



HP Virtual Original Equipment Manufacturer Agreement

V-OEM – _____

Agreement # _____

1. **Parties.** These terms represent the agreement (“**Agreement**”) governing the development, testing, certification, deployment and support of the V-OEM solution from [HP, Inc. entity] (“**HP**”) and the [insert OEM entity] (“**V-OEM**”).
2. **Definitions and details.** Capitalized terms used but not otherwise defined in this Agreement are defined in **Exhibit 1 (Agreement Details)**.
3. **V-OEM appointment.**
 1. V-OEM shall certify, test, cause to be deployed, and generate demand for incorporation of HP’s products (as defined in Exhibit 1 as Eligible Products) with V-OEM’s intellectual property in a complete V-OEM Solution for V-OEM end users. Unlike a traditional OEM, V-OEM will not purchase or take title to the HP hardware and resell it to any third party. Instead, V-OEM will work with their designated V-OEM Supplier that will purchase the Eligible Products from HP.
 2. If V-OEM acquires Eligible Products from a V-OEM Supplier, for the purposes of development, testing and certification, the loan or acquisition of those Eligible Products will be on such terms and conditions as may be agreed between V-OEM and the V-OEM Supplier subject to the terms and conditions of this Agreement.
4. **V-OEM Supplier Designation.**
 1. V-OEM shall designate a V-OEM Supplier in Exhibit 1. V-OEM Supplier must be an HP authorized partner in good standing. V-OEM Supplier shall enter into a V-OEM Supplier Agreement with HP in order to act as a V-OEM Supplier for V-OEM.
5. **V-OEM obligations and restrictions.**
 1. V-OEM (at V-OEM’s sole cost) must:
 - a. define the appropriate HP products, configurations (BOM’s), integration procedures and solution support services for the V-OEM Solution;
 - b. provide Level 1 support for the V-OEM Solution incorporating the Eligible Products. “Level 1 support” means technical investigation and diagnostic analysis by trained, specialist personnel with requisite skills and knowledge relating to V-OEM Solution and its component parts, including (for example) searching for known issues, identifying and issuing available corrections and workarounds as appropriate and remote support;
 - c. designate an authorized partner or HP to build the defined V-OEM Solution;
 - d. if applicable, designate authorized resellers to distribute the V-OEM Solution as needed globally;
 - e. designate either the Consolidated Billing or Split Billing model, as described in Exhibit 1. If V-OEM will use the Split Billing model, then V-OEM shall provide the mutually agreed upon volume commitment as



provided in Exhibit 1. At the beginning of every calendar quarter, V-OEM shall provide a 12-month rolling forecast;

- f. cause the integration of V-OEM's software by either V-OEM, a V-OEM representative (not an End User), V-OEM Supplier or HP; and
 - g. if integration work is done in a manner that requires shipping unmodified HP hardware product without the V-OEM intellectual property to a third party that will sell the V-OEM Solution:
 - (1) V-OEM Supplier must be provided a list of authorized resellers for the VOEM Solution.
 - (2) V-OEM must work as needed with the V-OEM Supplier to insure units are not diverted to unauthorized purchasers.
2. V-OEM acknowledges that if V-OEM fails to maintain to HP's recommended firmware revision levels in the Eligible Products included with the V-OEM Solution, then HP spares may be incompatible and HP has the right to refuse to install such spares.
 3. V-OEM shall comply with all laws, regulations and legal requirements applicable to the exercise of V-OEM's rights, and performance of V-OEM's obligations, under this Agreement.
- 6. Scope.** This Agreement may be used on a global basis by the parties' "**Affiliates**", meaning any entity controlled by, controlling, or under common control with a party. Such Affiliates can confirm their agreement to this Agreement either by signature where indicated at the end or by referencing these terms on orders. All orders, for purposes of this agreement, will come to HP through the V-OEM Supplier and not the V-OEM. The V-OEM Supplier must be an HP authorized partner with rights to purchase from HP within the applicable territory (ies).
- 7. Support Services.** Warranty for Eligible Products will flow to the V-OEM Supplier and not to the V-OEM or the end customer of the V-OEM Solution; however, the V-OEM may place warranty or support calls regarding the Eligible Products to HP in support of V-OEM's obligation for Level 1 support of the V-OEM Solution.
- 8. Remedies.** HP is not providing any warranty, express or implied to V-OEM on any Eligible Products or HP services, including without limitation suitability of the Eligible Products for the V-OEM Solution. To the extent permitted by law, HP disclaims all warranties with respect to any Eligible Products or services.
- 9. Intellectual Property Rights.**
1. No transfer of ownership of any intellectual property will occur under this Agreement. If deliverables are created by HP specifically for V-OEM and identified as such in supporting material, which the parties identify as incorporated either by attachment or reference ("**Supporting Material**"), HP hereby grants V-OEM a worldwide, non-exclusive, fully-paid royalty-free license to reproduce and use copies of the deliverables internally. Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work ("SOW"s), published warranties and service level agreements, and may be available to V-OEM in hard copy or by accessing a designated HP website.
 2. If indicated in **Exhibit 1 (Agreement Details)**, V- OEM may use and display the HP Trademarks specified in the Trademark Requirements (included as Supporting Material at



