
IMPORTANT – PLEASE READ CAREFULLY

The following Tier Two Reseller Agreement sets out the legal agreement between VCE Technology Solutions Limited and/or VCE Company, LLC and the organization identified in the Reseller Application form in which this Agreement is included, regarding Reseller's acceptance as an authorized Tier Two VCE Reseller and if applicable, membership and participation in the VCE Partner Program and access to VCE's Partner Portal, subject to eligibility requirements set forth therein. By clicking on the "I Accept" button or signing a copy of the Agreement you are representing to VCE that you are authorized to bind the Reseller and are agreeing on behalf of the Reseller that the terms of this Agreement shall govern the relationship of the parties with regard to resale of VCE products. VCE reserves the right to limit acceptance to the VCE Partner Program and VCE Partner Portal. This Agreement shall not become binding until VCE sends Reseller written notice (which may be by e-mail) of authorization to resell certain VCE products. Such notice will be sent to the email address and contact provided by the Reseller in the Reseller Application form.

VCE Company, LLC, a Delaware Limited Liability Company, with offices located at 1500 North Greenville Avenue, Richardson TX 75081 ("VCE US"), VCE Technology Solutions Limited, incorporated and registered in Ireland (Company number 484306) with its registered office at IDA Industrial Estate, Ovens, Co. Cork, Ireland, ("VCE Ireland") (VCE US and VCE Ireland collectively referred to as "VCE") and the organization identified in the Reseller Application (the "Reseller") enter into this Tier Two Reseller Agreement (the "Agreement") as of the date (the "Effective Date") that VCE notifies Reseller that Reseller has authorization to resell certain VCE Products (as defined below) and related professional and support services ("Services"). This Agreement sets forth the terms and conditions under which VCE may permit Reseller on a non-exclusive basis to (i) use certain VCE Mark(s), and (ii) obtain certain VCE technical training, all for use solely in connection with the marketing and resale of VCE Products and Services pursuant to Reseller's agreement with an authorized VCE distributor, or an additional distributor as may be subsequently agreed by VCE in electronic or hard-copy form (the "Distributor"), all as more specifically described below.

ACCORDINGLY, in consideration of the promises and obligations contained herein, it is agreed as follows:

- 1. Reseller Appointment**
 - 1.1 This Agreement shall commence upon the Effective Date and unless terminated in the manner set forth below, shall remain in effect for as long as Reseller has a then current product ordering agreement with the Distributor.
 - 1.2 Reseller warrants to VCE that, as of the date Reseller submits the Reseller Application to VCE, Reseller either has, or is in the process of establishing, an agreement with Distributor under which Reseller is permitted to obtain VCE Products from such Distributor and remarket such as part of a transaction in which Reseller may also add incremental value to the VCE Products and/or Services. Reseller agrees that VCE may disclose the information on the Reseller Application and the terms of this Agreement to Distributor.
 - 1.3 Reseller shall place orders and requests for pricing directly with Distributor. Any request for orders or pricing shall be subject to the terms agreed between the Reseller and the Distributor.
- 2. VCE Partner Program and Partner Portal Access**
 - 2.1 Membership and participation in the VCE Partner Program and access to VCE's Partner Portal, located at vcepartnerportal.com, are subject to then-current VCE Qualified Partner requirements as made available by VCE. Current requirements may be requested at any time by emailing askchannels@vce.com. Provided Reseller has met such Qualified Partner requirements, VCE shall send Reseller written notice (which may be by e-mail) of Reseller's membership and participation in the VCE Partner Program and access to VCE's Partner Portal. At this time both parties acknowledge that Reseller may not be in compliance with the requirements and VCE grants Reseller 90 days from the Effective Date to comply with the Qualified Partner requirements. In the event that Reseller has not completed such compliance at the end of the 90 days, VCE reserves the right to immediately terminate this Agreement. To the extent that there are any orders that have already been placed in good faith by the Reseller when notice is received from VCE to terminate the Agreement, VCE will honor such orders. During the term of the Agreement, VCE may, at its sole discretion modify the Partner Program by posting changes on vcepartnerportal.com. Upon such notice, Reseller will have ninety (90) days notice to meet any new requirements of the VCE Partner Program.
 - 2.2 Upon any termination or expiration of this Agreement or Reseller's agreement with Distributor, Reseller's access to VCE's Partner Portal shall be immediately revoked.
- 3. Use of Marks and VCE Information**
 - 3.1 VCE shall allow Reseller to (i) use certain VCE logo(s), and (ii) obtain certain VCE technical training, all for use solely in connection with VCE Products obtained by Reseller under Reseller's agreement with the Distributor, all as more specifically described below:
 - 3.2 Restriction on Usage – All VCE Information, whether obtained from VCE, the Distributor or through the VCE Partner Portal, may be used by Reseller only for the purposes of (i) marketing and delivery of VCE Products and/or Services obtained by Reseller from Distributor; (ii) development of Reseller services utilizing VCE Products and Services; and/or (iii) assisting VCE or Distributor to sell and/or license VCE Products and Services and subject to the terms of clause 13. Reseller shall make no other use thereof and shall use the Information only in a manner that inures to the benefit of VCE. Reseller shall not use the Information to engage in deceptive, misleading or unethical practices that

