Day |
| Priority 4 | Your operations are minimally impacted, this includes assistance with configurations, feature requests, and other non-critical questions. | Next Business Day |

Advance replacement service

## If available with your selected VCE Product, advance replacement services involve the shipment of parts or equipment that can be replaced at your premises, before we have received your failed or defective parts. This reduces the period of outages by reducing waiting times.

## Advance replacement services are subject to geographic and weight restrictions depending upon installation location.

## Shipment of replacement parts are DAT (Incoterms 2010), using our preferred carrier, freight prepaid, excluding import duties, taxes and fees, where applicable. Requests for alternate carriers will be at your expense.

## Parts provided under the advance replacement services will be either new or equivalent to new in all material respects.

## For Priority 1 issues, advance replacement services will be provided on a four hour response basis, and for Priority 2 issues, same Business Day, local hours, where available.

## For Priority 3 and Priority 4 issues, we will deliver equipment during working hours on the next Business Day, provided you have told us before 3pm (AET) the previous Business Day. Notifications after that time will be deemed to have been provided on the following Business Day.

## Where next Business Day delivery is not available, we will provide expedited shipping (and exact delivery dates depend on various factors including location and carrier service availability).

## We can provide you with further details of delivery arrangements on request.

## To enable us to provide the advance replacement service, you must at your cost:

### return any defective Product in accordance with our procedures, including proper packaging, a description of failure, and written specifications of any other changes or alterations;

### for Products not returned to us, provide us with a purchase order to facilitate non-returned Product billing; and

### assist us with troubleshooting before initiating any On-site Support Services.

## You must ensure that we receive any failed hardware components within 30 days of the date on which you received the relevant replacement part, otherwise, we may charge you for the cost of the replacement part. Returns due to replacement shall be shipped DAP (Incoterms 2010).

On-site Support Service

## On-site Support Services are performed at your premises.

## The response times for On-site Support Services, are subject to geographic restrictions depending on the location of your premises.

## For Priority 1 issues, we aim to provide On-site diagnosis, maintenance and/or replacement of hardware components (**Remedial Hardware Maintenance**) within four hours, where available, together with parts, labour and materials. For Priority 2 issues, we will provide same Business Day Remedial Hardware Maintenance, where available.

## We will install all field-replaceable units, and you must install any equipment which we tell you is a customer-replaceable unit.

## For Priority 3 and Priority 4 issues, or where four hour response time or On- site Support Service is not otherwise available, we will provide next Business Day Remedial Hardware Maintenance, together with parts, labour and materials by 5:00 p.m. AET, provided we determine that Onsite Support Service are required before 3:00 p.m. AET the prior day (otherwise, second Business Day will be provided for calls placed after 3:00 p.m. AET).

## Where next Business Day delivery of the parts is not available, expedited shipping will be provided and we will provide Onsite Support Service upon arrival of the parts.

## In order for us to provide On-site Support Services, you have to:

### provide an appropriate work environment and reasonable access to working space including heat, light, ventilation, electric current and outlets, and local telephone extension (or toll free domestic and international access );

### back-up software images and configurations on a regularly scheduled basis and provide those images and configurations to us in connection with Remedial Hardware Maintenance;

### provide us with the name of a point of contact prior to delivery of Products and other equipment;

### provide file transfer protocol capabilities or internet access for the purpose of downloading software images; and

### provide safety and security protection for our personnel on your unstaffed sites.

## If you do not carry out your obligations as set out in section 4.25, we will provide On-Site Support Services on a best-efforts basis only, and may impose additional charges relative to the increase in our costs in providing those elements ourselves.

Escalation Response

## Escalation response involves using commercially reasonable efforts to:

### coordinate with relevant support staff from the third party vendors of the various elements of the Services;

### escalate issues within our organisation and our third party vendors’ organisations to ensure significant issues have visibility amongst senior management; and

### provide regular updates with respect to outstanding issues and action plans.

## We will provide escalation response for Priority 1 issues that are unresolved in a timely manner, and for other issues at your reasonable request. Escalation response will be provided to manage and track production impacting events until the Product is restored.

