PARTsolutions, LLC – PARTsolutions PARTserver Agreement

Last Modified: May 27, 2013

PLEASE READ THIS PARTSOLUTIONS PARTSERVER AGREEMENT ("AGREEMENT") CAREFULLY BEFORE AGREEING TO THE TERMS, CONDITIONS AND ACCEPTANCE OF A PARTSOLUTIONS PROPOSAL, ONLINE ORDER OR OTHER PURCHASE OF PARTSOLUTIONS PRODUCTS OR SERVICES.

This PARTsolutions PARTserver Agreement is a legally binding contract between your company as defined in a PARTsolutions Proposal(s), Online Order or other purchase documentation ("Customer") and PARTsolutions, LLC, located at 400 Techne Center Dr Ste 301, Milford, OH 45150 USA ("PARTsolutions"). PARTsolutions provides services (as defined below) to you subject to and conditioned upon your acceptance of this PARTsolutions PARTserver Agreement.

BY ACCEPTING THE DELIVERY OF ANY PARTSOLUTIONS PARTSERVER SERVICES, CUSTOMER AGREES TO BE BOUND BY THIS AGREEMENT, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY, AND TERMINATION PROVISIONS BELOW. IF YOU DO NOT AGREE TO THE TERMS, DO NOT ACCEPT DELIVERY OF PARTSOLUTIONS PARTSERVER SERVICES.

PARTsolutions may update or change this PARTsolutions PARTserver Agreement from time to time. The current PARTserver Agreement will be posted at http://www.partsolutions.com/terms.

PARTsolutions offers the Customer the technology and infrastructure to list the Customer's product catalog along with specific data (e.g. catalogs, specifications, documentation, etc.) on the internet via PARTserver and to facilitate online access to the data provided by the Customer to Customer and third parties accessing PARTserver or other internet properties providing access to PARTserver or PARTserver data.

The following are the terms and conditions under which PARTsolutions grants PARTserver access to Customer (the "Agreement").

I.   Services Provided

I.1.   PARTsolutions shall provide the hosting and management of Customer's digital catalog(s) on PARTserver for access via email, direct download or other means by Customer and third parties.

I.2.   Customer products modeled in PARTsolutions format are accessible in 2D and 3D CAD and graphics formats provided on PARTserver. Supported CAD and graphics formats are subject to change by PARTsolutions. Cookies, Javascript and Java are required and must be enabled by Customer and third parties who access PARTserver and wish to visualize Customer data in a 3D viewer.

I.3.   Customer acknowledges that any 2D files not modeled in PARTsolutions format can only be exported in 2D.

I.4.   The necessary PARTserver hardware and software and the server pages will be provided by PARTsolutions.

I.5.   PARTsolutions provides access to PARTserver 24 hours a day, 7 days a week. Customer acknowledges that PARTserver may, from time to time, be taken offline for maintenance and upgrade procedures. For scheduled maintenance and upgrades, PARTsolutions will provide prior notice to Customer before taking PARTserver offline. Further, Customer acknowledges that due to the nature of the internet, there are occasions when PARTserver access is interrupted by technology failures outside of the control of PARTsolutions. Upon such occasion, PARTsolutions will take whatever action possible to restore access as quickly as possible. PARTsolutions has contracted with the highest quality service providers available.

I.6.   The selected parts will be sent by email, direct download or other means to the third party in the available format. The number of parts sent during each mailing may be limited by the Customer.

II.   Term and Termination

II.1.   This Agreement is effective on the date that it is accepted by PARTsolutions.

II.2.   This Agreement shall have an initial term of three (3) years from the effective date. Thereafter, the Agreement shall automatically renew for successive one (1) year periods, unless either party provides the other with six (6) months prior written notice of termination before the end of each term. In the event of Customer's breach of this Agreement, such breach not cured within thirty (30) days receipt of notice of such breach, PARTsolutions may terminate the Agreement upon written notice to Customer.

