



SUPPLYSTREAM™ TERMS OF USE

These SupplyStream™ Terms of Use (“Agreement”) constitute an agreement between PartMiner WorldWide Inc. (“PartMiner”) and you the Supplier (“Supplier”) regarding access to and use of the PartMiner SupplyStream portal and services (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 “Authorized User” shall mean an employee of Supplier who is authorized to use the Services, agrees to use the Services in accordance with this Agreement, and who receives a user name, ID and password for that purpose.

1.2 “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).

1.3 “Data” shall mean shall mean all information, text and other materials included in and/or made available through the Services.

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 PartMiner SupplyStream portal and services.

2. LICENSE

2.1 Grant. Subject to all of the terms and conditions of this Agreement), and Supplier complying with all applicable PartMiner processes, procedures and documentation, PartMiner hereby grants to Supplier a limited, revocable, nonexclusive, nontransferable, nonsublicensable license during the Term to access and/or use the Services.

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 Supplier. PartMiner hereby reserves all rights owned or licensable by PartMiner that are not expressly granted herein to Supplier. There are no licenses by implication under this Agreement.

2.3 **Access and Use.** Subject to the terms and conditions of this Agreement, only Authorized Users of Supplier may access and use the Services, and the Services may only be used for Supplier's internal purposes. Supplier and Authorized Users 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, Supplier 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 Supplier'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. Supplier shall be responsible for each Authorized User's compliance with this Agreement, and agrees to notify PartMiner immediately if Supplier becomes aware of any unauthorized use of the Services (including unauthorized use by Authorized Users or use by unauthorized users).

2.4 **Indemnification.** Supplier shall indemnify, defend and hold PartMiner and its affiliates and subsidiaries, and their respective officers, directors, partners, agents, employees, and Suppliers 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 Supplier, its Authorized Users or any third party of the Services, and/or (b) any breach of any representation, warranty or covenant made by Supplier pursuant to this Agreement, or violation of any law or regulation.

3. SUPPLIER USE AND PART SALES.

3.1 As part of the use of the Services, Supplier may submit lists of inventory, pricing on its inventory and line card, lead time, and other information regarding electronic component parts ("Product") it has for sale (collectively referred to as "Product Information") to PartMiner, either through the SupplyStream portal (when available) or otherwise. By submitting the Product Information, Supplier represents that all information is true and correct, and that, until the information is updated or modified by Supplier, PartMiner can rely on such Product Information. Supplier further agrees to sell the Product to PartMiner at the prices identified in the Product Information at the time PartMiner quotes its customer. Supplier agrees to submit updates to the Product Information promptly after a change.

3.2 In addition, through the SupplyStream portal and email, PartMiner will submit to Supplier PartMiner customer requirements ("CRs") for parts that either match Product identified in Supplier's list of inventory, or Product that matches Supplier's submitted Product line card. Based on these CRs, Supplier may submit quotes for these parts to PartMiner through the SupplyStream portal or other PartMiner identified methodology (in accordance with PartMiner procedures). Supplier also agrees that, if pricing has been provided, PartMiner may submit binding quotes to its customer based on the inventory/line card matches and pricing information. As PartMiner may not be re-contacting Supplier to negotiate a lower price, to successfully compete for PartMiner's business, it is suggested that Supplier's absolute lowest price be submitted each time. All pricing and shipments shall be FOB destination.

3.3 In addition, Supplier may submit quotes on any CRs it sees in the SupplyStream portal for parts that may be substitutes for parts on its line card, provided Supplier only submits quotes for parts on its line card or for which it has in inventory. All quotes shall be subject to the terms of section 3.2.

3.4 If PartMiner decides to purchase the parts from Supplier, Supplier agrees to (a) deliver the parts on the scheduled delivery date to PartMiner's warehouses or the end-user customer (as identified by PartMiner), (b) provide to PartMiner and its customer the full and best Supplier and manufacturer warranty and return privileges that Supplier has provided (including accepting returns without a restocking fee), and (c) have the transaction otherwise governed by the PartMiner Purchase Order Terms and Conditions, currently located at www.partminer.com/main/termsandconditions.

3.5 Payment for all parts shall be due forty-five (45) days after PartMiner's receipt of an undisputed invoice. PartMiner may offset from any invoice any credits or other amounts that Supplier may owe PartMiner.