<http://www.hp.com/hpinfo/abouthp/trademarks/> on its advertising and marketing materials for the V-OEM Solution, subject to V-OEM complying with all the Trademark Requirements.

3. If an inappropriate action involving the HP brand arises which is derived from the V-OEM Solution, V-OEM will reasonably cooperate with HP, on HP's request, to maintain and defend HP's rights in the HP brand, to assist HP to protect and preserve the good reputation of the HP brand. V-OEM must not use or authorize the use of, or make or authorize any application to register, any trade mark, domain name, business or company name or other sign that is substantially identical to, or confusingly similar to, any HP brand.

10. Confidentiality. Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

11. Personal Information. Each party shall comply with its respective obligations under applicable data protection legislation. HP does not intend to have access to personally identifiable information ("PII") of V-OEM or End-Users in providing services. To the extent HP has access to V-OEM PII stored on a system or device of V-OEM, such access will likely be incidental and V-OEM will remain the data controller of V-OEM PII at all times. HP will use any PII to which it has access strictly for purposes of delivering the services ordered.

12. Global Trade and Anti-Corruption Compliance.

V-OEM Supplier is governed by the export terms of their HP partner agreement. V-OEM acknowledges that the Eligible Products and deliverables (if any) sold under this Agreement are subject to the export laws of the US and may be subject to the export laws of other countries. V-OEM must comply with all applicable export and import laws (including national and international laws prohibiting or restricting exports to embargoes or sanctioned countries, currently including Cuba, Iran, North Korea, North Sudan (Khartoum) and Syria) and must obtain all required export or import authorizations prior to export, import or transfer. HP may suspend its performance under this Agreement in the event of V-OEM violation of these obligations or to the extent required by applicable laws. The parties acknowledge they are familiar with the US Foreign Corrupt Practices Act, the UK Bribery Act and anti-corruption legislation in other relevant jurisdictions. The parties agree that they will not, in connection with this Agreement: (a) make any payment to; (b) transfer anything of value to; (c) offer, promise or give a financial or other advantage or request to; or (d) agree to receive or accept a financial or other advantage from, in each case either directly or indirectly, (i) any government official or employee (including employees of a government corporation or public international organization); (ii) any political party or candidate for public office or (iii) any other person or entity with an intent to obtain or retain business or otherwise gain an improper business advantage.

13. Limitation of Liability. HP's liability to V-OEM under or in connection with this Agreement is limited to US\$1,000,000. Neither V-OEM nor HP will be liable for lost revenues or profits, downtime costs, loss or damage to data (whether direct, indirect or otherwise) or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; wilful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.



