

CREATIVE COMMONS Legal Code

Attribution-Non Commercial-Share Alike Malaysia

CREATIVE COMMONS CORPORATION IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL SERVICES. DISTRIBUTION OF THIS LICENCE DOES NOT CREATE A SOLICITOR-CLIENT RELATIONSHIP. CREATIVE COMMONS PROVIDES THIS INFORMATION ON AN "AS-IS" BASIS. CREATIVE COMMONS MAKES NO WARRANTIES REGARDING THE INFORMATION PROVIDED, AND DISCLAIMS LIABILITY FOR DAMAGES RESULTING FROM ITS USE.

The locally more common term "solicitor" is used in place of "attorney".

Licence

THE WORK IS PROVIDED UNDER THE TERMS OF THIS CREATIVE COMMONS PUBLIC LICENCE ("CCPL" OR "LICENCE"). THE WORK IS PROTECTED BY COPYRIGHT AND/OR OTHER APPLICABLE LAW. ANY USE OF THE WORK OTHER THAN AS PERMITTED BY COPYRIGHT LAW OR AS AUTHORISED UNDER THIS LICENCE BETWEEN YOU AND THE LICENSOR IS PROHIBITED. "COPYRIGHT", "WORK", "YOU" AND "LICENSOR" HAVE THE MEANINGS AS GIVEN BELOW.

The highlighted part is added to make clear that these words, although used preceding the definition clause have the same meanings as given to them in the rest of the document.

BY EXERCISING ANY RIGHTS TO THE WORK PROVIDED HERE, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENCE. THE LICENSOR GRANTS YOU THE RIGHTS CONTAINED HERE IN CONSIDERATION OF YOUR ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

In preparing this licence for Malaysia, we have generally avoided giving examples. The reason is to avoid any possible interpretation that a matter is to come within the definition or a clause only if it is sui generis (roughly means "of the same kind") with the examples cited. In some cases, this will be too restrictive. We have tried to provide for definition clauses that are as concise and clear as possible. We have also avoided repeating. For example, the statement that "A work that constitutes a Collective Work will not be considered a Derivative Work for the purposes of this Licence" is referred to once only in the definition of Derivative Work and not in both definitions of Derivative Work and Collective Work as in the standard licence ("Standard").

1 Definitions

- a. **"Collective Work"** means the Work in its entirety in unmodified form along with a number of other separate and independent works, assembled into a collective whole.

We have given a more concise definition for "Collective Work" compared to that used in the Standard.

- b. **“Communication to the Public”** or **“Communicate to the Public”** means the transmission of the Work through wire or wireless means to the public including the making available of the Work to the public in such a way that members of the public may access the Work from a place and at a time individually chosen by them.

This definition is additional and taken from our Copyright Act 1987. It is one of the exclusive rights protected by copyright (s. 13(1)) in addition to the rights of “reproduction in any material form”, “performance, showing or playing to the public”, “first distribution to the public by sale or other transfer of ownership” and “commercial rental to the public”. The right of communication to the public replaced the previous exclusive rights of broadcasting and communication by cable. It was introduced largely on account of and to control the distribution of copyrighted works over the Internet. “Communication to the public” is now capable of covering the distribution or making available of works via satellite, cable transmission, Internet and other wire or wireless means.

- c. **“Copyright”** means the entire copyright subsisting under the laws of Malaysia and all analogous rights under the laws of each and every jurisdiction throughout the world.
- d. **“Derivative Work”** means any work created based wholly or partially upon the Work or by a translation, adaptation, recast, arrangement and other transformation of the Work in any form or media except that a Collective Work is not considered a Derivative Work for the purposes of this Licence. For the avoidance of doubt, where the Work is a musical composition or sound recording, the synchronisation of the Work in timed relation with a moving image (“synching”) will be considered a Derivative Work for the purposes of this Licence.
- e. **“Licence”** means this Creative Commons public licence agreement between You and the Licensor
- f. **“Licensing Body”** means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for the owner, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

This definition is additional and taken from our Copyright Act 1987 so as to make it quite clear what is meant by the term.

- g. **“Licence Elements”** means the following high-level license attributes as indicated in the title of this Licence: Attribution, Non Commercial, Share Alike.
- h. **“Licensor”** means the individual or entity that offers the Work under the terms of this Licence.
- i. **“Non-Commercial”** means not primarily intended for or directed toward commercial advantage or private monetary compensation.