are or might be detrimental to VCE or VCE Products. Upon termination or expiration of this Agreement, Reseller shall cease all use of VCE Information and shall return to VCE or destroy all such Information.

- 3.3 The trademarks, service marks and trade names under which VCE markets the Products or Services (“Marks”), are the property of VCE or third party licensors. Subject to the provisions of this Agreement and in accordance with the VCE trademark usage guidelines (available on request), Reseller must use and reproduce exactly the Marks in any authorized reproduction of the Documentation or VCE marketing collateral, provided that VCE or the applicable third party licensor is referenced as the owner of the Marks. Reseller will only market the Product under the name specified by VCE. Reseller agrees to maintain and respect the trademark, trade name and copyright notices of any Product in connection with its advertisement and distribution of the Products. Reseller agrees to include a reference to VCE in any advertisement for the Products, subject to VCE’s final written approval of all such material.
- 3.4 Reseller agrees to promptly provide VCE, upon request, with any documentation (e.g., the document used for selling or advertising) that included the Marks and the date and source of the publication in which the Marks appeared.
- 3.5 All goodwill associated with, or created by, use of the Marks will belong to VCE, and Reseller hereby assigns such goodwill to VCE. If Reseller uses any Marks in its domain name, on VCE’s demand, Reseller will assign all of its rights in such domain name to VCE.

4. Termination

- 4.1 The licenses to use the Marks may be terminated by VCE under the following conditions: (i) effective thirty (30) calendar days after notice of termination to Reseller for breach of any provision of the website access or Mark license if such breach has not been cured within such thirty (30) day period, or immediately if no cure is possible; (ii) immediately upon notice to Reseller if Reseller has misrepresented itself or its products in its Reseller Application, or if at any time the information set forth in the Reseller Application materially overstates the level or character of Reseller's then current business operations or credit profile; (iii) immediately and automatically without notice of any kind from VCE in the event Reseller, without the prior written consent of VCE, (a) merges, is acquired or otherwise undergoes a change in control; or (b) attempts to assign any of its rights or delegate any of its obligations hereunder (any action violating the foregoing restriction on assignment or delegation shall be void); and (iv) by either party for convenience upon sixty (60) days' written notice to the other party
- 4.2 Termination of Website Access –VCE shall have the right to either terminate access to or discontinue access to the VCE Partner Portal Information, at its convenience, by sending the Reseller written notice thereof. Such termination shall be effective upon receipt. VCE shall have the right to deny Reseller or Reseller personnel access to the VCE Partner Portal made available hereunder. Upon any termination, expiration or cancellation of (i) this Agreement, (ii) the license granted in sub-section 3.1, or (iii) Reseller's agreement with Distributor, Reseller shall cease to use Information and shall promptly return to VCE, at Reseller's own cost, all tangible copies of the Information in its possession.
- 4.3 VCE may terminate the Agreement by sending the Reseller written notice thereof if the Reseller is in material breach of any of the terms of the VCE Partner Program and such breach is not cured within thirty (30) days of VCE providing written notice to Reseller to so cure.
- 4.4 Upon termination of the Mark license above or this Agreement, Reseller must discontinue all use of the Marks and other VCE-related marks, symbols, logos or copyrights and links to the VCE websites in the timescales set out below unless VCE has agreed in writing to some other schedule: (i) within seventy-two (72) hours on Reseller's website; (ii) within thirty (30) calendar days, or such earlier date as required by court or judicial order, on all Products, Products packaging, Products documentation, and related marketing materials, where applicable, on Reseller's premises, or the premises of Reseller's agents, resellers or distributors, by covering the Logo with an opaque label or by other methods pre-approved by VCE in writing. Nothing in this Paragraph 4.3 shall limit VCE's right to pursue other legal remedies, including immediate court or judicial relief.
- 4.5 Rights and obligations under the Mark license which by their nature should survive will remain in effect after termination or expiration hereof.

5. Disclaimer

PORTAL AS EXPRESSLY SET OUT HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, VCE PROVIDES ACCESS TO THE VCE PARTNER PORTAL AND INFORMATION ON AN “AS IS” BASIS AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR OTHERWISE OF ANY INFORMATION, OR OTHER INTELLECTUAL PROPERTY RIGHT LICENSED UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATURE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT AND/OR SPECIAL DAMAGES FOR ANY CLAIMS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, EVEN IF THE POSSIBILITY OF SUCH DAMAGES IS, OR SHOULD HAVE BEEN, KNOWN.

6. Reseller Warranties:

Reseller will comply with all applicable privacy and data protection laws for the collection, storage, use and disclosure of personal information about individuals and will obtain any required consent. Where the Reseller processes personal information on behalf of VCE it shall do so only in accordance with VCE’s express instructions and the Reseller shall use all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of such personal information. Reseller will comply with all applicable local laws concerning unsolicited email and all state and federal or national laws that are applicable to the Reseller’s business. To the extent that Reseller handles any Product or prepares it for shipment, Reseller will comply with all relevant laws related to product labeling.

7. **Indemnity:** Reseller shall indemnify VCE and hold VCE harmless against all claims asserted by third parties against VCE arising under this Agreement.

8. Limitation of Liability:

- 8.1 SUBJECT TO CLAUSES 8.2 AND 8.4 BELOW, TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR CLAIMS REGARDING VIOLATION OF EITHER PARTY’S INTELLECTUAL PROPERTY RIGHTS AND / OR CONFIDENTIALITY OBLIGATIONS HEREIN, EITHER PARTY’S TOTAL LIABILITY



WILL BE LIMITED TO DAMAGES IN AN AMOUNT NOT TO EXCEED: (i) FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, US\$1,000,000; OR (ii) FOR ALL OTHER LIABILITIES, THE TOTAL PRICE PAID BY RESELLER TO DISTRIBUTOR FOR THE PRODUCT OR THE SPECIFIC SERVICE FROM WHICH SUCH CLAIM ARISES.

