



## CAPS™ BASIC TERMS OF USE

These Terms of Use ("Agreement") constitute an agreement between PartMiner WorldWide Inc. ("PartMiner") and you (either an individual or single entity) ("Licensee") regarding access to and use of the PartMiner CAPS Basic services (as defined below)(the "Services"). **By accessing or using the Services, you accept and agree to be bound by the terms of this Agreement.**

### 1. DEFINITIONS

1.1 "Confidential Information" shall mean any information disclosed before or after the date of this Agreement that is confidential to a party, including, without limitation, all ideas, schemas, customer lists, sales and pricing schemes, parts information, password and other access information and credentials, concepts, structures, specifications, documentation, graphics, text, images, audio and/or video components, designs, techniques, drawings, hardware, computer programs (including without limitation software applications and/or code), data, prototypes, processes, technology, know-how, methods of design and/or development, inventions, and/or other technical, business, marketing, planning information and/or data regardless of how such information is transmitted (including orally, and/or in documentary and/or machine-readable form, and/or in the form of samples from which the information may be derived).

1.2 "Data" shall mean shall mean all information, text and other materials included in and made available through the PartMiner Databases, Software or other Services, which may include, without limitation, part numbers, manufacturer identification, part descriptions, pin data, cross-reference data, parts classification scheme, end of life information, datasheets, pricing or availability information.

1.3 "Databases" shall mean PartMiner's proprietary databases (as a whole and any part of any of them) embodied in any format (including XML Server), including all Data, and any updates, revisions, modifications or derivative works to the Databases and Data.

1.4 "Disclosing Party" means the party whose Confidential Information is revealed to, and/or learned by, the Receiving Party and/or its employees or agents as contemplated by this agreement.

1.5 "Intellectual Property Rights" shall mean all rights in inventions, patents, copyrights, database rights, design rights, trade secrets, know-how, trademarks and other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world.

1.6 "Receiving Party" shall mean the party who receives or otherwise learns, and/or whose employees or agents receive or otherwise learn, Confidential Information of the Disclosing Party in connection with this Agreement.

1.7 "Services" shall mean access to and use of the CAPS Basic databases, software and accompanying documentation identified in accordance with the the terms of this Agreement.

1.8 "Software" shall mean PartMiner's proprietary computer software programs, including any hosted application, any PartMiner Updates, and the XML Server.

1.9 "Term" shall have the meaning set forth in paragraph 10.1 below.

### 2. LICENSE

2.1 Grant. Subject to all of the terms and conditions of this Agreement, and Licensee complying with all applicable PartMiner processes, procedures and Documentation, and except as otherwise specifically provided, PartMiner hereby grants to Licensee a limited, revocable, nonexclusive, nontransferable, nonsublicensable license during the Term to (i) access and/or use the Services, and (ii) to download, use, archive, and copy on a limited basis portions of the Data provided as part of the Services, solely for Licensee's internal non-commercial purposes and solely in the format delivered to Licensee.

2.2 No Additional Rights. Except as expressly provided in this Agreement, nothing in this Agreement shall operate to assign, license, or otherwise transfer any Intellectual Property Rights or any other rights or interests from PartMiner to Licensee. PartMiner hereby reserves all rights owned or licensable by PartMiner that are not expressly granted herein to Licensee. There are no licenses by implication under this Agreement.

### 3. LICENSE RESTRICTIONS

3.1 Access and Use. Subject to the terms and conditions of this Agreement, only Licensee may access and use the Services, and the Services may only be used for Licensee's internal non-commercial purposes. Licensee shall not disclose or share any User ID, passwords or other access credentials with any other person. Without limiting the generality of the foregoing, except as specifically set forth in this Agreement, Licensee shall not: (a) market, sell or distribute the Services or any portion of the Services; (b) make the Services or any portion of the Services available to any individuals other than Licensee's Authorized Users; (c) download, use, modify, archive, publish, transmit, translate, reverse engineer, decompile, disassemble, or create derivative works based upon, the Services; (d) copy the Services, in whole or in part; (e) rent, lease, grant a security interest in, or otherwise transfer or attempt to transfer any rights in or to the Services or any portion of the Services; or (f) remove or deface any legends, restrictions, product identification, copyright, trademark or other proprietary notices from the Services and/or any related documentation. Licensee shall be responsible for each Authorized User's compliance with this Agreement.

3.2 Audit Right/Monitoring. PartMiner shall have the right, upon reasonable notice, during normal business hours, to inspect Licensee's computer system(s) and documentation and manuals to ensure compliance by Licensee with the use restrictions contained in this Agreement. Licensee acknowledges and agrees that PartMiner will continually monitor and access non-user-specific traffic and Services access in order to determine whether this Agreement is being complied with, to protect its Intellectual Property, and for Services improvement. Licensee agrees to provide PartMiner with proxy/IP or other verifiable information upon request in order to determine license compliance, facilitate security, and protection of PartMiner's Intellectual Property.

4. **LICENSEE OBLIGATIONS.** In addition to any other obligations identified in this Agreement, Licensee shall have the following responsibilities:

4.1 Access and Security. Licensee shall be solely responsible for all use of the Services (including use by Authorized Users). Licensee agrees to notify PartMiner immediately if Licensee becomes aware of any unauthorized use of the Services (including unauthorized use by Authorized Users or use by unauthorized users).

4.2 Export Controls. Licensee acknowledges that Services (or any portion thereof, including but not limited to the Data and Software) provided under this Agreement may be subject to U.S. export laws and regulations and any use or transfer of such products, software, and technical information must be authorized under those regulations. Licensee agrees that it will not use, distribute, transfer, or transmit any products, software, or technical information obtained hereunder (even if incorporated into other products), except in compliance with U.S. export regulations. If requested by PartMiner, Licensee also agrees to sign written assurances and other export-related documents as may be required to comply with U.S. export regulations.

4.3 U.S. Government Restricted Rights. The United States Government's rights with respect to the Services are limited by the terms of this License Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable.

4.4 Indemnification. Licensee shall indemnify, defend and hold PartMiner and its Affiliates and subsidiaries, and their respective officers, directors, partners, agents, employees, and licensees harmless from and against any and all claims, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of (a) the use or authorization of use by Licensee, its Authorized Users or any third party of the Services, and/or (b) any breach of any representation, warranty or covenant made by Licensee pursuant to this Agreement, or violation of any law or regulation.

### 5. OWNERSHIP

As between PartMiner and Licensee, PartMiner is the sole owner of all right, title and interest, including all Intellectual Property Rights in and to the Services, including any deliverables or work product arising out of or provided as part of the Services. Licensee acknowledges that the Services may be protected by United States and international copyright and other intellectual property laws and that Licensee shall obtain no rights or title in the Services, other than as set forth in this Agreement.

### 6. WARRANTIES AND LIMITATIONS OF LIABILITY

6.1 Authority. Each party represents and warrants that it has all requisite corporate power and authority to enter into this Agreement and is fully capable of performing its obligations under, and in accordance with,

this Agreement.

**6.2 DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPH 7.1, LICENSEE ACKNOWLEDGES AND UNDERSTANDS THAT THE SERVICES ARE PROVIDED “AS IS” AND WITHOUT WARRANTY BY PARTMINER OR ITS THIRD PARTY PROVIDERS OF ANY KIND AND, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, PARTMINER AND ITS THIRD PARTY PROVIDERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT. THERE IS NO WARRANTY THAT THE SERVICES WILL MEET LICENSEE’S REQUIREMENTS, OR THAT LICENSEE’S ACCESS TO THE SAME WILL BE UNINTERRUPTED OR ERROR-FREE. NEITHER PARTMINER NOR ITS THIRD PARTY PROVIDERS WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES WITH RESPECT TO PERFORMANCE, ACCURACY, RELIABILITY, SECURITY, CAPABILITY, CURRENTNESS OR OTHERWISE. LICENSEE WILL NOT HOLD PARTMINER AND/OR ITS THIRD PARTY PROVIDERS RESPONSIBLE FOR ANY DAMAGES THAT RESULT FROM LICENSEE’S USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY INFECTIONS OR CONTAMINATIONS OF LICENSEE’S COMPUTERS, WHICH MAY RESULT FROM SAID USE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY PERSON SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER RELATING TO PARTMINER AND/OR ITS THIRD PARTY PROVIDERS.

**6.3 LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, PARTMINER (INCLUDING PARTMINER’S THIRD PARTY LICENSORS OR PROVIDERS) SHALL NOT BE LIABLE TO LICENSEE (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM LICENSEE) FOR DIRECT, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND -- INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS AND LOSS OF DATA -- IN ANY WAY RELATED TO THIS AGREEMENT (INCLUDING WITHOUT LIMITATION AS A RESULT OF ANY BREACH OF ANY WARRANTY OR OTHER TERM OF THIS AGREEMENT OR AS A RESULT OF NEGLIGENCE OR BREACH OF STATUTORY DUTY), REGARDLESS OF WHETHER THE PARTY THAT IS LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL EITHER PARTY’S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY REASON EXCEED THE FEES PAID OR RECEIVED BY THAT PARTY.

## **7. CONFIDENTIALITY**

7.1 Licensee’s Obligations. Licensee acknowledges that, except as provided in paragraph 8.3, the Services, including without limitation the Data, Databases, and Software, and any information or documentation provided by PartMiner relating thereto, including all User IDs, passwords and other access credentials, as well as any information concerning the business of PartMiner, shall be treated as Confidential Information of PartMiner, and Licensee agrees to keep such information strictly confidential. Licensee agrees that it shall not use any such information for any purpose not expressly authorized by this Agreement. Without limiting the generality of the foregoing, Licensee agrees not to disclose such information to any person or entity other than, on a need to know basis, Licensee’s employees and agents who are under a duty to Licensee not to disclose such information. Licensee agrees to instruct such employees, agents and Authorized Users as to the appropriate steps to be taken to satisfy Licensee’s obligations hereunder, and shall be responsible for the employees’ and agents’ compliance with the terms of this Agreement. Licensee agrees that it will promptly inform PartMiner of any conduct by any party inconsistent with these provisions and will take all reasonable and lawful steps to terminate such conduct. Licensee shall indemnify and hold PartMiner harmless from any loss, damage or expense incurred by PartMiner as a result of any breach by Licensee, its employees, agents or Authorized Users of the confidentiality provisions of this Agreement.

7.2 Return. Upon termination of this Agreement for any reason, each party agrees promptly to return or, at the other party’s option, delete or destroy, all Confidential Information and copies thereof of the other party.

## **8. TERM AND TERMINATION**

8.1 Termination. PartMiner may terminate this Agreement at any time in its discretion

## **9. MISCELLANEOUS**

9.1 Relationship. Nothing in this Agreement shall be deemed to create a partnership or joint venture of any kind between Licensee and PartMiner.

9.2 Assignment. PartMiner may assign any or all of its rights hereunder to any company, partnership or other entity. Licensee may not, without the prior written consent of PartMiner, assign or transfer this Agreement or CAPS Basic Terms of Use

any of its rights or obligations hereunder.

9.3 **Governing Law.** All questions concerning the validity, operation, interpretation, and construction of this Agreement shall be governed by and determined in accordance with the laws of the United States and the State of Colorado, without regard to the choice of law and conflict of laws provisions thereof and excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The parties agree any suit brought in connection with this Agreement shall be brought in the federal or state courts in the City and County of Denver, Colorado, USA. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO VENUE, INCLUDING AN OBJECTION BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT SUCH PARTY NOW HAS OR HEREAFTER MAY HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION.

9.4 **Notices.** All notices and other communications required or permitted to be given by one party to another in connection with this Agreement shall be in writing and served upon such party via a nationally recognized overnight courier with tracking capability. Notice to PartMiner shall be addressed as follows.

**To PartMiner:**  
PartMiner WorldWide Inc.  
7807 E. Peakview Ave.  
Suite 400  
Centennial, CO 80111  
Attn: General Counsel

9.5 **No Waiver.** Neither party shall, by mere lapse of time, without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other shall neither be construed as nor constitute a continuing waiver of such breach or of other breaches of the same provision or any other provision of this Agreement.

9.6 **Force Majeure.** Neither party shall be in default if its delay or failure to perform any obligation hereunder is caused solely by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, strikes, labor disputes, and governmental demands or requirements; provided that, in order to be excused from any such delay or failure to perform, such party must act diligently to remedy the cause of such delay or failure.

9.7 **Severability.** If any provision of this Agreement is held to be unenforceable, invalid or illegal by any court of competent jurisdiction, such unenforceable, invalid or illegal provision shall not affect the remainder of this Agreement.

9.8 **Multiple Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.

9.9 **Complete Agreement, Amendments.** This Agreement constitutes the complete and exclusive statement of agreement among the parties with respect to the subject matter hereof and replaces and supersedes all prior and contemporaneous written and oral agreements, negotiations, discussions or statements by and among the parties. This Agreement may be amended only by a subsequent writing that specifically refers to this Agreement and that is signed by both parties. No other act, document, usage, or custom, including any printed terms and conditions contained in any purchase order, shall be deemed to amend this Agreement.

9.10 **Compliance with Laws.** In the performance and/or exercise of its respective rights and obligations under this Agreement, Licensee shall comply with all applicable legal requirements (including all anti-bribery, export control, and immigration laws and regulations of the United States and other applicable countries).