

SOFTWARE LICENSE TERMS AND CONDITIONS

These Software License Terms and Conditions (referred to interchangeably as the “Terms and Conditions” or the “Agreement”) form a legal contract between the User and Modular Mining Systems, Inc. (the “Licensor”) for the named Licensor Product. BY INSTALLING, COPYING, OR USING THE PRODUCT, THE USER AGREES TO BE BOUND BY THIS AGREEMENT. If the Licensee does not agree with this Agreement, the Licensee is not licensed to install, copy or use the Product, and will return all physical media and documentation associated with the Product to Licensor.

1. DEFINITIONS

“**Client**” means a user or device that accesses or utilizes the services or functionality of the Server software, including without limitation, each Mobile Device and Remote Desktop.

“**Intellectual Property**” means all patents, patent rights, copyrights and derivative works, rights of publicity, trademark, trade dress and service mark rights, trade secret rights and any other intellectual property right as may now exist or hereafter come into existence worldwide, and all applications therefore and registrations, renewals and extensions thereof, recognized under any state, country, or territory’s laws, or international treaty.

“**Mobile Device**” means a portable computing device licensed by Licensor for use with the Product Server.

“**Licensee**” means one named individual or entity to whom the Product is licensed.

“**Permitted Clients**” means the maximum number of Clients licensed by Licensor for use with the Server software.

“**Product**” means the applicable Hardware or Licensed Software provided by Modular under this Agreement and includes without limitation, Server software, Client software, Updates acquired from Licensor, all associated media and documentation, and internet-based services.

“**Remote Desktop**” means a remote access computer licensed by Licensor for use with the Product Server.

“**Server**” means a computer capable of running the Server software, whether real or virtual that is identified by its unique host name or IP address.

“**Term**” means (a) if a purchased subscription, the period of time specified in Licensee’s purchased subscription documentation; or (b) if a purchased license, the period of time specified in Licensor’s documentation and if no such period is specified, a period of ten (10) years.

“**Update**” means a broadly available modification to the Product made available by Licensor in relation to a Product problem, including without limitation, patches, updates, improvements and fixes. The release of an Update is subject to Licensor’s sole discretion. All Updates are subject to these Terms and Conditions unless other terms of use are provided by Licensor in writing.

“**Warranty Period**” means a period of ninety (90) days from Product delivery to Licensee.

2. GRANT OF LICENSE

Subject to compliance with this Agreement, Licensor grants to the Licensee a non-exclusive, non-transferable (without right of sublicense or assignment), revocable and limited license for the Term to install and run: (a) the Server software on a single Server; and (b) the Client software on a single Client for the number of Permitted Clients. The Product is licensed, not sold. All rights reserved.

3. RESTRICTIONS ON USE

- 3.1 Licensee shall not duplicate the Product, or any portion thereof, except for a reasonable number of copies solely for archival and disaster recovery purposes. All copies shall remain the exclusive property of Licensor and shall be subject to the terms of this Agreement. Except as expressly set forth in this section 3.1, Licensee shall not allow any person or entity to copy the Product, either in whole or in part. Licensee shall maintain a record of the location of Product copies which shall be made available to Licensor upon request.
- 3.2 Licensee shall not modify or remove any markings, identifiers or notices on the Product, Product media or documentation, including without limitation, any Intellectual Property, proprietary or confidentiality notices.
- 3.3 Licensee shall not sell, assign, pledge, lease, market, rent, transfer, sublicense or otherwise grant any rights in the Product or this Agreement. Licensee shall not make the Product available, in any form, to any third party without Licensor's prior express written consent.
- 3.4 Licensee shall not decompile, translate, disassemble, reverse engineer or in any way derive source code from the Product, except to the extent required by law.
- 3.5 Licensee shall keep the Product, including without limitation source code and documentation, in the strictest confidence, and shall protect the Product from unauthorized use or disclosure. At a minimum, Licensee shall use the same degree of care that it uses to protect its own confidential and proprietary information of a like nature. Licensee shall maintaining physical and electronic security and limit Product access to essential personnel.
- 3.6 Licensee shall not modify or create a derivative work of the Product, including without limitation, modification for use with a third party application or the incorporation of the Product with third party software resulting in other pieces of software.
- 3.7 Licensee shall not attempt to circumvent any electronic security or encryption in the Product.
- 3.8 Licensee shall not disclose the results of any benchmark tests on the Product to any third party without Licensor's prior express written consent.