- 14. Disputes.** If either party is dissatisfied with the other party's performance under this Agreement and disagrees with the proposed resolution, the parties both agree to promptly escalate the issue to a vice president (or equivalent executive) in their respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
- 15. Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 16. Term and termination.**
1. This Agreement commences on the Commencement Date and continues for two years (the **Term**) subject to section 16.2 below. It will automatically extend for successive one (1) year terms subject to section 16.2 below unless either party notifies the other in writing at least 90 days before the end of the Term or successive term (as the case may be) that this Agreement will expire.
 2. Either party may terminate this Agreement (and cancel any unfulfilled obligations) at any time on written notice if the other:
 - a. fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details; or
 - b. becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment.
 3. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
 4. In the event that V-OEM Supplier, using the split billing model, does not ship an amount that is at least 50% of the Forecasted Annual Volume stated in Exhibit 1, then HP may terminate this Agreement. The initial period shall be 18 months from the time the applicable Eligible Product is made available to V-OEM's customers, and each 12 month period thereafter.
 5. If V-OEM Supplier fails to be a partner in good standing with HP or if V-OEM Supplier fails to cure a material breach of the V-OEM Supplier Agreement with HP within a reasonable period after being notified in writing of the details, V-OEM must use best efforts to designate an alternate V-OEM Supplier to HP as soon as is practicable to minimize disruption of order fulfillment.
- 17. Publicity.** Neither party will publicize or disclose the existence, or any term, of this Agreement to any third party without the prior written consent of the other party, except as required by law.
- 18. Assignment.** V-OEM must not assign, novate or transfer any or all of its rights or obligations under this Agreement, whether by operation of law or otherwise, without HP's prior written consent (not to be unreasonably withheld or delayed).
- 19. General.** This Agreement represents the entire understanding between the parties with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. The word "including" in



this Agreement means “including, without limitation”. V-OEM and HP agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising under this Agreement will be governed by the laws of California excluding rules as to choice and conflict of law. The parties agree that this Agreement and any changes, notices and amendments may be conducted and executed using electronic signature tools.

The parties confirm their agreement to these terms either by referencing them in the relevant order or by executing below:

Signed for
HP: *[Insert signature]*

By:
[Insert name]

Title:
[Insert signatory's business title]

HP Entity:

Address:

Date:

Signed for
V-OEM: *[Insert signature]*

By:
[Insert name]

Title:
[Insert signatory's business title]

Phone #
and email: *[Insert signatory's phone# and email]*

V-OEM
Company *[Insert V-OEM Company]*
Name

.....

Address:



Date:

Exhibit 1: Agreement Details

This Exhibit 1 may be updated by mutual agreement from time to time using a process by which V-OEM submits a written request to HP and if HP agrees, HP will issue a signed Supplement to this Exhibit 1 and such Supplement shall be deemed a part of this Agreement.	
Authorized Territory	[Global] <i>OR</i> [Each territory listed below]: _____
Cloud V-OEM Service	A service hosted remotely and delivered by V-OEM to End-Users over the internet by a technical solution which involves the V-OEM Solution as a necessary and integral part. Cloud V-OEM Services are prohibited unless described below: _____
Commencement Date	_____
V-OEM Customer Billing Type	___ Consolidated Billing model, means the End User receives a consolidated invoice from either the V-OEM Supplier, V-OEM, HP Financial Services or V-OEM designated financial services firm where the Eligible Product price is not disclosed in the invoice. ___ Split billing model, means the End User receives separate invoices from the V-OEM Supplier for the Eligible Products and the V-OEM for the balance of the V-OEM Solution.
Eligible Product (List HP Products included in V-OEM Solution)	1. _____ 2. _____ 3. _____ 4. _____
If Split billing	Split billing product number : _____ Forecasted Annual Volume \$ _____
If Split billing	___ HW & SW will be integrated prior to leaving for V-OEM supplier; or ___ HP Bundle will be sold as a single part number and named "V-OEM solution" bundle.
Split Billing Product number Description	Provide the complete description of the components of the split billing product being ordered by the V-OEM's End-Users. _____ _____ _____
End-User	A third party customer that is not affiliated with V-OEM and that acquires a V-OEM Solution from V-OEM or V-OEM Supplier for its own internal business use.



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V-OEM Supplier(s)

The V-OEM Supplier(s) is the designated party who will provide hardware on behalf of the V-OEM. HP's authorized V-OEM Supplier, as listed below:

1. _____
2. _____

V-OEM Solution

The final product produced by a manufacture or assembly process (performed by V-OEM or V-OEM Supplier) under which an Eligible Product is combined with, or integrated into, the V-OEM Solution, such that the Eligible Product becomes an integral and necessary component of the V-OEM Solution and without which the V-OEM Solution would be wholly or partly inoperable. The V-OEM Solution is further described below including documentation at what point integration will occur and who will be responsible:

Permissible Modifications

The modifications (if any), which HP authorizes V-OEM Supplier to make to Eligible Products, as identified in the V-OEM Supplier Agreement.

Permission to use HP Trademarks

No permitted use except as described below:

