



MADE
MAINTENANCE AWARE DESIGN

End User License Agreement

January 2023

1. Ownership of MADe

Program and its copyright is owned by Licensor.

2. Grant of license

Licensor grants You a non-exclusive license to install and use Program while you are in compliance with these terms.

3. Authorised use

- 3.1. You may install and use Program as specified in clause 4 and make and install backup copies of Program to support such use.
- 3.2. This license applies to each copy of Program You make.
- 3.3. You must reproduce all copyright notices and all other statements of ownership on each copy of Program.
- 3.4. You must not copy, install or use, reverse assemble, reverse compile, or otherwise translate, or adapt, modify or distribute Program except as expressly permitted by this license or as authorised by any law that applies to this license and cannot be excluded.
- 3.5. You must not sublicense, rent, or lease Program or permit it to be used by anyone other than your Staff and (where clause 4.1 applies) your students.
- 3.6. You must not use Program to provide a data processing or bureau service.

4. License types

- 4.1. Academic License
If You are a bona fide university, college or other academic institution, Your Staff and students may use Program for educational, academic, teaching or research purposes during the term agreed by Licensor. An Academic License granted under this clause 4.1 does not permit any use of Program for a commercial purpose.
- 4.2. Subscription License
While the Subscription Charge is paid in full and up to date, You and Your Staff may use such number of copies of the Program concurrently as your applicable user limit permits for the term of Your subscription.
- 4.3. Perpetual License
If a Perpetual Charge is paid in full and up to date, You and Your Staff may use such number of copies of the Program concurrently as your applicable user limit permits.
- 4.4. Proof of Concept License
While a Proof of Concept Charge is paid in full and up to date, an Enterprise may permit up to three Staff to use Program simultaneously for a period up to six weeks. An Enterprise may only obtain a Proof of Concept License only once.

5. Charges

- 5.1. Unless Licensor's price list states otherwise, the Charges other than the Perpetual Charge are annual charges and include Maintenance and Limited Support.
- 5.2. Licensor will credit towards the Subscription Charge and the Up- front Charge any Proof of Concept Charge paid by You within the previous six months.
- 5.3. If You ask Licensor to install, configure or modify Program or to provide additional maintenance or support, then additional time & materials charges will apply. Licensor will obtain Your prior agreement to rates and / or amounts for such services. Licensor owns all modifications and improvements to Program even if suggested by or created for You.

6. Taxes

If any authority imposes a duty, tax, levy or fee, excluding any based on Licensor's net income, on Program or anything else Licensor supplies to you, You must also pay the duty, tax, levy or fee, or supply valid exemption documentation

7. Maintenance

Maintenance entitles You to receive and install any maintenance or upgrade patch or release that Licensor makes available to licensees of Program generally.

8. Limited Support

Limited Support entitles you to:

- 8.1. Technical services provided on-line to ensure that the Program is correctly installed and functioning, provided either via email, web-conference or telephone;
- 8.2. Use of materials, resources and tools posted on the Support section of Licensor's web site for the purpose of using Program as authorized by this license; and
- 8.3. (except for Academic Licenses) any other support Licensor makes available to licensees of Program generally.
- 8.4. Exclusions: Support does not include any advice or consultation in relation to models created with the Program by You.

9. Warranties & limitation of liability

- 9.1. Licensor warrants that when used in accordance with its user manual, Program will perform materially in accordance with that manual for:
 - 9.1.1. 90 days from first installation; and
 - 9.1.2. 14 days from Licensor's release of any update or patch – (each a 'Warranty Period').
- 9.2. Licensor does not warrant uninterrupted or error-free operation of Program or that all Program defects will be corrected.
- 9.3. If Program does not perform as warranted during a Warranty Period and You have made reasonable efforts to remedy any deficiency using Limited Support, you may within 14 days after the Warranty Period ends elect to cease using Program and receive a refund: 9.3.1. under clause 9.1.1 – of 75% of the Charge paid for the current License Period; or
 - 9.3.2. under clause 9.1.2 – of the Charge paid for the current License Period multiplied by the number of days until the end of that License Period and divided by the number of days in that License Period.
- 9.4. Where any law implies into this license a condition or warranty that cannot be excluded (a) it is included; (b) its operation is limited to the shortest time allowed by law (c) as far as the law allows Licensor's liability for breach of it is limited to doing one of the following things (or paying the cost of doing so): for goods – replacing the goods, supplying equivalent goods or repairing the goods; for services – re-supplying the services.
- 9.5. Subject to clause 9.4, Licensor excludes all implied conditions and warranties of any kind including but not limited to warranties of merchantability and fitness for a particular purpose, whether such conditions or warranties are implied by custom, common law, statute or otherwise.
- 9.6. Subject to clauses 9.3 and 9.4, to the fullest extent allowed by law Licensor disclaims and You release Licensor from and indemnify it against all liability to You and any third party under or in relation to or arising out of (a) Program or (b) any goods or services Licensor provides (or fails to provide) to You whether such liability is direct or indirect, arises by virtue of act or omission, is in the nature of indirect or consequential loss, loss of profits or opportunity, loss of or damage to data, whether in tort, statute, contract or at common law, and whether or not such loss, cost, expense or liability was foreseeable.

