



## HP Virtual Original Equipment Manufacturer Agreement

AGREEMENT # \_\_\_\_\_

1. **Parties.** These terms represent the agreement governing the purchase of products and services from the HP entity identified in the signature section below (“**HP**”) and by the Virtual Original Equipment Manufacturer entity identified below (“**V-OEM**”) and is effective as the date of last signature below (“**Effective Date**”). In addition, your HP quote will reference terms, which shall govern except as set forth below (these terms and the HP terms referenced in your quote, collectively referred to as the “**Agreement**”). This Agreement may be used by V-OEM either for a single Order or as a framework for multiple Orders.
2. **Definitions.**
  - a. “**V-OEM.**” An entity who acquires HP product directly from HP or from a Preferred OEM Integration Partner for use as part of their complete solution, as further defined in this agreement
  - b. “**Preferred OIP, (Preferred OEM Integration Partner).**” An HP Reseller Partner, who has previously been given the authority to act as a supplier of unique V-OEM services to the V-OEM.
  - c. “**End-User.**” A third-party customer that is not affiliated with V-OEM and that acquires an V-OEM Product from V-OEM or an V-OEM Authorized Reseller for its own internal business use.
  - d. “**V-OEM Authorized Reseller.**” Authorized third-party reseller or distributor (if any) of V-OEM Products. Based on the capabilities and duties of the V-OEM Authorized Reseller, HP may recognize the reseller as an V-OEM Distribution Partner (ODP), or an V-OEM Integration Partner (OIP).
  - e. “**Support Services.**” HP support (either a standard offering or customized services) provided directly to End-Users for HP Products which have been integrated into V-OEM Products supplied to End-Users.
  - f. “**HP Product.**” The HP branded hardware provided under this Agreement, which is used by the V-OEM as part of their V-OEM Product. If specific HP Products are not allowed to be used as part of the V-OEM Product, those specific products should be listed in **Exhibit 1**.
  - g. “**V-OEM Product.**” The final product produced by a manufacture or assembly process (performed by V-OEM or Preferred OIP under which an HP Product is combined with, or integrated into, the V-OEM Product, such that the HP Product becomes an integral and necessary component of the V-OEM Product and without which the V-OEM Product would be wholly or partly inoperable.
3. **V-OEM Appointment.**
  - A. V-OEM may purchase HP Products on a non-exclusive basis from HP or a Preferred OEM Integration Partner, solely for the following purposes (“**Authorized V-OEM Activities**”):
    - a. development, testing, manufacture or creation, or demonstration of V-OEM Products;
    - b. supply (by sale, lease, loan or otherwise) of V-OEM Products to End-Users either directly or through a Preferred OEM Integration Partner;
    - c. repair, upgrade, maintenance and support of V-OEM Products supplied to End-Users; or
  - B. If V-OEM acquires HP Products from a Preferred OEM Integration Partner, the acquisition of those HP Products will be on such terms and conditions as may be agreed between V-OEM and the Preferred OEM Integration Partner.
4. **V-OEM Responsibilities**
  - a. V-OEM will ensure that HP Products forming part of V-OEM Products are certified in and localized for the country of destination and supplied with all required local accessories, language manuals and software;
  - b. V-OEM will implement any changes developed for HP Products promptly on notice from HP for safety, data integrity or legal issues and, if requested by HP, promptly notify End-Users and V-OEM Authorized Resellers of such changes. HP will provide to V-OEM, at HP’s expense, a field change notice and the