4. PERMITTED USE

Licensee is authorized to use the Product solely in machine-readable, object-code form, for its own internal business purposes. Licensee shall use the Product only on the hardware and compatible operating systems described in the Product documentation or as otherwise approved by Licensor in writing. Licensee may use the Server software on a temporary basis on a single Server, located in the Licensee's country and owned and operated by Licensee, only for fail-over support.

5. LICENSEE OBLIGATIONS

Licensee is responsible for its use and operation of the Product, including without limitation, installation, data verification and back up, and maintaining the required operating environment. Licensee may contract separately with Licensor or its affiliate for installation and support and maintenance services.

6. AUDIT

Licensor shall have the right to inspect and audit Licensee's records and systems to verify Licensee's compliance with this Agreement, and Licensee shall reasonably cooperate and assist Licensor with such audit. Without prejudice to any other right or remedy available at law, equity or otherwise, Licensee shall: (a) reimburse Licensor for all associated audit costs where such audit reveals that Licensee is not in compliance with this Agreement; and (b) immediately pay Licensor all amounts owing as revealed by such audit.

7. PAYMENT

Licensee agrees to pay Licensor all applicable license fees set forth in Licensor's documentation referencing this Agreement. Except as otherwise expressly agreed by Licensor in writing, Licensee agrees to pay all license fees within thirty (30) days of invoice. Licensee shall pay a late fee equal to one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, on all unpaid amounts. Licensee shall pay all taxes, duties, tariffs or other government charges levied or otherwise exacted that arise out of this Agreement.

8. PROPRIETARY RIGHTS

The parties agree that the Product, including without limitation Product documentation, and all enhancements, corrections and modifications thereto, and all Intellectual Property rights therein, are and shall remain the sole and exclusive property of Licensor and, where applicable, Licensor's suppliers. Licensee shall cooperate with and assist Licensor as reasonably necessary to protect Licensor's Intellectual Property rights in the Product. This Agreement does not convey title or ownership to Licensee.

9. SUPPORT

During the Warranty Period, Licensee will receive all commercially available maintenance releases and minor enhancements. Thereafter, Licensee may, at its option, purchase any then current commercially available Licensor support program for the Product.

10. LIMITED WARRANTY

10.1 Licensor warrants that at the time of delivery to Licensee and during the Warranty Period: (a) the Product shall substantially conform to the specifications set forth in Licensor's then current commercially available documentation; and (b) if applicable, the media on which the Product is delivered shall be free from defects in materials and workmanship.

10.2 Licensor's entire liability and Licensee's sole and exclusive remedy for breach of this limited warranty shall be, in Licensor's sole discretion either: (a) correct the defective Product, or repair or replace such Product; or (b) accept the return of the Product and refund the license fee paid by Licensee, subject to an equitable reduction thereof. Licensee must notify Licensor in writing of any defective Product within the limited warranty period. This limited warranty is void where the Product has been: (i) modified or altered by a third party, unless authorized by Licensor in writing; (ii) subjected to abuse, misuse, abnormal or negligent use; or (iii) installed or used other than in accordance with the Product's intended use or Licensor's written instructions.

10.3 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT, SYSTEM INTEGRATION, OR INTERNET ACCESS OR PERFORMANCE. LICENSEE ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THERE IS NO WARRANTY THAT THE PRODUCT IS ERROR-FREE, WILL OPERATE IN AN UNINTERRUPTED MANNER OR IN COMBINATION WITH OTHER SOFTWARE, PLATFORMS OR SYSTEMS.

11. TERM & TERMINATION

- 11.1 This Agreement and the license granted hereunder shall take effect on the date set forth in Licensor's documentation and shall remain in effect for the Term unless earlier terminated as provided herein.
- 11.2 Where Licensee breaches any covenant, obligation, representation or warranty, it being agreed that all breaches shall be deemed material, Licensor shall have the right to terminate this Agreement immediately, or after Licensee fails to cure said breach within a period of time defined by Licensor in writing.
- 11.3 Where Licensor terminates this Agreement, Licensee shall immediately discontinue use of the Product and all copies. Licensor may suspend, lock, or otherwise disable operation of the Product or may take immediate possession of the Product and all copies wherever located. Within a period of five (5) days after termination of this Agreement, Licensee shall, at Licensor's option, either return to Licensor, or certify destruction of the Product and all copies, and deliver to Licensor a written certification of compliance with same.
- 11.4 The following provisions shall survive termination of this Agreement: section 8 (Proprietary Rights); 12 (Indemnity), 13 (Limitation of Liability); and any other obligation which is intended to survive termination of this Agreement.