3.6 Supplier understands and agrees that all Product Information provided to PartMiner pursuant to this Agreement may be input into and made a part of PartMiner's databases and provided to other SupplyStream users or other PartMiner customers or third parties, provided that PartMiner shall not specifically identify Supplier or other source of the information.

4. WARRANTIES AND LIMITATIONS OF LIABILITY

4.1 **Authority.** Each individual and 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.

4.2 DISCLAIMER. SUPPLIER 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 SUPPLIER’S REQUIREMENTS, OR THAT SUPPLIER’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. SUPPLIER WILL NOT HOLD PARTMINER AND/OR ITS THIRD PARTY PROVIDERS RESPONSIBLE FOR ANY DAMAGES THAT RESULT FROM SUPPLIER’S USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY INFECTIONS OR CONTAMINATIONS OF SUPPLIER’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.

4.3 LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, PARTMINER SHALL NOT BE LIABLE TO SUPPLIER (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM SUPPLIER’S RIGHTS) FOR 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 PARTMINER’S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY REASON EXCEED THE FEES PAID OR RECEIVED BY THAT PARTY.

5. CONFIDENTIALITY

5.1 Supplier’s Obligations. Supplier acknowledges that, except as provided in paragraph 8.3, the Services, including without limitation the Data 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 Supplier agrees to keep such information strictly confidential. Supplier 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, Supplier agrees not to disclose such information to any person or entity other than, on a need to know basis, Supplier’s employees and agents who are under a duty to Supplier not to disclose such information. Supplier agrees to instruct such employees, agents and Authorized Users as to the appropriate steps to be taken to satisfy Supplier’s obligations hereunder, and shall be responsible for the employees’ and agents’ compliance with the terms of this Agreement. Supplier 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. Supplier shall indemnify and hold PartMiner harmless from any loss, damage or expense incurred by PartMiner as a result of any breach by Supplier, its employees, agents or Authorized Users of the confidentiality provisions of this Agreement.

5.2 PartMiner’s Obligations. PartMiner acknowledges that, except as otherwise provided, it may have access, pursuant to this Agreement, to documents and information that comprise and/or contain valuable and Confidential Information of Supplier, and PartMiner agrees to keep it confidential. PartMiner 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, PartMiner agrees not to disclose such information to any person or entity other than PartMiner’s employees or agents who are under a duty to PartMiner not to disclose such information. PartMiner agrees to instruct such employees and agents as to the appropriate steps to be taken to satisfy PartMiner’s obligations hereunder. PartMiner agrees that it will promptly inform Supplier of any conduct by any party inconsistent with these provisions and will take all reasonable and lawful steps to terminate such conduct.

5.3 Exceptions. The foregoing obligations of confidentiality shall not apply to any Confidential Information to the extent such information: (a) is or becomes freely and generally available to the public through no fault of the Receiving Party; (b) was or is already known to the Receiving Party, as supported by reasonable evidence; (c) was or is disclosed to the

Receiving Party by a third party who in making such disclosure breaches no obligation of confidentiality; (d) was or is independently developed by the Receiving Party, as supported by reasonable evidence or (e) is required to be disclosed by law, subpoena or other process, so long as the Receiving Party first gives the Disclosing Party notice of the required disclosure and reasonably cooperates with the Disclosing Party, at the Disclosing Party's sole expense, in seeking reasonable protective arrangements with respect to such Confidential Information. In no event shall the Receiving Party's or its Affiliates' cooperation with the Disclosing Party require the Receiving Party or any of its Affiliates to take any action that, on the advice of their counsel, could result in the imposition of any sanctions or other penalties against them. Supplier further agrees that PartMiner may disclose any of the Product Information to third parties provided Supplier's name is not used in any such disclosure

5.4 **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.

6. **TERMINATION.** PartMiner reserves the right to amend or terminate this Agreement at any time for any reason.

7. MISCELLANEOUS

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

7.2 **Assignment.** PartMiner may assign any or all of its rights hereunder to any company, partnership or other entity. Supplier may not, without the prior written consent of PartMiner, assign or transfer this Agreement or any of its rights or obligations hereunder.

7.3 **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.

7.4 **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

7.5 **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.

7.6 **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.

7.7 **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.

7.8 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.

7.9 Compliance with Laws. In the performance and/or exercise of its respective rights and obligations under this Agreement, Supplier 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).