- necessary parts to retrofit V-OEM Products supplied to End-Users , manufacturing inventory and spares inventory;
- c. V-OEM will ensure that V-OEM Products adhere to all HP operating and non-operating specifications for the applicable HP Products;
  - d. V-OEM will remain at all times solely responsible for all development, testing, manufacturing and assembly of V-OEM Products (including interoperability and compatibility with the V-OEM Products including V-OEM software), for all sale, supply, marketing, installation, maintenance, support and updating of V-OEM Products and for all communications with End-Users relating to HP warranties; and
  - e. V-OEM will not use any HP Products acquired under this Agreement for V-OEM's internal business use or for any purpose other than Authorized V-OEM Activities; or modify the HP Product such that it doesn't meet the published operating specifications; and
  - f. V-OEM will ensure that the designated Preferred OIP is fully capable of performing any and all duties above, as agreed to between V-OEM and Preferred OIP.
  - g. V-OEM shall certify, test, cause to be deployed, and generate demand for incorporation of HP Products with V-OEM's Product thereby producing a complete V-OEM Solution ("V-OEM Solution") for End Users
5. **Global Implementation.** 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. The parties can confirm their agreement to this Agreement either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under this Agreement by placing orders which specify product or service delivery in the same country as the HP Affiliate accepting the Order, referencing this Agreement, and specifying any additional terms or amendments to reflect local law or business practices.
  6. **Prices and Taxes.** Prices are set out in your HP quote that is provided either to the V-OEM or the Preferred OIP.
  7. **Preferred OIP.** A V-OEM will be asked to choose one of HP's pre-authorized Preferred OIP partners to perform duties. HP has already provided authority to the Preferred OIP, and will operate under the terms of their Preferred OIP guide.
  8. **Support Services.** HP makes standard Support Services available for HP Products. Additional terms and conditions applicable to all Support Services performed under this Agreement are included at **Exhibit 3 (Support Services Terms)**.
  9. **Services with Deliverables.** If Supporting Material for services define specific deliverables, HP warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If V-OEM notifies HP of such a non-conformity during the 30 day period, HP will promptly remedy the impacted deliverables or refund to V-OEM the fees paid for those deliverables and V-OEM will return those deliverables to HP.
  10. **Intellectual Property Rights.**
    - a. No transfer of ownership of any intellectual property will occur under this Agreement. V-OEM grants HP a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HP and its designees to perform ordered services. If deliverables are created by HP specifically for V-OEM and identified as such in Supporting Material, HP hereby grants V-OEM a worldwide, non-exclusive, fully-paid royalty-free license to reproduce and use copies of the deliverables to support their V-OEM Product.
    - b. V-OEM must not (subject to section 11.c) use any of HP's trademarks, brand names or logo-(the "**HP Brand**") to convey branding of anything other than the HP Product, and must not remove any of the following affixed by HP on or to HP Products: badges, labels, stickers, transfers or similar bearing the HP Brand or any regulatory compliance statements, safety or agency certification labels, HP Product serial number, Microsoft COA label and country of origin label; or



- c. If indicated in **Exhibit 1**, V-OEM may use and display the HP Trademarks specified in the Trademark Requirements (attached as Supporting Material) on its advertising and marketing materials for V-OEM Products, subject to V-OEM complying with all the Trademark Requirements and V-OEM Brand Guidelines.
  - d. V-OEM must 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.
11. **Intellectual Property Rights Infringement.** HP will defend and settle any claims against V-OEM that allege that an HP-branded product or service as supplied under this Agreement infringes the intellectual property rights of a third party. HP will rely on V-OEM's prompt notification of the claim and cooperation with the HP defense. HP may modify the product or service so as to be non-infringing and materially equivalent, or may procure a license. If these options are not reasonably available, HP will refund to V-OEM the amount paid for the affected product in the first year or the depreciated value thereafter or, for Support Services, the balance of any pre-paid amount. HP is not responsible for claims resulting from:
  - a. any unauthorized use of the products or services; this section shall also apply to deliverables identified as such in the relevant Supporting Material except that HP is not responsible for claims resulting from deliverables content or design provided by V-OEM;
  - b. HP's compliance with V-OEM or third party designs, specifications, instructions, or technical information;
  - c. changes made by V-OEM or a third party or by HP at V-OEM's direction;
  - d. V-OEM's non-compliance with the specifications or any other Product specific terms or requirements set forth in Documentation provided by HP to V-OEM; or
  - e. V-OEM's use of HP-branded products with products, software, or services that are not HP branded.
12. **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.
13. **Personal Data.** Each party will 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 or End User 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.
14. **Global Trade and Anti-Corruption Compliance.** V-OEM acknowledges that the HP Product 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. V-OEM will not sell or provide HP Product or deliverables to any party subject to trade sanctions, restrictions or controls imposed by the US government or other national governments. HP may suspend its performance under this Agreement in the event of V-OEM's 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.

- 15. **Disputes.** If V-OEM is dissatisfied with any products or services purchased under this Agreement and disagrees with HP's 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.
- 16. **Term.** In addition to termination rights under the Single Order Terms and Conditions, these terms commence on the Effective Date and continues for two (2) years (the "**Term**"). It will automatically extend for successive one (1) year terms, 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.
- 17. **Audit.** V-OEM must create and maintain (and must ensure Preferred OIPs create and maintain) accurate and detailed operational and financial records and documents verifying and demonstrating V-OEM's and Preferred OIPs' compliance with this Agreement (including inventory information, records of supplies to End-Users of HP Product forming part of V-OEM Products and of model, inbound and outbound part and serial numbers of HP Product. Promptly upon a request from HP (and in any event within ten (10) business days) V-OEM must provide to HP copies of all records and documents as may be reasonably requested by HP or otherwise allow HP's authorized representatives to access such records and documents for the purposes of audit and inspection. V-OEM may request, at its expense, the use of an independent auditor. HP may only make a request under this section once per calendar year except where HP has reasonable grounds to believe that V-OEM has failed to comply with this Agreement. If an audit reveals any discrepancy, without limiting HP's rights, V-OEM must reimburse HP for all amounts in respect of discounts or special pricing improperly received by V-OEM and HP may debit, invoice or set-off such amounts.
- 18. **Assignment.** V-OEM must not assign, delegate, novate or transfer any or all of its rights or obligations under this Agreement whether voluntary or by operation of law without HP's prior written consent (not to be unreasonably withheld or delayed), and any such assignment, delegation, novation, or transfer in violation of this Section will be void.
- 19. **Publicity.** Neither party will publicize or disclose any specific term of this Agreement to any third party without the prior written consent of the other party, except as required by law, however, either party can disclose the existence of this Agreement for the purpose of selling and marketing HP products to worldwide markets.
- 20. **Compliance with Laws.** The parties agree to comply with all laws, regulations and legal requirements applicable to both party's obligations, under this Agreement.
- 21. **Integration.** 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 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: .....

*[Insert 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]*

Address: .....

.....

Date: .....

*[Insert date]*



## Exhibit 1: Non-Eligible and V-OEM Products

This Exhibit 1 lists Eligible and V-OEM Products.

<b>Non-Eligible Products</b> (not allowed to be sold to V-OEM, or Preferred OIP, as part of the V-OEM Product)	1. _____ 2. _____ 3. _____ 4. _____ 5. _____
<b>V-OEM Product</b>	The final product produced by a manufacture or assembly process (performed by V-OEM or a Preferred OIP under which an HP Product is combined with, or integrated into, the V-OEM Product, such that the HP Product becomes an integral and necessary component of the V-OEM Product and without which the V-OEM Product would be wholly or partly inoperable. The V-OEM Product is further described below:  _____ _____ _____ _____
<b>Preferred OEM Integration Partner (Preferred OIP)</b>	HP's authorized Preferred OIP as listed:  _____
<b>Use of HP Trademarks</b>	No permitted use except as described below:  _____ _____ _____ _____



## Exhibit 2: V-OEM Software License

### 1. LICENSE GRANT

- a. HP grants to V-OEM a non-exclusive, non-transferable worldwide License during the term of the Agreement to use and supply HP Software solely to the extent strictly necessary to conduct Authorized V-OEM Activities.
- b. This License includes the right for V-OEM to:
  - i. distribute HP Software through its channels of distribution solely in conjunction with the distribution of an V-OEM Product to End-Users in accordance with the Agreement;
  - ii. reproduce, edit (subject to approval by HP before distribution to End-Users), translate, publish, and distribute through its channels of distribution Documentation in electronic form in conjunction with the HP Software; and
  - iii. distribute through its channels of distribution any hard copy Documentation obtained from HP.
- c. This License excludes any right for V-OEM to Use HP Software for V-OEM's internal use, for development or testing or for any other purpose not expressly stated in sections 1.a and 1.b. There are no implied licenses.
- d. V-OEM's right to Use HP Software to provide maintenance and support of V-OEM Products supplied to End-Users during the term of the Agreement survives termination or expiry of the Agreement.