For purposes of later clauses, we believe it makes for clearer and easier reading to first define what is meant by "non-commercial".

- j. **"Original Author"** means the individual or entity who created the Work.
- k. **"Other Licence"** means a later version of this Licence with the same Licence Elements as this Licence or a Creative Commons iCommons licence which contains the same Licence Elements as this Licence.

For the purposes of later clauses in relation to Derivative Work we find that it is clearer and easier to read to first give a reference / defined term to the other licences that may be relevant in relation to a Derivative Work.

- l. **"Work"** means the work protected by copyright which is offered under the terms of this Licence.
- m. **"You"** means an individual or entity exercising rights under this Licence who has not previously violated the terms of this Licence with respect to the Work, or who has received express permission from the Licensor to exercise rights under this Licence despite a previous violation.
- n. Unless the context requires otherwise, words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated and associations and partnerships.

This clause is added for the avoidance of any doubt.

2 **Licence Terms**

In drafting this part, we brought together all terms, conditions and provisions concerning the grant of the rights to the Work and placed them under this clause 2. The terms and conditions are further sub-divided, starting with what rights are granted, the restrictions to which the rights are subjected, followed by various other related provisions. Each of these various provisions is given a sub-heading in bold to state in summary the matter to which the clause relates, to aid the reader.

- 2.1 **Licence grant.** Subject to the terms and conditions of this Licence, the Licensor grants to You a worldwide, royalty-free, non-exclusive licence for the duration of copyright in the Work to use the Work for a Non-Commercial purpose in any of the following manner:

"Non-Commercial" is added to make it clear from the outset that the licence is only for non-commercial use.

- a. copy the Work;
- b. incorporate the Work into one or more Collective Works;
- c. copy the Work as incorporated in any Collective Work;

- d. create Derivative Work;
- e. copy the Derivative Work;
- f. communicate to the public, perform, show or play to the public or distribute the Work, Derivative Work or the Work as incorporated in any Collective Work.

The term "communicate to the public" having the same meaning as in the Copyright Act 1987 is used to permit the exercise of such controlled rights for Non-Commercial use subject to the expressed restrictions. Further, we do not think it is necessary to say "perform publicly by means of a digital audio transmission" as per the Standard. To "perform, show or play to the public" would allow the doing of such acts publicly whether by means of digital audio transmission or otherwise.

The above permitted rights will be referred to as "Licensed Rights".

We have used "Licensed Rights" as a reference term for all the permitted acts. We believe this helps to make the document more clear and easy to read.

2.2 Restrictions. The Licensed Rights are at all times subjected to the following restrictions and You:

We have organised the restrictions as below. Each paragraph sets out a restriction and deals with that restriction in respect of the Work, Derivative Work and Collective Work. We think it is more clear and easy to read this way. We also thought that lay persons may find it difficult to grasp all the different restrictions set out in a few long paragraphs as per the Standard format.

- a. may exercise the Licensed Rights only under the terms of this Licence. In relation to a Derivative Work, You may exercise the Licensed Rights under the terms of this Licence or the Other Licence;
- b. may exercise the Licensed Rights only for a Non-Commercial use or purpose. The exchange of the Work for other copyrighted works by means of digital file-sharing or otherwise will be considered Non-Commercial provided there is no payment of any monetary compensation in connection with the exchange. **If You are uncertain if a use of the Work qualifies as Non-Commercial and permitted by this Licence, You have responsibility to verify with the Licensor that the use is permitted before commencing with such use;**

We have added the part highlighted. We think it may be useful to set out what needs to be done should the user be uncertain as to whether a use is primarily intended for or directed toward commercial advantage.

- c. may exercise the Licensed Rights in any material form in any media and formats whether now known or becoming available or created at a later date. You may make such modifications to the Work but only if they are technically necessary to exercise the Licensed Rights in the other media and formats;

- d. *in exercising the Licensed Rights You must not distort, mutilate, modify or significantly alter or transform the Work in a manner that adversely affects the Licensor's honour or reputation;*

This provision is additional and is part of the moral rights granted by the Copyright Act 1987. These rights may be waived by the author. The moral rights include the right to be identified as the author and to prohibit any distortion, mutilation or modification of the work if it will significantly alter the work or might reasonably be regarded as adversely affecting the author's honour or reputation. Will this provision be unnecessarily restrictive in view that the Licensor / author has a right to request not to be attributed or identified as author in respect of any Derivative Work? We will include this provision for the time being and invite feedback and comments during public forum discussions.

- e. must not sub-licence the Work;
- f. must not offer or impose any terms on the use to be made of the Work or the Derivative Work that alter or restrict the terms of this Licence or any rights granted under it or the recipients' exercise of the rights granted hereunder;
- g. must not exercise the Licensed Rights with or using any technological measures that control access or use of the Work or the Derivative Work in a manner inconsistent with the terms of this Licence or that alters or restricts the terms of this Licence or any rights granted under it;
- h. must make reference to this Licence and include a copy of the Uniform Resource Identifier ("URI") for this Licence with every copy of the Work You use in the exercise of the Licensed Rights. The URI for this Licence or the Other Licence must be included with every copy of Derivative Work You create or use in the exercise of the Licensed Rights;
- i. must keep intact all notices that refer to this Licence and to the disclaimer of warranties;
- j. must keep intact all copyright notices for the Work in exercising the Licensed Rights and provide, reasonable to the medium or means You are utilising:
- (i) if supplied, the name of the Original Author (or pseudonym, if applicable) and/or the name of such party as may be designated for attribution by the Original Author and/or Licensor;
 - (ii) the title of the Work if available;
 - (iii) to the extent reasonably practicable, the URI, if any, that the Licensor specifies to be associated with the Work, unless such URI does not refer to the copyright notice or licensing information for the Work;
 - (iv) in the case of a Derivative Work, a credit identifying the use of the Work in the Derivative Work (by way of example only, "Bahasa Melayu translation of the Work by Original Author" or "Screenplay based on original Work by

Original Author”) to be implemented in any reasonable manner. Such credit, in relation to a Derivative Work or Collective Work, must, at minimum, appear where any other comparable authorship credit appears and in a manner at least as prominent as such other comparable authorship credit

EXCEPT THAT if You create a Collective Work or Derivative Work, the Licensor may request You to remove from the Collective Work or Derivative Work, any credit required as above to be provided and You must remove the same, to the extent practicable.

- k. unreservedly accept that the above restrictions apply equally to the Work and/or Derivative Work as incorporated in a Collective Work but this does not require the Collective Work apart from the Work and/or Derivative Work to be made subject to the terms of this Licence.

- 2.3 **Reservation of rights to royalties if use is commercial.** If the Licensed Rights are exercised by You for a purpose or use which is otherwise than Non-Commercial, the Licensor reserves the exclusive right to collect whether individually or through a licensing body or other authorised person, royalties in respect of such exercise of the Licensed Rights.

Rather than specifying the particular work (e.g., musical composition, sound recording, etc.) and the controlled act (e.g., for public performance royalties, mechanical royalties) as in 4e. and 4d. of the Standard, we have provided for the reservation of rights to royalties in a broader and more general form as above. Whilst long standing licensing bodies such as MACP and PPM are generally known and recognised to collect royalties for the exercise of various rights in respect of musical compositions and sound recordings, respectively, there exists also other arrangements for the collection of rights not governed by MACP and PPM. For example, local music publishers have organised themselves to use their association to grant licence for reproduction rights of their musical works and collect royalties in respect of the same. As such, we think a more general format as above may be more appropriate.

Royalties collected by Licensing Bodies are usually only for commercial use or purpose. Thus, if the use is non-commercial, the payment of royalties to Licensing Bodies is usually not an issue. We invite views and comments in this regard.

- 2.4 **Further licence from Licensor to relevant third party.** Each time You exercise the Licensed Rights in relation to the Work, Derivative Work or a Collective Work, the Licensor offers to the recipient a licence to the Work on the same terms and conditions as this Licence

- 2.5 **Reservation of rights to release under different licence terms or to stop distribution of the Work.** The Licensor reserves the right to release the Work under different licence terms or to stop distributing the Work at any time. Any such election will not serve to withdraw this Licence (or any other licence that has been, or is required to be, granted under the terms of this Licence) and this Licence will continue in full force and effect unless terminated in accordance with the provisions of this Licence.

2.6 **Rights not granted are reserved.** All rights not expressly granted to You by this Licence are reserved.

2.7 **No limitation on acts excluded from copyright control.** Nothing in this Licence is intended to reduce, limit or restrict any rights arising from fair dealing and any acts or use specifically excluded from copyright control by the Malaysian copyright law as currently existing or as it may be amended, extended or re-enacted from time to time.

The term "fair dealing" as used in our Copyright Act 1987 is adopted. Section 13(2) of the 1987 Act specifies all the acts that are excluded from copyright control. The language of this clause refers to and is to reflect this.

3 **Representations, Warranties and Disclaimer**

Unless expressly stated otherwise, the Licensor offers the Work as-is and makes no representations, promises or warranties of any kind concerning the Work, whether express, implied, statutory or in any way. This provision is to survive any termination of this Licence.

4 **Exclusion of Liability**

Subject to any liability that may not be excluded or limited by law, the Licensor excludes all liability and shall not be liable for any loss, damage or injury to You arising in any way out of this Licence or the exercise of any of the Licensed Rights or howsoever, even if the Licensor was aware or has been advised of such loss, damage or injury or the possibility or likelihood of its occurrence. This provision is to survive any termination of this Licence.

5 **Termination**

5.1 This Licence and the Licensed Rights will terminate automatically upon any breach by You of the terms of this Licence.

5.2 Such termination will not destroy or diminish the binding force or effect of any of the provisions of this Licence which are expressly or impliedly to survive or continue to have effect and force after such termination.

5.3 The licences of persons who have received Derivative Works or Collective Works from You under this Licence are not terminated for so long as such persons remain in full compliance with their licences.

6 **General**

6.1 **Severability.** If any provision of this Licence is prohibited by or adjudged by a court to be unlawful, void or unenforceable, such provision will to the extent required and possible, be severed and rendered ineffective without modifying the remaining provisions of this Licence and will not in any way affect any other circumstances or the validity or enforcement of this Licence.

- 6.2 **No waiver.** No provision of this Licence is deemed to be waived and no breach consented to unless a written waiver or consent is signed by the party entitled to give the waiver or consent
- 6.3 **Entire agreement.** This Licence constitutes the entire agreement between You and the Licensor. There is no understanding, agreement or representation with respect to the Work and the Licensed Rights not specified here. The Licensor is not bound by any additional provisions that may appear in any communication in any form.
- 6.4 **No modification.** This Licence may not be modified or altered without the mutual written agreement of the Licensor and You.
- 6.5 **Governing law.** This Licence is governed by the laws of Malaysia and the parties irrevocably submit to the exclusive jurisdiction of the Courts of Malaysia.

7 **Role of Creative Commons and Use of the Creative Commons Logo**

We have added this part to incorporate the below provisions relating to Creative Commons Corporation as part of the terms of the Licence (they substantially reflect what is stated in the box below. It is however disputable, in our view, if the matters stated in the box form part of the terms of agreement between the parties).

- 7.1 The Licensor and You acknowledge, agree and accept:
- a. that Creative Commons Corporation (“Creative Commons”) is not a party to this Licence and it makes no representation or warranty whatsoever in connection to the Work, Licence or Licensed Rights and is not liable in all events for any loss, damage or injury howsoever arising even if it was aware or was informed of such loss, damage or injury or the possibility or likelihood of its occurrence;
 - b. the limited role of Creative Commons as a facilitator of the Licence from the Licensor to You and that Creative Commons is not responsible to any one for the actions of and statements by You or the Licensor or any one else attempting to use or who is using this Licence in any way;
 - c. the Creative Commons logo may not be used except to indicate that the Work is licensed under a Creative Commons Licence. Any permitted use must be in compliance with the Creative Commons trade mark usage guidelines as may be published on the Creative Commons website or otherwise made available by Creative Commons upon request from time to time.

Creative Commons is not a party to this Licence, and makes no warranty whatsoever in connection with the Work. Creative Commons will not be liable to You or any party on any legal theory for any damages whatsoever, including without limitation, any general, special, incidental or consequential damages arising in connection to this Licence. Notwithstanding the foregoing

two sentences, if Creative Commons has expressly identified itself as the Licensor hereunder, it shall have all rights and obligations of a licensor.

Except for the limited purpose of indicating to the public that the Work is licensed under the CCPL, neither will use the trade mark “Creative Commons” or any related trade mark or logo of Creative Commons without the prior written consent of Creative Commons. Any permitted use will be in compliance with Creative Commons’ then-current trade mark usage guidelines, as may be published on its website or otherwise made available upon request from time to time.

Creative Commons may be contacted at <http://creativecommons.org/>.