III.   Customer Duties

III.1.   The Customer will scan and guarantee that the data and files uploaded to PARTserver are free from computer viruses.

III.2.   The Customer will publish catalog data to PARTserver in a timely manner.

III.3.   In case of functional disturbances on PARTserver, the Customer is obliged to officially report them to PARTsolutions both by email to support@partsolutions.com and in writing via fax to (513) 453-0460.

III.4.   The Customer will allow PARTsolutions to attach a PARTserver logo with a copyright remark for PARTsolutions software as well as a link to further PARTsolutions services. The Customer is obliged to attach a reference to the PARTsolutions software on its web page. The Customer explicitly permits PARTsolutions to publish their partnership and to list the Customer as a reference.

III.5. The parties acknowledge and agree that all Customer catalog data, including .3db and .tab files, in PARTsolutions (PS3) data format, including all intellectual property rights thereto, shall finally and exclusively belong to Customer. Customer has no intellectual property rights whatsoever to the output files containing Customer's products that can be generated by PARTsolutions technologies. Without prior written consent of PARTsolutions, Customer and all third parties are strictly prohibited from downloading and/or transferring any files, including but not limited to CAD and graphics files, for use in any new database or website created for use by Customer or any third party. Any duplication of Customer's PARTcommunity data, in any form, is strictly prohibited.

III.6. Without prior written consent of PARTsolutions, Customer and all third parties are strictly prohibited from downloading and/or transferring any files, including but not limited to CAD and graphics files, for use in any new database or website created for use by Customer or any third party. Any duplication of Customer's PARTserver data, in any form, is strictly prohibited.

III.7. Contracts for embedded sales configurators and/or PARTsolutions viewers or any other PARTsolutions technology that will reside in or be linked to or displayed in any way within or from Customer's website shall clearly display the PARTsolutions and/or "powered by PARTsolutions" text or logo, with the appropriate logo and/or language provided by PARTsolutions.

IV. PARTsolutions Duties

IV.1. PARTsolutions will produce and deliver the requested standard CAD and graphics format files available on PARTserver upon request by Customer or third parties accessing PARTserver.

IV.2. PARTsolutions is responsible for the preparation of data and ensuring that an up-to-date database is available for the third party. A password-protected FTP access to the data is available to the Customer for the upload. Therefore, PARTsolutions does not guarantee the correctness of the data.

IV.3. PARTsolutions shall provide an individual web site for the Customer. The web site look and feel is to be designed by the Customer within the framework of standard PARTserver pages.

IV.4. PARTsolutions will include Customer's digital product catalog on PARTserver.

IV.5. PARTsolutions offers the current version of CAD software released for CAD systems available from PARTserver.

V. Customer data access & Fees

The Customer can read the log data at any time via a password protected configuration tool. With the log file, the Customer has the capability to retrace how often the data was sent, how much data was sent, and to which email address PARTserver has sent the data. The Customer will be charged a fee for hosting and for part downloads. Fees are defined in a separate PARTsolutions proposal to Customer.

VI. Payment and delivery terms

VI.1. Billing occurs according to the terms and conditions defined in the PARTsolutions customer proposal.

VI.2. PARTsolutions reserves the right to make price adjustments on a quarterly basis based on the general trend. In case of a price adjustment, the changed prices are valid. The Customer will be informed about price adjustments in a reasonable amount of time before the price changes are to take effect.

VII. Abuse protection

VII.1. In order to protect the Customer from data abuse (for example mass downloading or use of the data in a way that was not intended by the Customer), the Customer has the possibility to use PARTserver's following protection measures free of charge.

VII.2. The Customer can read the log file at any time via a password protected configuration tool and retrace how often the data was sent, how much data was sent, and to which email address PARTserver sent the data. The Customer can also change and adjust the protective measures at any time.