- 8.2 SUBJECT TO CLAUSE 8.4 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR CLAIMS REGARDING VIOLATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AND / OR CONFIDENTIALITY OBLIGATIONS, NEITHER RESELLER NOR VCE (INCLUDING VCE'S SUPPLIERS) WILL: (i) HAVE ANY LIABILITY WHATSOEVER FOR ANY (A) SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR (B) PURE ECONOMIC LOSS, COSTS, CHARGES EXPENSES, LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL OR SIMILAR LOSSES, LOSS OF GOODS, LOSS OF CONTRACT, LOSS OF USE, OR LOSS OR CORRUPTION OF DATA, EACH OF WHICH WHETHER DIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT EVEN IF ADVISED OF THE POSSIBILITY THEREOF; (ii) BE LIABLE FOR THE COST OF PURCHASING REPLACEMENT SERVICES, LOST PROFITS (OTHER THAN VCE'S CLAIMS FOR ANY PROFIT FORMING PART OF THE PRICE, FEES OR CHARGES), LOSS OF GOODWILL OR LOSS OR CORRUPTION OF DATA REVENUES, DATA AND/OR USE; AND / OR (iii) BRING ANY CLAIM BASED ON A PRODUCT OR SERVICE PROVIDED UNDER THIS AGREEMENT MORE THAN 12 MONTHS AFTER THE CAUSE OF ACTION ACCRUES.
- 8.3 In this Clause 8, "Liability" in relation to a Party or its suppliers means a Party's entire financial liability (including any liability for the acts or omissions of its employees, agents and/or sub-contractors) to the other Party and/or any End User whether in tort (including but not limited to negligence and breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution and/or otherwise arising directly or indirectly out of or in connection with this Agreement, its performance, contemplated performance or termination.
- 8.4 Nothing in this Agreement excludes or limits the Liability of either party for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation.

9. **Mandatory Flowdown Terms**

Reseller shall comply with any VCE mandatory flowdown terms as made available to Reseller by Distributor from time to time.

10. **Notices**

Any notice or other communication required or permitted hereunder will be given in writing to the other party at such address as will be given by either party to the other in writing. Such notice will be deemed to have been given when (i) delivered personally, (ii) sent via certified mail (return receipt requested) (iii) sent by fax (with confirmation of receipt), or (iv) by courier service.

11. **Use of Information**

Where Discloser makes Information available to the Recipient, the Recipient will only use such Discloser Information within the scope and for purpose of this Agreement. Each party agrees to hold the other's Information in strict confidence and not to disclose it to any third party without the prior written consent of the Discloser. If the Recipient is compelled by law to disclose Discloser's Information, Recipient will provide: (i) the Discloser with prompt prior notice of such compelled disclosure (to the extent legally permitted), and (ii) reasonable assistance, at Discloser's cost, if the Discloser wishes to contest the disclosure or obtain a protective order. If the Recipient discloses or uses (or threatens to disclose or use) any Discloser Information in breach of these confidentiality protections, the Discloser has the right, in addition to any other remedies available to it, to seek injunctive relief, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

12. **General**

- 12.1 **Survival:** The terms of the following provisions shall survive termination of this Agreement: (i) (ii) Term and Termination (Section 15); (iii) Confidentiality (Section 13); (iii) Warranties (Section 6) Indemnification (Section 7); (vi) Limitation of Liability (Section 8).
- 12.2 **Term:** This Agreement shall commence upon the Effective Date and unless terminated in the manner set forth above, shall remain in effect for as long as Reseller has a then current product ordering agreement with the Distributor.
- 12.3 **Entire Agreement:** The terms contained herein constitute the entire agreement between the parties and agreements, either oral or written and shall replace any existing terms that may be in place between Reseller and VCE at the point this Agreement is signed or accepted. No modification or amendment hereto, nor any waiver of any rights herein, shall be effective unless assented to in writing by both parties.
- 12.4 **Assignment:** Reseller shall not assign this Agreement or any of its rights, or delegate any its obligations hereunder without VCE' prior written consent, and any such action in violation of the foregoing shall be void.
- 12.5 **Severability and Waiver:** If any provision hereof shall be held illegal or unenforceable, such provision shall be deemed separable from, and shall in no way affect or impair the validity or enforceability of, the remaining provisions. The waiver of any breach or default shall not constitute a waiver of (i) any other right or remedy hereunder, or (ii) any subsequent breach or default.
- 12.6 **Independent Contractors:** Each party shall act only as an independent contractor and not as an employee, agent, servant, or representative of the other. Neither party shall have any authority to transact business or make any commitments or speak on behalf of the other party unless expressly authorized in writing by an officer of the other party. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party. Reseller shall not make any statement (or fail to correct any statement) which indicates that Reseller is an agent or representative of VCE in any capacity, or that Reseller is authorized by VCE to do more than perform the ordinary functions of an independent contractor and reseller of VCE Products.
- 12.7 **Government Regulations:** The VCE Products and the technology included therein provided to Reseller are subject to governmental restrictions on exports from the U.S.; restrictions on exports from other countries in which such Products and technology included therein may be produced or located; disclosures of technology to foreign persons; exports from abroad of derivative products thereof; and the importation and/or use of such Products and technology included therein outside of the United States (collectively, "Export Laws"). Diversion contrary to



