

**MADe Software License**
**1. Ownership of MADe**

Program is owned by and copyright to 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 use Program as specified in clause 4 and make and install and backup Program to support such use.

3.2. This license applies to each copy 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**

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. This clause 4.1 does not apply to any use of Program for a commercial purpose.

**4.2. Enterprise**

While an Enterprise Charge is paid in full and up to date, no user limit applies to the use of Program by an Enterprise.

**4.3. Basic**

While a Standard Charge is paid in full and up to date, an Enterprise may permit up to three Staff to use Program simultaneously.

**4.4. Proof of Concept**

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 Enterprise Charge and the Basic Charge are annual charges and include Maintenance and Limited Support.

5.2. Licensor will credit towards the Enterprise Charge and the Basic 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. use of materials, resources and tools posted on the Support section of Licensor's web site for the purpose of using Program as authorised by this license; and

8.2. (except for Academic Licenses) any other support Licensor makes available to licensees of Program generally.

**9. Warranty & 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 consequential loss or loss of profits, revenue, goodwill, opportunity, anticipated savings or loss of or damage to data, is tortious, contractual, statutory or otherwise in nature, arises or is incurred as principal or agent or vicariously, is a primary liability, arises by way of an obligation to indemnify or to contribute, was or was not foreseeable, was or was not of a kind or amount that Licensor was on notice of.

**10. General**

10.1. Nothing in this license affects any statutory rights of consumers that cannot be waived or limited by contract.

10.2. If any term of this license is held to be invalid or unenforceable, the remaining terms remain in full force and effect.

10.3. Licensor is not responsible for failure to fulfill any obligations due to causes beyond its reasonable control.

10.4. 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.

10.5. 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.

10.6. Overdue payments bear interest at 15% a year, calculated and compounding daily.

**11. Termination**

This license automatically terminates if:

11.1. You, Your Staff or (where clause 4.1 applies) one of your students breaches it;

11.2. You purport to transfer Program or your interest in this license to another Enterprise or third party without our prior written approval;

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

11.4. 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.

**12. Unauthorised use**

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

**13. Transfer by Licensor**

Licensor may transfer its interest in this license to any third party that is entitled to grant a license for Program.

**14. Sub-contracting**

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

**15. Dictionary**

15.1. 'Academic License' means a license under clause 4.1.

15.2. 'Charge' means Enterprise Charge, Standard Charge or Proof of Concept Charge as applicable.

15.3. '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.

15.4. 'Enterprise Charge' means Licensor's current listed charge for a license under clause 4.2, net of any discounts applicable to You.

15.5. 'License Period' means the period to which a Charge is referable (and unless stated otherwise for a Standard Charge or an Enterprise Charge, is a year) starting on the day the Charge is paid.

15.6. 'Licensor' means PHM Technology Pty Ltd, ACN 120 459 832 or its appointed nominee.

15.7. '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.

15.8. 'Proof of Concept License' means a license under clause 4.4

15.9. 'Proof of Concept Charge' means Licensor's current listed charge for a license under clause 4.4, net of any discounts applicable to You.

15.10. '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.

15.11. 'Standard Charge' means Licensor's current listed charge for a license under clause 4.3, net of any discounts applicable to You.

15.12. 'You' means a person that downloads, copies, installs, or uses Program.