12. INDEMNITY

- 12.1 Licensor will defend at its expense or settle any third party claim against Licensee alleging that the Product provided under this Agreement infringes Intellectual Property rights in the country where licensed. Licensor will pay infringement claim defense costs, Licensor-negotiated settlement amounts, and damages awarded by a court of competent jurisdiction. If the Product becomes subject to a claim of infringement for which Licensor may become liable, Licensor may, in its sole discretion: (a) secure the right for Licensee to continue to use the Product; or (b) replace or modify the Product to make it non-infringing. Licensee will defend, indemnify and hold Licensor harmless from and against, and Licensor has no obligation for any claim of infringement arising from: (i) modifications to the Product made by any party other than Licensor; (ii) Licensee's non-compliance with this Agreement; (iii) use of the Product for purposes not contemplated by this Agreement; (iv) Licensee use or combination of the Product with products, software or services that are not provided by Licensor; or (v) a Product that is not at the most current release level if the most current release level is non-infringing.
- 12.2 Licensor's indemnification obligations under this section are conditioned upon the Licensee: (a) promptly notifying the Licensor of any claim in writing; (b) reasonably cooperating with the Licensor in the defense of the claim; and (c) granting the Licensor sole control of the defense or settlement of the claim.

13. LIMITATION OF LIABILITY

- 13.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, LICENSOR'S TOTAL LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM, LOSS OR LIABILITY OF ANY TYPE

WHATSOEVER ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY LICENSEE DURING THE PREVIOUS ONE (1) YEAR PERIOD FOR THE PROGRAM GIVING RISE TO THE CLAIM, LOSS OR LIABILITY.

13.2 IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA, LOSS OF DATA USE OR BUSINESS INTERRUPTION) WHETHER AN ACTION IN CONTRACT, TORT, OR BASED ON ANY OTHER LEGAL THEORY, EVEN WHERE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IF LICENSEE'S EXCLUSIVE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSES.

14. MISCELLANEOUS

14.1 Entire Agreement. This Agreement encompasses the entire understanding between the parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous agreements or statements regarding the subject matter hereof. There are no representations, warranties, covenants, agreements, collateral understandings, oral or otherwise, expressed or implied, affecting this instrument not expressly set forth or provided for herein.

14.2 Amendment. None of the terms, conditions or provisions of this Agreement shall be deemed modified or altered by any act, course of conduct, course of dealing, or knowledge of either party or their respective agents or employees. The terms of this Agreement may not be amended, changed, waived, varied or modified except by a statement in writing signed by duly authorized representatives of the parties expressly assenting to the amendment.

14.3 Assignment. Customer may not assign, without Licensor's prior written consent, this Agreement in whole or in part, by operation of law or otherwise and such purported assignment shall be void.

14.4 Severability. The invalidity or unenforceability of any provision of this Agreement pursuant to any applicable law, statute or regulation shall not affect the validity or enforceability of the remaining provisions hereof. However, this Agreement shall be construed as if not containing the provision held invalid or unenforceable in the jurisdiction in which so held, and the remaining provisions shall remain in full force and effect.

14.5 Rule of Construction. No rule of construction applies to the advantage of a Party because the other Party was responsible for the preparation of this Agreement.

14.6 No Waiver. All waivers under this Agreement must be made in writing to be effective. No delay on the part of either party in exercising any of their respective rights under, or the failure to exercise the same, nor the acquiescence in or wavier of a breach of any term, covenant or condition of this Agreement shall be deemed or construed to operate as a waiver of such rights or acquiescence thereto except in the specific instance for which given.

14.7 Third Party Software. The Product may be delivered with non-embedded third party software, including without limitation, commercial and open source software. All third party software is licensed according to separate license terms and conditions, the applicable license agreement governing said software is incorporated herein by reference. By installing, copying or using third party software, Licensee agrees to be bound by all terms and conditions contained in the applicable third party software license agreement. Licensor makes no claim of ownership in or to third party software.

14.8 Export. Licensee shall comply with the customs, import and export laws, and regulations of the United States (including the U.S. Export Administration Act) and all other applicable customs, import and export laws, and regulations pertaining to the goods and services under this Agreement. Licensee shall ensure

that no goods or services (including software), or any portion thereof, are imported or exported, directly or indirectly, in violation of said laws. Licensee shall arrange for documentation or permits related to the import or export of goods or services, as required by applicable law. Licensee agrees to indemnify, defend and hold Modular harmless from any breach of Licensee's obligations under this Section 14.8.