VII.3 **Notice: The desired protection options must be adjusted by the Customer via the password protected configuration tool.**

VII.4. In the event there is suspicion of misuse which can be substantiated or mass download by the user of PARTserver, PARTsolutions has the right to inhibit use by other email addresses or deny further access and will notify Customer in a timely manner.

VII.5. **Blocking access of email addresses**
The Customer can block single mail addresses or entire groups such as entire domains (for example @hotmail.com, @yahoo.com, etc.). These settings are adjusted on the PARTserver configuration page accessible by the Customer. Note that the blocking of email addresses with direct data downloads via portals is not possible at this time.

VII.6 **Third Party Database Download Contract**
PARTsolutions requires that third parties agree to the Database Download Contract prior to accessing Customer data on PARTserver whether accessing PARTserver data directly or indirectly through configurators or other applications which make programmatic calls to PARTserver. Upon request, PARTsolutions will make a sample contract available to the Customer.

VIII. Warranty

VIII.1. **PARTSOLUTIONS WARRANTS THAT FOR A PERIOD OF NINETY (90) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT, PARTSERVER WILL PERFORM IN ACCORDANCE WITH PARTSERVER DOCUMENTATION. IN THE EVENT THAT PARTSERVER DOES NOT PERFORM IN ACCORDANCE WITH THE DOCUMENTATION, THEN DURING THE NINETY (90) DAY WARRANTY PERIOD PARTSOLUTIONS SHALL AT ITS OPTION (I) CORRECT ANY VARIANCE BETWEEN PARTSERVER PERFORMANCE AND PARTSERVER DOCUMENTATION; OR (II) REFUND CUSTOMER FEES HEREUNDER. THE FOREGOING SHALL THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ERROR OR DEFECT IN PARTSERVER.**

VIII.2. **THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, WHICH WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PUPOSE.**

IX. Limitation of Liability

IX.1. Customer agrees to be solely responsible for all aspects of the design and configuration of Customer's digital products hosted on PARTserver. Customer assumes all risks and liability for results obtained for the use or implementation of the digital products hosted on PARTserver, whether such digital products are used singly or in combination with other data. Customer agrees that PARTsolutions shall have no liability to the Customer or to any third party for any ordinary, special or consequential damages or losses which might arise directly or indirectly by reason of the Customer's use of PARTserver or the provision of services hereunder. Customer shall protect, indemnify, hold harmless and defend PARTsolutions of and from any loss, cost, damage or expense, including attorney's fees, arising from any claim asserted against PARTsolutions that is in any way associated with the matters set forth in this agreement.

IX.2. The liability of PARTsolutions for any claim hereunder, regardless of the form of action, whether in contract or tort, including claims of negligence against PARTsolutions, shall be limited to the total of all amounts Customer has paid to PARTsolutions for PARTserver or services that alleged to have caused damages or that is related to the cause of action. In no event shall PARTsolutions be liable for incidental or consequential damages including, without limitation, loss of use, loss of profit, or other consequential damages, even if PARTsolutions has been advised of the possibility of such damages. No action, regardless of form, arising out of the transactions under this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

X. General

X.1. Customer may not assign any of its obligations, rights or remedies hereunder and any such attempted assignment shall be null and void.

X.2. Any amendment or addition to this Agreement is valid only when agreed upon in writing and signed by both parties.

X.3. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder. This Agreement constitutes the entire terms and conditions between the parties with respect to the subject matter herein and supersedes all proposals, all previous negotiations and agreements, written or oral, express or implied, between the parties with respect to the matters herein.

X.4. The complete or partial invalidity or unenforceability of any provision herein for any purpose shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions. Any such provision shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary for the purpose of such severance.

X.5. All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties set forth above. Either party, upon written notice to the other, may change any name or address to which future notice shall be sent.

X.6. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Ohio.

X.7. **THIS AGREEMENT IS ACCEPTED BY BOTH PARTIES BY EXECUTING A PARTSOLUTIONS PROPOSAL REFERENCING THIS AGREEMENT.**