10. Intellectual Property Rights

You agree and acknowledge that Licensor owns all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields in relation to the Program and any improvements or modifications to the Program.

- 10.1. Licensor represents and warrants that it has the right to license the Software in accordance with the terms of this Agreement and so far as the Licensor is aware use of its Program in accordance with the MADe Software License (2022) terms of this licence does not infringe the intellectual property rights of any third party.
- 10.2. In the event that the Licensor is notified by a third party of any such infringement which would prevent Your use of the Program, Licensor will at its expense and election either: (a) procure for You the right to continue using the Program or infringing part thereof; (b) modify or amend the Program or infringing part thereof so that it ceases to infringe; (c) replace the infringing part of the Program with another non-infringing component of similar capability; or (d) terminate this license and refund any prepaid license fees to You.

11. Use of Trade Marks in Marketing Materials

- 11.1. You agree to grant to Licensor a non-exclusive licence to use Your business name and trade marks used in Your business from time to time to enable Licensor to refer to You as a customer of Licensor when Licensor is engaged in marketing activities and to perform its obligations under this Agreement, subject to clause 11.3.
- 11.2. Licensor acknowledges that You are the proprietor and/or exclusive licensee of Your trade marks and that nothing in this Agreement has the effect of transferring any ownership or other rights in those trade marks to Licensor.
- 11.3. Licensor agrees not to use Your business name and trade marks without Your consent if such use is likely to cause You material detriment.

12. General

- 12.1. Nothing in this license affects any statutory rights of consumers that cannot be waived or limited by contract.
- 12.2. If any term of this license is held to be invalid or unenforceable, the remaining terms remain in full force and effect.
- 12.3. Licensor is not responsible for failure to fulfil any obligations due to causes beyond its reasonable control.
- 12.4. This license is governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of that State and their appeal courts.
- 12.5. This license is the entire agreement between Licensor and You regarding its subject matter, and You agree that you have not relied on any representation or promise that is not set out expressly herein.
- 12.6. Overdue payments bear interest at 15% a year, calculated and compounding daily.

13. Termination

This license may be terminated by Licensor with or without notice to You if:

- 13.1. You, Your Staff or (where clause 4.1 applies) one of your students breaches it;
- 13.2. You purport to transfer the Program or your interest in this license to another Enterprise or third party without our prior written approval;

13.3. Your License Period ends and You have not paid a Charge for the next License Period; or

13.4. You fail to pay any money owed to Licensor. Termination in any circumstances does not affect (a) any cause of action (including for debt) extant immediately before termination or (b) the operation of clauses 9.5 and 9.6.

14. Unauthorised use

In addition to any other right or remedy of Licensor, Licensor may invoice You, and You must pay within 14 days, any charges that would have applied for Your, Your Staff or students' unauthorised use of Program as if You had been licensed to use Program as You, Your Staff or students' did use it.

15. Transfer by Licensor

Licensor may transfer its interest in this license to any third party that is or will become entitled to own or grant a license of Program.

16. Sub-contracting

We may sub-contract any service we supply to you.

17. Dictionary

- 17.1. 'Academic License' means a license under clause 4.1.
- 17.2. 'Charge' means Subscription Charge, Proof of Concept Charge or Perpetual Charge as applicable and set out in the proposal to which these terms are attached or incorporated.
- 17.3. 'Enterprise' means a single corporation and its Staff but where a corporation consists of divisions, each division constitutes a separate Enterprise for the purposes of this license.
- 17.4. 'License Period' means the period to which a license of Program is referable (and unless stated otherwise for an Academic License or Subscription License, this is a year) starting on the day the Charge is paid.
- 17.5. 'Licensor' means PHM Technology Pty Ltd, ACN 120 459 832 or its appointed nominee.
- 17.6. 'Perpetual Charge' means Licensor's current listed charge per user for a license under clause 4.3, net of any discounts applicable to You.
- 17.7. 'Perpetual License' means a license under clause 4.3
- 17.8. 'Program' means computer software known as MADe in machine- readable form plus all associated instructions, components, materials, and documentation, including original and all copies in whole or part, as updated and maintained by Licensor from time to time.
- 17.9. 'Proof of Concept License' means a license under clause 4.4
- 17.10. 'Proof of Concept Charge' means Licensor's current listed charge for a license under clause 4.4, net of any discounts applicable to You.
- 17.11. 'Staff' of an Enterprise are its employees and / or contractors who use Program at premises occupied by that Enterprise and by means of its computer system.
- 17.12. 'Subscription Charge' means Licensor's current listed charge per user for a license under clause 4.2, net of any discounts applicable to You.
- 17.13. 'Subscription License' means a license under clause 4.2
- 17.14. 'Support' means the services / materials described in clause 8.
- 17.15. 'You' means a person or organisation that downloads, copies, installs, or uses Program.



END