- 14.9 Code of Conduct. Licensor is a fully-owned Komatsu entity. As such we follow the Komatsu [Worldwide Code of Business Conduct](#) and we expect all of our vendors and customers to follow the Code as well. The Code can also be found on Licensor's website on our [company values page](#).
- 14.10 Compliance. The Parties acknowledge that both faithful performance of this Agreement and compliance with any and all laws and regulations are important factors in maintaining a long-term business relationship. The Parties agree to each ensure that their own internal system is in place for observing and complying with any and all laws and regulations, and with prevailing business, social and community rules.
- 14.11 Removal of Anti-social Forces. The term "**Anti-social Forces**" shall mean one or more persons or entities coming under any of the following items:
- a. "*Bouryokudan*" as defined in Article 2 Clause 2 of the Act on Prevention of Unjust Acts by Organized Crime Group Members in Japan and/or any organization affiliated to any Bouryokudan;
 - b. Member or quasi-member of any Bouryokudan and/or organization as described in a, above;
 - c. *Sokaiya* (professional extortionist or corporate racketeer attending shareholders' meetings), a person or a member of an entity engaging in criminal activities under the pretext of conducting a social campaign or political activities, or a criminal group specialized in intellectual property crime, etc.;
 - d. Any other person or entity that makes unreasonable demands accompanied by threat of violence, use of force, intimidating words, or fraudulent means for the purpose of obtaining unjust financial gain; or
 - e. Any other person or entity that makes demands, acts, or behaves in a manner that makes use of the influence of any of the above.

Licensee represents, warrants and covenants to Licensor that (a) Licensee is not now, nor has ever been, nor will exploit, an Anti-social Force; and (b) No board member, executive officer or other employee substantially involved in the management of, leading shareholder, or sponsor of Licensee is an Anti-social Force or is engaged in a relationship with any Anti-social Force.

In the event that Licensee discovers that it is in breach of any of the representations or covenants set forth in this Section 14.11, Licensee shall immediately report such fact to Licensor.

If Licensee breaches or is suspected of any violation of any of the representations or covenants set forth in this Section 14.11, Licensor may immediately terminate this Agreement, in whole or in part, without giving any notice or taking any other procedure and may seek from Licensee indemnification for any damages suffered as a result of such breach or violation.

- 14.12 Injunction. In the event of a material breach of this Agreement, the parties agree that money damages may be an inadequate remedy for Licensor and in addition to other remedies available at law, equity or otherwise, Licensor shall be entitled to seek injunctive relief, reasonable attorney's fees and costs incurred in obtaining such injunctive relief and such damages as a court of competent jurisdiction shall award.
- 14.13 Compliance with Law. Licensee agrees that it shall comply with all federal, state and local laws and regulations governing the use of the Product. For the avoidance of doubt, Licensee shall comply fully with all relevant export laws and regulations, including without limitation, the U.S. Export Administration

Regulations. Licensee agrees to indemnify and defend Licensor from and against any violation of this section.

- 14.14 Reliance on Counsel. Each party represents that, in relation to this Agreement, it has been represented by, and relied upon, the advice of counsel of its choice. Therefore, each party agrees that no rule of construction to the effect that any ambiguities are to be resolved against the drafter shall be employed in this Agreement.
- 14.15 Legal Costs. The parties endeavor to resolve disputes under this Agreement by mutual consultation. Where legal action is pursued to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all associated fees, including without limitation reasonable attorney fees, and costs.
- 14.16 Language. This Agreement has been prepared in English and the Parties expressly agree that English shall be used as the official language of choice in any dispute or arbitration process.
- 14.17 Jurisdiction and Venue. The parties irrevocably and unconditionally agree that the exclusive place of jurisdiction for any litigated dispute relating to this Agreement shall be in the federal or state courts of Arizona. Each party irrevocably and unconditionally waives any objection it may have to the venue of any litigated dispute brought in such courts or to the convenience of such forum. Final judgment in any action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment, a certified or true copy of which shall be conclusive evidence of the fact and the amount of any indebtedness or liability of any party therein described.
- 14.18 Governing Law. This Agreement shall be governed by the laws of the state of Arizona and the United States, without regard to its conflict of laws principles.