### 2. MICROSOFT LICENSE GRANT LIMITATION

- a. Section 2 of this Exhibit, applies if V-OEM supplies to End-Users, V-OEM Authorized Resellers or Preferred OIPs HP Products forming part of V-OEM Products which include pre-installed, bundled, or otherwise distributed Microsoft operating system or application software ("MS Software").
- b. V-OEM will:
  - i. deliver the Microsoft Certificate of Authenticity ("COA") and Associated Product Materials ("APM") together with the V-OEM Product and will not quote a separate price for any MS Software. APM means material relating to MS Software supplied by HP with the HP Product;
  - ii. provide reasonable assistance to HP in any investigation of an incident where V-OEM or any party within V-OEM's manufacture or distribution channels delivers the COA and APM separate from V-OEM Products or quotes a separate price for any MS Software; and
  - iii. take all commercially reasonable steps to follow notices of any kind provided by Microsoft, or by HP to V-OEM, regarding any Microsoft Software distributed with HP Products forming part of V-OEM Products.
- c. If Microsoft notifies HP that HP must discontinue distribution of MS Software to V-OEM, HP will do so promptly following receipt of such notice. Under no circumstances will HP's failure to deliver MS Software to V-OEM, following receipt of such notice, constitute a breach of this Agreement.
- d. V-OEM indemnifies HP from all costs, including reasonable attorneys' fees, relating to claims by Microsoft relating to the unauthorized distribution of Microsoft products.

### 3. PREFERRED OIPS AND V-OEM AUTHORIZED RESELLERS

- a. V-OEM may sublicense the License to Preferred OIP and V-OEM Authorized Resellers solely to the extent strictly necessary for the purposes of:
  - i. in the case of Preferred OIPs, manufacturing or creating V-OEM Products in accordance with the Agreement; and



- ii. in the case of V-OEM Authorized Resellers, supplying V-OEM Products in accordance with the Agreement, but for no other purpose.
- b. Each sublicense under section 3.a, of this Exhibit, must be in writing and contain terms and conditions at least as onerous as this License.
- c. V-OEM must enforce the terms of sublicenses under section 3.a, of this Exhibit, against Preferred OIP or V-OEM Authorized Reseller and terminate any sublicense for material breach, or otherwise if requested by HP because HP reasonably believes an Preferred OIP or V-OEM Authorized Reseller is or may be in breach of its terms.

#### 4. END-USERS

V-OEM must advise each End-User that the Use of HP Software is subject to End-User's acceptance of the HP EULA. V-OEM must incorporate the HP EULA (and ensure V-OEM Authorized Resellers incorporate the HP EULA) in each V-OEM Product supplied to each End-User such that it becomes, on acceptance by End-User, a legally enforceable agreement between HP and End-User (for example, by means of a written or electronic version of the EULA, such as a "click wrap"). V-OEM must provide all assistance reasonably requested by HP from time to time to enforce the terms of the HP EULA against End-Users.

#### 5. UPDATES

When V-OEM obtains a license for a new HP software version through HP's Software Support organization or purchases an upgrade license to a new Version, V-OEM's License for the earlier Version will terminate. HP software versions are subject to the license terms in effect on the date that HP delivers or makes the version available to V-OEM.

#### 6. LICENSE RESTRICTIONS

- a. **Use Restrictions.** V-OEM must ensure that End-Users do not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations (if any) agreed by HP and V-OEM or specified in SLI. Some HP Software may require license keys or contain other technical protection measures. V-OEM acknowledges that HP may monitor V-OEM's compliance with Use restrictions and authorizations remotely, or otherwise.
- b. **Copy and Adaptation.** Unless otherwise expressly permitted by law, V-OEM may only make copies or adaptations of HP Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the HP Software. If V-OEM makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the SLI, V-OEM may not operate such backup installation of the HP Software without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable.
- c. **Copyright Notice.** V-OEM must reproduce all copyright notices that appear in or on HP Software on all permitted copies or adaptations.
- d. **Changes.** V-OEM must not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of HP Software except to the extent permitted by law, in which case V-OEM will provide HP in advance with reasonably detailed written information regarding any intended modifications, reverse engineering, disassembly, decryption, or decompilation and the intended purposes.

#### 7. LICENSE TERM AND TERMINATION

- a. This License continues in effect during the term of the Agreement but ends automatically on expiry or any termination of the Agreement. HP may terminate the License at any time on written notice to V-OEM if V-OEM fails to comply with its terms.
- b. Immediately upon expiry or any termination of the License, V-OEM will either destroy or return to HP the HP Software together with all copies. V-OEM will also remove and destroy or return to HP any





copies of the HP Software that are merged into adaptations, except for individual pieces of data in V-OEM's database. V-OEM may retain one copy of the HP Software subsequent to termination solely for archival purposes. At HP's request, V-OEM will certify in writing to HP that V-OEM has complied with these requirements.

## 8. COMPLIANCE

V-OEM agrees that HP may audit V-OEM's compliance with this License. Upon reasonable notice, HP may conduct an audit during normal business hours (with the auditor's cost being at HP's expense except if the audit identifies any non-compliance with this License).

## 9. DEFINITIONS

- a. **Documentation** means user operating instructions, manuals and specifications supplied by HP for the HP Software.
- b. **HP Software** means the version or release of the machine-readable object code instructions and data which bears an HP trademark or service mark and which is included with or embedded in an HP Product forming part of an V-OEM Product, and includes copies of the HP Software, updates and upgrades made available by HP and Documentation.
- c. **HP EULA** means HP's standard End-User License Agreement for each HP Product, as supplied by HP with the HP Product. If no EULA is supplied by HP, V-OEM or Preferred OIP may request a copy from HP and HP will make it available either in writing or for download in electronic form.
- d. **License** means the terms and conditions of this **Exhibit 2 (V-OEM Software License)** and any SLI applicable to a particular item of HP Software.
- e. **Software License Information** or **SLI** means license information or additional license terms specific to a particular item of HP Software. SLI may be found in a file in the directory for the HP Software, in license terms applicable to download of the HP Software or as accompanying information.
- f. **Use** means install, store, load, execute, and display one copy of HP Software on one device at a time for End-User's internal business purposes.



## Exhibit 3: Support Services Terms

### 1. Scope of Support Services

- a. Standard support: the scope of standard Support Services purchased by V-OEM is as described in the standard Supporting Material for the offering.
- b. Customized support: the scope of customized support services (if any) will be as agreed and described in an SOW attached to and incorporated into this Agreement as Supporting Material.
- c. End-Users only: support services purchased under this Agreement are only required to be provided to End-Users (and not V-OEM).
- d. Response times: response times are measured from when HP receives a valid support request from V-OEM.
- e. Additional services: additional services performed by HP at V-OEM's request that are not within purchased Support Services are chargeable at the applicable published service rates for the country where the service is performed.
- f. Limits of service: If V-OEM offers or provides to End-Users support and maintenance for V-OEM Products which is different to, or more extensive than, Support Services acquired by V-OEM from HP, V-OEM must take steps to clarify that V-OEM and not HP is not responsible for those services and must identify such services as "non-HP support".

### 2. V-OEM responsibilities. V-OEM is solely responsible for:

- a. software updates: installing software or firmware updates, patches or fixes for HP Products supplied by HP;
- b. support requests: initiating all support requests on behalf of End-Users. HP is not required to respond to, or supply support for, requests or contacts initiated direct by End-Users to HP;
- c. level 1 support: providing all level 1 support to End-Users at the necessary coverage hours to effectively support V-OEM Products. Level 1 support means technical investigation, diagnostic analysis and issue resolution by trained, specialist personnel with requisite skills and knowledge relating to an V-OEM Product and its component parts, including (for example) searching for known issues, identifying and issuing available corrections and workarounds as appropriate, remote or on-site support by V-OEM engineers. HP Support Services exclude level 1 support and HP is not required to provide Support Services unless or until the issue cannot be resolved through effective Level 1 support. Some product families may require additional training as described in the V-OEM program guide.

### 3. International services locations

- a. Service Transfers:
  - i. HP's obligation to provide HP Fixed Care Pack Support Services (hardware break/fix only) purchased in one country and destined for another, is conditional upon HP pre-approval and subject to the V-OEM local affiliate first signing a separate agreement with the HP local affiliate incorporating this Agreement and reflecting requirements of local laws or business practice.
  - ii. HP may perform support services in specific countries by means of an HP affiliate, and in the case of the Russian Federation, the payment agent for support services will be as notified by HP.
  - iii. HP pre-approved service relocations are only available for services transferring to an approved country; services that will remain in the country of purchase must be registered



by the V-OEM. V-OEM or Preferred OIP must request service relocation from HP for approved countries in writing within 90 days of service purchase for HP Products.

- b. Regional differences in services: some support features of support services and coverage may not be available in every country. V-OEM should review the HP Care Pack Central portal or contact an HP representative for further information.