Hardware and Software End-of-Life Support

## If you have Managed or Fully Managed VCE Support Services from us, we will provide you with notice of the retirement of a VCE Product platform hardware or software components. When a Product has reached end of life, it will no longer be made generally available for sale and will be supported only in the manner and for the term specified by the applicable end-of-life policies for hardware and software established and maintained by the Third Party Software manufacturers.

Your Responsibilities

## To enable us to provide the VCE Core Support Services, you must (at your expense):

### provide reasonable access to establish a data communication link between you and us;

### provide us with necessary systems passwords and access rights;

### provide us with 30 days’ written notice of any requested addition(s) to your equipment;

### provide us with 30 days’ written notice if you wish to relocate equipment (although we may not be able to continue to provide VCE Core Support Services if we do not support your new location);

### notify us of any modifications to your Products or configuration;

### provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number;

### provide valid serial numbers for all Product components when reporting problems and issues, or seeking support;

### appoint authorised support contacts who have a basic understanding of, and expertise in the tasks related to, administering the Product technology (including operating systems, application servers, and databases); and

### providing us with a complete and up to date list of your authorised support contacts on request and following any change to that list.

# VCE Support Services

General

## You may ask us to perform the VCE Support Services as set out in your application form or separate agreement with us. You may also acquire the VCE Support Services directly from VCE. If you engage VCE directly you enter into a separate agreement with them to provide the VCE Support Services, and we are not responsible for those VCE Support Services.

## There are five management levels of VCE Support Services you can choose from:

### ROBO/Domain Controller;

### Appliance;

### Service Critical Appliance;

### Managed; and

### Fully Managed,

### as further described below and as set out in your application form or separate agreement with us.

## We will charge you for the VCE Support Services on a monthly basis per Product, as set out in your application form or separate agreement with us.

## We will provide the VCE Support Services:

### using commercially reasonable efforts to remedy failures of supported Products to perform substantially in accordance with the specifications;

### in accordance with the VCE Support Services service levels;

### using an English-language support desk; and

### with access to software releases and documentation updates made generally available by the Third Party Software manufacturer for the relevant Product.

## You may ask us to perform additional support services that are not included in the standard scope of VCE Support Services. If we agree to provide you with any additional support services, we will charge you an additional amount which we will advise to you when you ask for the additional services.

## If you do not take up the VCE Support Services from the commencement of your Service, but later decide to take up the VCE Support Services, or you cancel your VCE Support Services and then wish to recommence them:

### commencement or reinstatement of VCE Support Services will be subject to certification of the Product (at the then-current rates and conditions); and

### the new term of the VCE Support Services must be for a minimum of 12 months commencing upon payment to us of:

#### the certification charges;

#### the amount we would have normally charged had the VCE Support Services been in effect during the full term of your Services with us (less any amount actually paid for the VCE Support Services during the term of your Services); and

#### the charges for the next 12 months of the newly commenced VCE Support Services.

## We reserve the right to change the scope of the VCE Support Services on sixty days’ written notice. If the change is a detrimental change, it will be managed in accordance with the relevant section of General Terms of Our Customer Terms.

## **VCE Support Services Management Levels**

## The inclusions and services levels for each of the five management levels of VCE Support Services are summarised in the following table. Inclusions marked as ‘optional’ are available at additional cost. The service levels are targets only, and we do not promise to meet them.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Management Level  | ROBODomain Controller | Appliance | Service Critical Appliance | Managed  | Fully Managed |
| Service Elements | Remote business hours support for low touch VCE Product appliances with minimal low impact change request. | Business hours remote support for dedicated single workload VCE Product appliance running platforms such as Unified Communications. Pre-defined Telstra/VCE service levels. | Remote managed 24x7 business critical VCE Product appliance with full SLA's for critical incident and service request. | Remote managed business hours VCE Product platform support with pre-negotiated Telstra/VCE defined service levels. | Fully managed 24x7 multi-workload VCE Product with full incident, change and service request. Proactive platform management, provisioning and capacity planning. Combination of remote and onsite management support. |
| ITIL Based ITSM Support |
| SLA Basis | Single Defined Service levels | Single Defined Service levels | By Incident and SR Criticality | Single Defined Service levels | By Incident and SR Criticality |
| SLA Basis | Single Defined Service levels | Single Defined Service levels | By Incident and SR Criticality | Single Defined Service levels | By Incident and SR Criticality |
| SLA - threshold | 80% | 80% | See Below | 85.00% | See Below |
| SR Response | 48 hrs | 24 hrs. | Priority 1 - 1 Hour (90% of Requests) | 6 Business Hrs | Priority 1 - 1 Hour (90% of Requests) |
| Priority 2 - 1 Bus Day (90% of Requests | Priority 2 - 1 Bus Day (90% of Requests |
| Priority 3 - 2  Bus Day (90% of Requests) | Priority 3 - 2  Bus Day (90% of Requests) |
| Priority 4 - 3 Bus Days (90% of Requests) | Priority 4 - 3 Bus Days (90% of Requests) |
| SR Completion | 3 Business days | 2 Business Day | Priority 1 - 1 Bus Day (90% of Requests) | 2 Business Days | Priority 1 - 1 Bus Day (90% of Requests) |
| Priority 2 - 2 Bus Day (90% of Requests) | Priority 2 - 2 Bus Day (90% of Requests) |
| Priority 3 - 5  Bus Day (90% of Requests) | Priority 3 - 5  Bus Day (90% of Requests) |
| Priority 4 - 10 Bus Days (90% of Requests) | Priority 4 - 10 Bus Days (90% of Requests) |
| Incident Response | 24 hrs. | 8 hrs. | Priority 1 - 15 Min  (95% of incidents) | 4 hrs. | Priority 1 - 15  Min  (95% of incidents) |
| Priority 2 - 30 Min  (90% of incidents) | Priority 2 - 30 Min  (90% of incidents) |
| Priority 3 - 1 Hour  (90% of incidents) | Priority 3 - 1 Hour  (90% of incidents) |
| Priority 4 - 8 Hours  (90% of incidents) | Priority 4 - 8 Hours  (90% of incidents) |
| Priority 5 - 3 Bus Days  (85% of incidents) | Priority 5 - 3 Bus Days  (85% of incidents) |
| Incident Resolution | 1 Business day | 1 Business day | Priority 1 - 4 Hours  (95% of incidents) | 1 Business Day | Priority 1 - 4 Hours  (95% of incidents) |
| Priority 2 - 1 Bus Day  (90% of incidents) | Priority 2 - 1 Bus Day  (90% of incidents) |
| Priority 3 - 2 Bus Days  (90% of incidents) | Priority 3 - 2 Bus Days  (90% of incidents) |
| Priority 4 - 3 Bus Days (85% of incidents) | Priority 4 - 3 Bus Days (85% of incidents) |
| Priority 5 - 15 Bus Days (85% of incidents) | Priority 5 - 15 Bus Days (85% of incidents) |
| SR and Incident Limits/month | 2/ VCE Product Additional per Change Fee | 2/ VCE Product Additional per Change Fee | 2/ VCE Product Additional per Change Fee | 5/ VCE Product Additional per Change Fee | Not limited within scope Priority 5 - 15 Bus Days (85% of incidents) |
| Support Hours | 9 x 5 M-F | 9 x 5 | 24x7 Critical Support | 9 – 5 | 24x724x7 |
| 9 – 5 Non-Critical Support |
| Support Medium | Ticketing System and Web | Ticketing System and Web | Ticketing System, Phone, Web | Ticketing System and Web | Ticketing System, Phone, Web |
| Cloud Management |
| Delivery Model | Remote | Remote | Remote | Remote | Remote, Onsite Option, Hybrid remote/Onsite Option |
| Policies and Standards |
| IT  Security Plan Compliancy | Included | Included | Included | Included | Included |
| Identity Management Compliancy | Included | Included | Included | Included | Included |
| User account management | Included | Included | Included | Included | Included |
| Security monitoring  | Included | Included | Included | Included | Included |
| Security incident procedures | Included | Included | Included | Included | Included |
| Malware prevention, detection and correction | Included | Included | Included | Included | Included |
| Regular SLM Meetings and  Account reviews | Optional | Optional | Included - Quarterly | Optional | Included – Monthly |

VCE Support Services exclusions

## Except to the extent that VCE Support Services are independent of the hardware’s location, we are not required to provide VCE Support Services with respect to Products outside our service area (which we will advise you of on request).

## We are not required to provide VCE Support Services for ancillary hardware and/or software purchased with the Product that do not form part of the Product.

## We will only provide VCE Support Services if you have the current version of the software for the relevant Product, or the two releases immediately prior (that is, you must be N-2 or later).

## VCE Support Services are subject to VCE’s then-current product life cycle policy for the Product.

## We provide the VCE Support Services remotely. If we cannot connect to your site or systems, we cannot provide the VCE Support Services. You are responsible for ensuring that remote access to your site or systems is available.

## VCE Support Services do not include:

### hardware upgrades, if any, needed to utilise new features or functionality in a software release;

### problems that arise from:

#### your accident or neglect;

#### resale to any third party;

#### software installed or used beyond the licensed use or outside the Product;

#### hardware or software whose original identification marks have been altered or removed;

#### any third party items or services with which the Product is used or other causes beyond our control;

#### installation, operation or use of the Product that is not in accordance with our instructions or the applicable documentation;

#### any modification, addition and/or development of code scripts by anyone other than us or our third party suppliers;

#### 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 us;

#### third party modification, alteration or repair;

#### your failure to maintain a currently supported software release on a Product or

#### causes not attributable to normal wear and tear.

## If you use VCE Support Services tools improperly, or fail to use them at all, then we may charge an additional amount for the VCE Support Services, in line with our then-current rates.

Your Responsibilities

## You agree to:

### acquire the same level of support services for all Products (and each component in each Product);

### use reasonable efforts to troubleshoot issues with Products;

### promptly notify us when Products fail and provide us with sufficient details of the failure so we can reproduce the failure;

### give us reasonable remote and on-site access (as we determine necessary) to the Products to provide the VCE Support Services;

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

### assign an authorised contact who is familiar with your requirements to report problems and coordinate support services with us;

### undertake reasonable data back-up measures, including performing daily back-ups of all relevant data before we perform any VCE Support Services;

### install and maintain current any current software releases that we notify you of; and

### properly train your personnel in the proper use and application of the relevant hardware and software (including the Products).

Additional terms

## **Maintenance Aids and Spare Parts for Hardware**: We may, on reasonable notice and at completion of the VCE Support Services, enter your premises or remotely connect to your premises to remove and disable maintenance aids and spare parts and you will reasonably cooperate with us.

## **Support Tools**: You must use any VCE Support Services tools we make available to you in accordance with terms we provide you with.

## **Hardware Replacements and Data Security Options**: If you fail to return any replaced Product within ten days in accordance with our return materials authorisation process, otherwise we may charge you the then-current spare parts price for that item. You are responsible for removing all data and information from any replaced parts, or any other items you provide to us for trade-in or disposal, and indemnify us for any failure to properly remove such data and information and any information contained on such items.

## **Proactive Product Changes**: We may, at our expense, implement changes to the Products upon reasonable notice to you if the changes:

### do not adversely affect the interchangeability or performance of the Products;

### are required for purposes of safety or reliability; or

### are required by law,

### and you must give us reasonable access to the Products to make the changes.

## **Software Releases**: Upon use of a software release, you must immediately cease using all prior software releases, and remove from your systems (except as contemplated by the following sentence), and protect them from disclosure or use by any third party. Unless prohibited by the relevant software licensor, you are authorised to retain a copy of each properly obtained software release for archive purposes and use as a temporary back-up if the current software release becomes inoperable. You must use and deploy software releases strictly in accordance with the Licence Terms. If we reasonably suspect any modification, addition or development of code scripts may be a cause of a reported problem, we reserve the right to request its removal in order for you to continue to receive the Service.

## **Change of Hardware Location or Configuration**: You must obtain our prior written approval and promptly notify us of any changes to the configuration, or movement of the Products. We may not be able to provide the VCE Support Services, if you have not approved in changes in hardware location or configuration.

## **Changes to VCE Support Services Management Level:** You may change the management level of your VCE Support Services on 30 days’ written notice at no cost.

## **Remote Support Capability**: As part of the VCE Support Services, we make various remote support capabilities available for certain Products. You must immediately notify us if you disable remote support capabilities. If you disable remote support capabilities, we may charge you a surcharge in accordance with our then current standard rates for on-site access and the service levels will no longer apply.

## **Alterations and Attachments to Product**: We may suspend the VCE Support Services or alter the service levels if you make any unapproved alterations to the Product or VCE Product cabinet. If in our opinion any approved or unapproved alteration or attachment may be adversely impacting the proper operation, functionality or performance of the Product, we may require you to remove the equipment and restore the Product to its original condition as a pre-requisite of receiving any further VCE Support Services. We may charge you to rebuild the Product components to its original condition if removal of the non-supplied equipment does not resolve the adverse affects and/or if there has been physical damage to the Product components.

## **Hardware Upgrades**. If your Products are subject to a hardware upgrade, the upgraded hardware remains subject to the same management level of VCE Support Services as the original Product.

## **VCE Support Services Service Levels**

## Subject to section 5.28, if we fail to meet any service levels more than three times in any 12 month period, you will be entitled (as your sole remedy) to an extension of the VCE Support Services for a period of 30 days provided you notify us within 30 days of a failure to meet a service level.

## We are not responsible for a failure to meet any service level where the failure results from unavailability of the VCE Support Services due to:

### scheduled outages where we have notified you in advance of such outages;

### your failure to provide us with full and accurate information detailing any requests or relating to any incidents that you report to us;

### your acts or omissions (including your breach of an obligation under this section, the General Terms of Our Customer Terms and any third party licence terms);

### power failure, or a failure of third party facilities, equipment, applications, systems or connections outside our reasonable control;

### software failure or defect;

### applying necessary security or application updates;

### failure resulting from addition hardware, software or telecommunications resources required to meet your need and any failure by you to install and or agree to pay for such additional resources.

## **VCE Support Services Warranty**

## We warrant that we will perform the VCE Support Services in a professional manner in accordance with generally accepted industry standards.

## You must notify us within 10 days if you think we have failed to comply with this warranty.

## Subject to section 7.5 below, your exclusive remedy and our entire liability for failure to meet the warranty is for us to, at our option:

### use commercially reasonable efforts to re-perform the deficient services within a reasonable time; or

### replace any replacement parts which become defective during a period in which the Product containing the replacement part is covered by warranty or VCE Support Services, for 90 days after installation, whichever occurs later; and

### if, after reasonable efforts, we are not able to correct such deficiencies, then you may terminate the VCE Support Services for the relevant Product in accordance with section 5.34 below.

### **Termination of VCE Support Services**

## We may terminate the VCE Support Services by giving you written notice, if we are unable to continue to provide the services. If we do terminate under this section, we will refund any amount pre-paid for the remainder of the then-current term of the VCE Support Services (had they not been terminated). That is our sole liability in respect of our termination for convenience.

## If you terminate the VCE Support Services for any reason other than our material breach, you must pay the early termination charge set out in paragraph 2.14(b).

## Either party may terminate the VCE Support Services for a specific Product for cause if the other party commits a material breach of this section of Our Customer Terms with respect to that Product, provided the terminating party has given 30 days’ written notice of the breach, and the breaching party has not remedied the breach in that time.

## If we terminate under section 5.34, we have no further liability to you and are not required to repay any pre-paid amounts. You may be required to pay an early termination charge in accordance with section 2.14.

## If you terminate under section 5.34, subject to section 7.5, our sole liability will be to either issue a credit for use against current or future purchases of Products or VCE Support Services, or provide a refund (at your option) for the portion of any pre-paid VCE Support Service fee that corresponds to the period between the effective date of the termination and the end of the then-current VCE Support Services period.

# VCE Professional Services

## **General**

## You can choose whether or not to take the VCE Professional Services.

## The VCE Professional Services include some or all of:

### installation of the Products at your nominated premises;

### installation and configuration of the standard management tools deployed with the Products;

### Product training; and

### acceptance testing,

### as set out in your application form or separate agreement with us.

## The fees and charges for VCE Professional Services, including the process for changes to those fees and charges, will be set out in your application form.

## You may also engage our third party supplier, VCE, to provide the VCE Professional Services. If you engage VCE directly you enter into a separate agreement with them to provide the VCE Professional Services, and we are not responsible for those VCE Professional Services.

Terms applying to VCE Professional Services

## We acknowledge that you are the owner or licensor of pre-existing works of authorship and other intellectual property that you provide to us in our performance of the VCE Professional Services (**Customer IP**). You grant us a licence to use, reproduce and modify the Customer IP to the extent necessary to perform the Services, and warrant that you have the right to grant us that licence.

## We do not claim any right in Customer IP. Except for any Customer IP, we exclusively own any and all object code, micro code, firmware, source code, flow charts, documentation, information, reports, test results, findings, ideas and any and all works and other materials developed as part of the VCE Professional Services (collectively, the **Work Product**).

## All applicable patents, copyrights, trademarks, trade secrets and other rights and interests in the Work Product are ours.

## Subject to payment of all fees for the Services, we grant you a perpetual, non-transferable, non-exclusive license to use any Work Product prepared as part of the Services for your Internal Business Purposes.

## Depending on the specific nature and scope of the VCE Professional Services you choose, we may include additional terms which apply to those services, and the terms will be set out in your application form or separate agreement with us.

Acceptance Testing

## Your application form may set out that acceptance testing is required for the Products. If so, the following process will apply:

### there will be a acceptance test period of 10 business days from the date we deliver the Products to you;

### we may carry out acceptance testing during the delivery test period to make sure that the Products are materially consistent with the requirements set out in your application form;

### if you consider the acceptance testing shows the Products are materially consistent with the requirements in the application form, you must issue us with an acceptance notice;

### if you consider the acceptance testing shows the Products are not materially consistent with the requirements in the application form (a **Defect**), you must notify us in writing and you may require us to repeat the acceptance tests at no cost to you. You must provide us with enough information to enable us to identify and repair the defects;

### if the Products fail to pass the acceptance tests more than three times within the acceptance period, you may:

#### terminate your order for the Services; or

#### issue us with an acceptance notice on an ‘as is’ basis, and we will agree to either an appropriate reduction in fees, or will agree to rectify the Defect within an agreed time frame.

## To avoid doubt, a minor or cosmetic difference to the requirements which does not have any substantive effect on the Products will not be regarded as a Defect for the purposes of clause 6.10.

## If we do not consider a matter raised by you constitutes a Defect, we will notify you. You and we will use all reasonable efforts to resolve a dispute about whether there is a Defect as soon as reasonably practicable, including by escalation to more senior management. Unless other agreed, we are not required to carry out any repairs or to re-submit the Products while we attempt to resolve the dispute.

## Acceptance of the Products occurs on the earliest of:

### the date you issue a notice of acceptance to us;

### five days after the end of the acceptance test period unless you have issued us with a valid defect notice; or

### your use the Products in any way other than for testing purposes.

## Acceptance of a Product does not affect any rights you may otherwise have under any law or elsewhere in these terms to have defects in a Product corrected.

# Additional Terms

Resupply and Export restrictions

## You must not re-sell or otherwise supply the Product to a third party outside your territory. If you buy the Products from us, you are not prevented from disposing of any Product to which you have title in accordance with this section, provided you do not act in a value-added reseller, intermediary or other resale sales structure.

## You must:

### not export, directly or indirectly, any Products or related documentation without a licence from the applicable government authority;

### comply with all import regulations and maintain, at your expense, all licences, permits and authorisations required by the applicable government authorities required for you to use the Service;

### comply with all Export Laws;

### not provide services using the Products to countries embargoed from time to time by the government of the United States of America; and

### not use the Products in connection with any nuclear, chemical or biological weapons or missile technology.

Warranties

## In addition to any express warranties set out elsewhere in this section of Our Customer Terms, we warrant that:

### the Products:

#### will perform in accordance with VCE’s published specifications;

#### are free from material defects in design and workmanship;

#### where you buy the Products from us, are free from any charge or encumbrance on title passing to you; and

#### comply with all applicable laws; and

### we have the right and power to supply the Products to you.

## Your use of the Services is subject to any express warranty terms set out in the Licence Terms.

## In addition, if you are a consumer as defined in the Australian Consumer Law, the Services come with guarantees that cannot be excluded under the Australian Consumer Law. The provisions of this clause 5 are in addition to the rights and remedies you may have under the Australian Consumer Law or other laws. For important information regarding your rights under the Australian Consumer Law, see <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/business-a-full/Warranties_Against_Defects.pdf> (or any successor to that site). If applicable to you, you are entitled to a replacement of goods or resupply of services (as applicable) or refund for a major failure, and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure, and services resupplied or the costs of having the services resupplied if the services are not fit for purpose or rendered with due care and skill and the failure does not amount to a major failure.

## Subject to clauses 7.3, 7.4, and 7.5, and to the extent permitted by law, we exclude all other warranties, rights, remedies and liability to you.

Indemnity

## You indemnify us against any liability, loss, damage, costs or expenses we incur or suffer arising out of, or in connection with any third party claim made or alleged against us in relation to your breach of the obligations under this VCE Cloud Service section of Our Customer Terms, or any separate agreement you have with us in relation to the Services.

# Definitions

**Export Laws** means any governmental restrictions on:

### the exportation of the VCE Product and related technology from the United States of America, the Republic of Ireland and any other countries in which the VCE Products and related technology are produced or located; and

### the importation of the VCE Product and related technology into the any country outside the United States of America.

### **Internal Business Purposes** means use of the Work Product for all of your business purposes excluding:

### sale or license of the Work Product to third parties;

### integration of all or part of the Work Product into a product for sale or license to third parties; or

### any purpose that directly benefits a third party.

### **Licence Terms** has the meaning given in section 3.14.

### **Priority 1** in respect of the VCE Support Services means a service request or incident where:

### **Business Impact**: the system or device is down, causing work to cease, and you are in danger of or are experiencing a financial loss, or the ability to make strategic business decisions is impaired;

### **Work Outage**: the application or system failure causes you to be unable to work or perform some significant portion of your work; and

### **Number affected**: users across your organisation are affected.

### **Priority 2** in respect of the VCE Support Services means a service request or incident where:

### **Business Impact**: the level of service is degraded or the system or device is down, causing work to cease and potential business impact;

### **Work Outage**: the application or system failure causes you to be unable to work or perform some significant portion of your work; and

### **Number affected**: users in multiple sites or across a department of your organisation are affected.

### **Priority 3** in respect of the VCE Support Services means a service request or incident where:

### **Business Impact**: work continues (e.g. unrelated to the failing component or as a result of implementing a work around), though operational impact is being experienced (e.g. data is occasionally lost);

### **Work Outage**: the application or system failure causes you to be unable to perform some small portion of your job, but you can still complete most other tasks (and for clarity, this priority level includes questions and requests for information); and

### **Number affected**: a single site or group of users is affected.

### **Priority 4** in respect of the VCE Support Services means a service request or incident where:

### **Business Impact**: work continues (e.g. unrelated to the failing component or as a result of implementing a work around), though minor impact is being experienced;

### **Work Outage**: the application or system failure causes you to be unable to perform a minor portion of your job, but are still able to complete most other tasks; and

### **Number affected**: one or two users are affected.

### **Priority 5** in respect of the VCE Support Services means a service request or incident which does not fall within one of the higher priority levels.

### **Release Announcement** means a document that contains a Release Certification Matrix, release notes, upgrade documentation, system documentation, and/or directions to obtain customer installable component updates.

### **Release Certification Matrix** means a list of certified versions of software, firmware and hardware for a specific release.

### **Third Party Software** means software supplied by EMC, Cisco and VMware that is integrated or otherwise incorporated into the VCE Product or Custom Elements.

### **VCE** means VCE Technology Solutions Limited.

### **VCE Core Support Service** means the services described in section 4.3.

### **VCE Support Services** means the services described in section 5.2.

### **VCE Software** means all software provided by VCE under the VCE Licence Terms.

### **Work Product** has the meaning given in section 6.6.