U.S. law is expressly prohibited. Reseller shall, at its sole expense, comply with all Export Laws and VCE export policies made available to Reseller by VCE. Reseller represents that it is not a Restricted Person, which shall be deemed to include any person or entity: (1) located in countries that are embargoed by the U.S. government or become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (2) on any restricted person or entity list maintained by any U.S. governmental agency. Certain information, products or technology may be subject to the International Traffic in Arms Regulations ("ITAR"). This information, products or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with ITAR.

- 12.8 Governing Laws:** Where the Reseller is incorporated in the U.S, Canada or Mexico, this Agreement is governed by the State of New York. For all other jurisdictions, this Agreement is governed by the laws of England and Wales and the exclusive jurisdiction of the English courts. Nothing in this Agreement shall be construed as precluding the bringing an action for injunctive relief or other equitable relief.
- 13. Confidentiality:** Where Discloser makes Confidential Information available to the Recipient, the Recipient will only use such Discloser Confidential Information within the scope and for purpose of this Agreement. Each party agrees to hold the other's Confidential Information in strict confidence and not to disclose it to any third party without the prior written consent of the Discloser. If the Recipient is compelled by law to disclose Discloser's Confidential Information, Recipient will provide:(i) the Discloser with prompt prior notice of such compelled disclosure (to the extent legally permitted), and(ii) reasonable assistance, at Discloser's cost, if the Discloser wishes to contest the disclosure or obtain a protective order. If the Recipient discloses or uses (or threatens to disclose or use) any Discloser Confidential Information in breach of these confidentiality protections, the Discloser has the right, in addition to any other remedies available to it, to seek injunctive relief, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

14. Definitions

Documentation means the then current, generally available, written user manuals and online help and guides for Products.

Information means non-public information relating to financial, business, marketing, operations, scientific, technical, economic or engineering information, and other proprietary information of the party disclosing such information its affiliates, subsidiaries or parent ("**Discloser**"), (including all originals, copies, digests and summaries in any form); provided, however, Confidential Information does not include any specific information which: (i) is or becomes public other than by disclosure of the party receiving the Confidential Information ("**Recipient**"), (ii) is disclosed by the Discloser to anyone without similar restrictions on disclosure, (iii) is or becomes known to the Recipient without proprietary restrictions when, or subsequent to, disclosed by the Discloser, (iv) is independently developed by the Recipient without reference to the Discloser's Confidential Information, or (v) is disclosed by order of law.

Hardware means the physical hardware components and related Documentation provided to Reseller pursuant to an Order.

Product means Hardware and Software collectively that comprise the VCE Vblock™ System.

Reseller Application means the completed application form submitted by Reseller and approved by VCE in connection with Reseller's authorization as a reseller and/or participation in the VCE Partner Program, or the successor thereto, as designated by VCE.

Software means all software and related Documentation (included as defined in the applicable Exhibits) provided to Reseller pursuant to an Order including Software Releases and Third Party Software.

Territory means the country(ies) in which Reseller is authorized by Distributor to market VCE products as identified in the Reseller Application approved by VCE.

Third Party Software means Software supplied by any third party to or through VCE and licensed to an End User.

By signing below, the Reseller, intending to be legally bound, agrees to the terms of this Agreement AS WITNESS the hands of the duly authorised representatives of the Reseller as of the Effective Date:-

SIGNED for and on behalf of Reseller

by an authorised signatory:

Signature:

Name:

Title: