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Australian Version 0-2

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1. Definitions

- a. "**Collective Work**" means a work, such as a periodical issue, anthology or encyclopaedia, in which the Work in its entirety in unmodified form, along with a number of other contributions, constituting separate and independent works in themselves, are assembled into a collective whole. A work that constitutes a Collective Work will not be considered a Derivative Work (as defined below) for the purposes of this Licence.
- b. "**Derivative Work**"² means a work that reproduces a substantial part of the Work, or of the Work and other pre-existing works protected by copyright, or that is an adaptation of a literary, dramatic, musical or artistic work such as a translation, musical arrangement, dramatisation,³ motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work⁴ may be adapted, except that a work that constitutes a Collective Work will not be considered a Derivative Work for the purpose of this Licence.
- c. "**Licensor**" means the individual or entity that offers the Work under the terms of this Licence.

¹ Please note that some spellings have been changed to conform to Australian usage, which generally follows UK usage. This should ensure that only two spelling branches arise within the English versions: US English and International English (as used in the UK and Australian versions).

² These changes address the lack of a *sui generis* exclusive right to create "derivative works" under Australian copyright law, but accommodate the closest analogous exclusive rights.

³ "Fictionalization" has been deleted because there is no exclusive right under Australian copyright to control fictionalizations.

⁴ Definition of Derivative Work has been amended to acknowledge that only Part III works (literary, dramatic, musical or artistic works) can be the subject of the adaption right granted by the Copyright Act. Part IV works (such as films, sound recordings or broadcasts) are still incorporated into the definition of Works even though the Copyright Act excludes them from being "works" *per se*, as these can be subject to the provisions of this licence other than in relation to the adaptation right.

d. "**Moral rights law**" means laws under which an individual who creates a work protected by copyright has rights of integrity of authorship of the work, rights of attribution of authorship of the work, rights not to have authorship of the work falsely attributed, or rights of a similar or analogous nature in the work anywhere in the world.⁵

e. "**Original Author**" means the individual or entity who created the Work.

f. "**Work**"⁶ means the work or other subject-matter protected by copyright that is offered under the terms of this Licence, which may include (without limitation) a literary, dramatic, musical or artistic work, a sound recording, cinematograph film, a published edition of a literary, dramatic, musical or artistic work or a television or sound broadcast.

g. "**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.

g. "**Licence Elements**" means the following high-level Licence attributes as selected by Licensor and indicated in the title of this Licence: Attribution, Noncommercial, ShareAlike.

2. Fair Dealing and Other Rights. Nothing in this Licence excludes or modifies, or is intended to exclude or modify,⁷ (including by reducing, limiting, or restricting) the rights of You or others to use the Work arising from fair dealings or other limitations on the rights of the copyright owner or the Original Author under copyright law, moral rights law or other applicable laws.

3. Licence Grant.ⁱ Subject to the terms and conditions of this Licence, Licensor hereby grants You a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright) Licence to exercise the rights in the Work as stated below:⁸

a. to reproduce the Work, to incorporate the Work into one or more Collective Works, and to reproduce the Work as incorporated in the Collective Works;

b. to create and reproduce Derivative Works;

c. to publish, communicate to the public, distribute copies or records⁹ of, exhibit or display publicly, perform publicly and perform publicly by means of a digital audio transmission the Work including as incorporated in Collective Works;

⁵ This addresses Part IX (Moral Rights of Authors of Literary, Dramatic, Musical or Artistic Works and Cinematograph Films) of the Copyright Act, and is used in clause 2 to preserve the exceptions to moral rights (as they do not exactly mirror those in the laws relating to copyright per se).

⁶ This change addresses the lack of general protection for "copyrightable works of authorship" under Australian law. Instead, Australian copyright only protects subject-matter if it falls into the particular categories specified in the Copyright Act, as described in the examples added to the definition.

⁷ This wording mirrors the terms of section 47H of the Copyright Act, which creates certain non-excludable exceptions to copyright control for computer-programs. The CLRC's report on Contract and Copyright has recommended that these words be used to make various fair dealing provisions into non-excludable exceptions to copyright protection.

⁸ The additions in subparagraphs a. to d. reflect the exclusive rights specified in the Copyright Act.

d. to publish, communicate to the public, distribute copies or records of, exhibit or display publicly, perform publicly, and perform publicly by means of a digital audio transmission Derivative Works;

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b. You may publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform a Derivative Work only under the terms of this Licence or any other Creative Commons licence that contains the same Licence Elements (e.g. a later version of this Creative Commons licence, or a Creative Commons Japan licence that contains the same Licence Elements as this Licence). You must include a copy of, or the Uniform Resource Identifier for, this Licence or other Creative Commons licence containing the same Licence Elements as this Licence with every copy or record of each Derivative Work You publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform. In the event that your Derivative Work is based upon the Work and one or more other works licensed under Creative Commons licences different from this one, you must include copy of, or the Uniform Resource Identifier for, any Creative Commons licence that contains all Licence Elements contained in this Licence, plus those Licence Elements contained in the licence(s) governing the other work(s). You may not offer or impose any terms on the Derivative Works that exclude, alter or restrict the terms of this Licence or the recipients' exercise of the rights granted hereunder, and You must keep intact all notices that refer to this Licence and to the disclaimer of representations and warranties. You may not publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Derivative Work with any technological measures that control access or use of the Work in a manner inconsistent with the terms of this Licence. The above applies to the Derivative Work as incorporated in a Collective Work, but this does not require the Collective Work apart from the Derivative Work itself to be made subject to the terms of this Licence.

c. You may not exercise any of the rights granted to You in Section 3 above in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation. The exchange of the Work for other copyrighted works by means of digital file-sharing or otherwise shall not be considered to

⁹ The term "record" is used in the Copyright Act, instead of "phonorecord".

be intended for or directed toward commercial advantage or private monetary compensation, provided there is no payment of any monetary compensation in connection with the exchange of copyrighted works.

d. If you publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must keep intact all copyright notices for the Work. You must also give the Original Author clear and reasonably prominent credit, in the particular way made known by the Original Author¹⁰ and otherwise as reasonable to the medium or means You are utilizing, by conveying the identity (such as by name or pseudonym if applicable) of the Original Author if supplied; the title of the Work if supplied; to the extent reasonably practicable, the Uniform Resource Identifier, if any, that Licensor specifies to be associated with the Work, unless such URI does not refer to the copyright notice or licensing information for the Work; and in the case of a Derivative Work, a credit identifying the use of the Work in the Derivative Work (e.g., "French translation of the Work by Original Author," or "Screenplay based on original Work by Original Author"). Such credit may be implemented in any reasonable manner; provided, however, that in the case of a Derivative Work or Collective Work, at a minimum such credit will appear where any other comparable authorship credit appears and in a manner at least as prominent as such other comparable authorship credit.

e. Except as otherwise agreed in writing by the Licensor, If you publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must not falsely attribute the Work to someone other than the Original Author.¹¹

f. Except as otherwise agreed in writing by the Licensor, if you publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must not do anything that results in a material distortion of, the mutilation of, or a material alteration to, the Work that is prejudicial to the Original Author's honour or reputation, and You must not do anything else in relation to the Work that is prejudicial to the Original Author's honour or reputation.¹²ⁱⁱ

5. Disclaimer

EXCEPT AS EXPRESSLY STATED IN THIS LICENCE OR SPECIFIED OTHERWISE BY THE PARTIES IN WRITING, AND TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR OFFERS THE WORK "AS-IS" AND MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS REGARDING THE CONTENTS OR ACCURACY OF THE WORK, OR OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, THE ABSENCE OF LATENT OR OTHER DEFECTS, OR THE PRESENCE OR ABSENCE OF ERRORS, WHETHER OR NOT DISCOVERABLE.¹³

6. Limitation on Liability.

TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR ANY LIABILITY ARISING FROM CONTRARY WRITTEN SPECIFICATION AS REFERRED TO IN SECTION 5,¹⁴ IN NO

¹⁰ Substantially mirrors the words of ss.195 and 195AA.

¹¹ Substantially mirrors the wording of s.195AC-AH.

¹² Substantially mirrors the wording of s.195AJ-AL.

¹³ This amendment merges the two original provisions that substantially overlapped and served the same purpose.

¹⁴ This change addresses changes made to section 5 in the draft US version 2.0.

EVENT WILL LICENSOR BE LIABLE TO YOU ON ANY LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) FOR ANY LOSS OR DAMAGE WHATSOEVER, INCLUDING (WITHOUT LIMITATION) LOSS OF PRODUCTION OR OPERATION TIME, LOSS, DAMAGE OR CORRUPTION OF DATA OR RECORDS; OR LOSS OF ANTICIPATED SAVINGS, OPPORTUNITY, REVENUE, PROFIT OR GOODWILL, OR OTHER ECONOMIC LOSS; OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS LICENCE OR THE USE OF THE WORK, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

If applicable legislation implies warranties or conditions, or impose obligations or liability on the Licensor in respect of this Licence that cannot be wholly or partly excluded, restricted or modified, the Licensor's liability is limited, to the full extent permitted by the applicable legislation, at its option, to:¹⁵

- a. in the case of goods, any one or more of the following:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - iv. the payment of the cost of having the goods repaired; or
- b. in the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

7. Termination

- a. This Licence and the rights granted hereunder will terminate automatically upon any breach by You of the terms of this Licence. Individuals or entities who have received Derivative Works or Collective Works from You under this Licence, however, will not have their licences terminated provided such individuals or entities remain in full compliance with those licences. Sections 1, 2, 5, 6, 7, and 8 will survive any termination of this Licence.
- b. Subject to the above terms and conditions, the licence granted here is perpetual (for the duration of the applicable copyright in the Work). Notwithstanding the above, Licensor reserves the right to release the Work under different licence terms or to stop distributing the Work at any time; provided, however that 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 as stated above.

8. Miscellaneous

- a. Each time You publish, communicate to the public, distribute or publicly digitally perform the Work or a Collective Work, the Licensor offers to the recipient a licence to the Work on the same terms and conditions as the licence granted to You under this Licence.
- b. Each time You publish, communicate to the public, distribute or publicly digitally perform a Derivative Work, Licensor offers to the recipient a licence to the original Work on the same terms and conditions as the licence granted to You under this Licence.

¹⁵ The specified options substantially mirror the permitted options in s.68A of the Trade Practices Act 1974.

c. If any provision of this Licence is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this Licence, and without further action by the parties to this agreement, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.

d. No term or provision of this Licence shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party to be charged with such waiver or consent.

e. This Licence constitutes the entire agreement between the parties with respect to the Work licensed here. To the full extent permitted by applicable law, there are no understandings, agreements or representations with respect to the Work not specified here. Licensor shall not be bound by any additional provisions that may appear in any communication from You. This Licence may not be modified without the mutual written agreement of the Licensor and You.

f. The construction, validity and performance of this Licence shall be governed by the laws in force in New South Wales.¹⁶

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NOTES ON SPECIFIC ISSUES

i A. Taxable supply issues

1. Australian goods and services tax (GST)

1.1 Australian GST is imposed on a wide range of transactions including in some circumstances the supply of goods, services or grant of rights. GST is only payable in relation to supplies:

- made for consideration (whether monetary or non-monetary); and

¹⁶ This subsection explains the licence in light of the legislative background by reference to which this licence has been drafted. A state jurisdiction is specified because if this licence is enforced in Australia, both federal and state law will apply. New South Wales is chosen simply to provide certainty to licensors and licensees with regard to governing laws.

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- made in the course or furtherance of an "enterprise" carried on by the supplier. The definition of "enterprise" excludes activities done as a private recreational pursuit or hobby; and
 - connected with Australia; and
 - made by a supplier who is registered or required to register for GST (generally this includes enterprises that have an annual turnover of AUD50,000 or more).
- 1.2 The licence form may be used in a wide variety of circumstances, involving a broad spectrum of:
- (a) kinds of licensors;
 - (b) kinds of licensees;
 - (c) locations of licensors and licensees; and
 - (d) kinds of licensed materials.
- 1.3 Different GST implications will arise depending on the circumstances of a particular transaction. The issue is also complicated by the practical difficulties in enforcing the licence, in that neither party signs the document or communicates on a one-to-one basis with the other regarding it. This gives rise to the following difficulties:
- licensees might have difficulty in enforcing licence provisions (including provisions in relation to GST) against licensors, as there is no obligation on licensors to identify themselves with sufficient particularity in the licensed material; and
 - licensors might have difficulty in enforcing licence provisions (such as GST-related ones) against licensees, as there is no obligation on licensees to communicate their acceptance of the licence form.
- 1.4 The following comments can therefore only be made at a high level of generality with no particular application to specifically contemplated licensing transactions using the Creative Commons licence form. The comments would have to be carefully elaborated if they were to be applied to any particular licensing transaction or scenario using the Creative Commons licence form.
- 1.5 For some licensing transactions involving use of a Creative Commons licence, the GST legislation will not, on its terms, impose an obligation on the licensor to pay GST.
- Examples may be where:
- (a) the supply is not connected with Australia; or

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- (b) the recipient of the supply is not registered (and is not required to be registered) for GST and is not required to disclose an Australian Business Number (ABN); or
 - (c) the supply is not made in the course or furtherance of an "enterprise" (eg, because it is an activity done as a private recreational pursuit or hobby); or
 - (d) the supply constitutes an export that is treated as GST-free.

Special GST rules also apply for educational institutions and charities, so that some (but not all) of their activities might be treated as GST-free.

1.6 For other licensing transactions involving use of a Creative Commons licence, it is possible that the GST legislation will impose an obligation on the licensor to pay GST. Importantly, it should be noted that:

- (a) the grant of copyright licence contemplated by the Creative Commons licence form would arguably constitute a "supply" within the meaning of the GST legislation;
- (b) the restraints and positive obligations on the licensee contemplated by the Creative Commons licence form would arguably constitute "consideration" within the meaning of the GST legislation. In this regard, note that:
 - (i) the statutory definition of "consideration" is potentially broader than "consideration" within the common law meaning for the purposes of contract law, as it includes any act or forbearance in connection with the supply of anything, or in response to or for the inducement of a supply of anything. It is therefore possible that even if a licence in the Creative Commons form is held contractually unenforceable for (say) illusory/bad consideration at common law, those matters might nevertheless still fall within the literal bounds of the statutory definition of "consideration".
 - (ii) it is not necessary that there be any legal obligation to provide the consideration.
 - (iii) where the consideration is not expressed in money, the consideration is "the GST inclusive market value of that consideration". Although it can be hard to value such non-monetary consideration, the preponderance of authority favours the view that difficulties in determining the amount of consideration cannot of itself justify the conclusion that no consideration exists.
- (c) The combination of the licensing transaction under a Creative Commons licence and other transactions between the licensor and licensee might also affect the analysis, such that additional supplies and/or consideration could be construed.

1.7 Where a transaction involving use of a Creative Commons licence is such as to attract the imposition of GST liability on the licensor, there may be circumstances allowing the licensor to argue that the GST payable in the transaction is zero because the GST inclusive

market value of that consideration is zero. Equally, however, there may also be other circumstances in the transaction that make such arguments difficult.

1.8 It is also possible that a licensee, in undertaking to abide by certain conditions, may be treated as making a supply to the licensor in return for the licence.

2. **Practical implications**

2.1 Given that there is a material risk that the Creative Commons licence form may be used in some circumstances in which GST liability will be imposed on the licensor, there are at least two broad approaches that could be taken as to the management of that risk:

- (a) Option 1 - the Creative Commons licence can be silent about this risk, so that the practical burden of the risk remains with the licensor.
- (b) Option 2 - the Creative Commons licence expressly provides that the licensor can recover from the licensee the amount of GST payable (by the licensor to the Australian Taxation Office). This Option tries to transfer the practical burden of the risk to the licensee. This Option is not uncommon in commercial licensing practice, and it is rare for licensees to object to its imposition in commercial transactions provided there is certainty regarding both the imposition of liability and the quantum of liability.

2.2 There are practical difficulties associated with both Options. In both cases, a licensor may not know (as a matter of course and without taking special measures) when the licence has been invoked and who invoked it. In one sense, adopting Option 1 (rather than Option 2) would be consistent with acknowledging this practical difficulty; that is, why should a licensor bother including contractual rights to recover GST amounts from the licensee when the licensor will not (as a matter of course) have that practical opportunity?

2.3 Regardless of which Option is taken, licensors and licensees should be provided with commentary noting this potential risk and strongly suggesting that they take their own professional tax advice before using the Creative Commons licence form. This is particularly important, if Option 1 is adopted, so as to minimise and mitigate the risks for Creative Commons (as an organisation) arising from third party use of the Creative Commons licence form. In addition, there appears to be nothing to stop variants of the Creative Commons licence form being developed, that:

- (a) adopt Option 2; and
- (b) include particular mechanisms by which the licensor can identify/authenticate individual licensees, and perhaps even strengthen the legal enforceability of the licence (eg by obtaining stronger manifestations of consideration and assent from individual licensees).

2.4 In addition, the Australian Taxation Office (ATO) could be requested to provide a binding private ruling on the matter. Such an application would need to be made on behalf of an identified licensor (or licensors) and in relation to a particular proposed transaction. It would only be binding on the ATO in relation to that particular transaction (or

transactions). However, the ATO would not normally depart from its position in relation to other identical transactions. This would involve some effort and delay and it is possible (but not certain) that the ATO would agree that there are no taxable supplies involved in the licensing transactions (or that any taxable supplies are for consideration that is of no value). This would give practical comfort to users of the Creative Commons licence that they are complying with their GST obligations.

3. **Comparative approaches**

It is useful to note that the two other common law countries that are participating in the Creative Commons internationalisation project and which have comparable taxation schemes (the UK and Ireland) have remained silent on the issue in their licence versions. Neither licence mentions the Value Added Tax (VAT) operating in those countries.

ii **B. Moral Rights**

1. The original (United States) version of the Creative Commons Attribution, Non-Commercial, Share-Alike licence has limited provisions for moral rights. Clause 4(d) provides, in effect, for a right of attribution of authorship. In the Australian version, this right has been simply translated into Australian legal terms.
2. Australian moral rights legislation (contained in Part IX of the *Copyright Act 1968* (Cth)) gives authors the following additional rights:
 - (a) a right not to have authorship of a work falsely attributed (ss 195AC - 195AH) and
 - (b) a right of integrity of authorship of a work.
3. There are three options with regard to treatment of these rights in the licence: silence, assertion of these rights or disavowal of the rights. The US version takes the option of silence (except in relation to attribution). The UK version takes the option of assertion of moral rights.

3.1 **Silence**

If the licence is silent on the issues of false attribution and integrity of authorship, then the last sentence in clause 3 is likely to operate to reserve those rights. The default position, then, will be that the author is, in effect, reserving his or her moral rights. This appears to be the current position for Australian licensors who already use the US version of the licence and for the Original Authors of Works currently licensed under the US version. Arguably, such a position introduces unnecessary and easily avoidable ambiguity.

3.2 **Assertion of Rights**

- (a) There are two alternative ways in which these rights can be asserted. The first method is to incorporate, into the licence, an assertion of rights mirroring the language of the Australian Copyright Act. This is the option and method currently

drafted into the Australian version. The specific changes, made in sub-clauses 4(e) and (f), are reproduced below:

e. Except as otherwise agreed in writing by the Licensor, if if You publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must not falsely attribute the Work to someone other than the Original Author.

f. Except as otherwise agreed in writing by the Licensor, if you publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works, You must not do anything that results in a material distortion of, the mutilation of, or a material alteration to, the Work that is prejudicial to the Original Author's honour or reputation, and You must not do anything else in relation to the Work that is prejudicial to the Original Author's honour or reputation.

- (b) The alternative method for assertion of moral rights is explicit reference to the applicable legislation. This is analogous to the method taken in the version 1.0 UK licence draft with regard to fair dealing:

*2. **Fair Dealing.** Nothing in this Licence is intended to reduce, limit or restrict your right to use the Works as permitted by Chapter III of the Copyright, Designs and Patents Act 1988 as amended from time to time (including without limitation your rights to use the work based on rights of fair dealing).*

- (c) The Australian version adopts the first option, though a possible alternative drafting (that would also dispel ambiguity) is to disavow the moral rights granted to authors by Australian law: see below. The pragmatic approach taken in the current drafting of the Australian version is to maintain consistency with the philosophical position taken in the UK licence drafting but, consistent with the Creative Commons drafting style, to avoid statutory references that would be cryptic to laypeople or lawyers from outside the jurisdiction.
- (d) To accommodate the possibility that a default assertion of rights is not intended by the licensor, the drafting adds the words added to Version 2 in the context of the disclaimer of warranty. That is, the licence contemplates that the default assertion can be defeated by an express disavowal of moral rights accompanying the licence.

3.3 Disavowal of Rights

- (a) It is certainly possible to adopt the philosophical stance that the licence should disavow the moral rights granted to authors by Australian law, either invariably or as a default position. This is a difficult policy issue that does not yield easy answers.
- (b) Reasons, additional to those identified above, for not disavowing those moral rights in the present drafting include the following:

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- (i) It is arguable that where the licensor is not the Original Author, a default disavowal by a copyright owner of all moral rights of the author will carry less risk for both licensor and licensee than a default assertion of those rights. That is, if the licensor was wrong in disavowing those rights by default, the consequences are likely to be more drastic for both licensor and licensee than if the licensor wrongly asserts those rights by default (since it seems unlikely that an Original Author would seek legal redress for a mistaken enforcement of his or her lawful rights).
- (ii) Where the licensor chooses to take measures to assure a legally effective disavowal of moral rights, the present drafting allows the licensor the opportunity to defeat the default assertion of those rights. The argument here is that if a licensor goes to the trouble of obtaining moral rights consents that are valid for the purposes of the moral rights legislation, it should be little inconvenience for them to take the extra step of positively expressing that disavowal with the licence. Whereas, if the default drafting required due diligence to confirm that a moral rights consent had been obtained and then a positive assertion of those rights if they had not been obtained, this might lead to either unreliable consents (because licensors who are not the Original Author might not bother to perform such due diligence) or to non-dissemination of the works (because the transaction cost for the licensor is too high).
- (c) Nonetheless, if a policy decision is made for the default position under the licence to be a disavowal of moral rights protection afforded under Australian law, a provision to do so should be relatively easy to include. For instance, clauses 4.e and 4.f could read:

e. Except as otherwise agreed in writing by the Licensor, if You publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works in accordance with this Licence, You do not have to refrain from falsely attributing the Work to someone other than the Original Author, and the licensor either (if the licensor is the Original Author) consents to this under Section 4..g or (if someone else is the Original Author) has obtained a valid written consent substantially in the terms of Section 4.g, given by or on behalf of the Original Author.

f. Except as otherwise agreed in writing by the Licensor, if You publish, communicate to the public, distribute, publicly exhibit or display, publicly perform, or publicly digitally perform the Work or any Derivative Works or Collective Works in accordance with this Licence, You do not have to refrain from making a material distortion of, the mutilation of, or a material alteration to, the Work that is prejudicial to the Original Author's honour or reputation, or anything else in relation to the Work that is prejudicial to the Original Author's honour or reputation, and the licensor either (if the Licensor is the Original Author) consents to this under Section 4..g or (if someone else is the Original Author) has obtained a

valid written consent substantially in the terms of Section 4.g, given by or on behalf of the Original Author.

g. If the Licensor is the Original Author, then to the extent permitted by applicable law, the Licensor unconditionally and irrevocably consents to all acts or omissions permitted by this Licence that would otherwise infringe the Licensor's rights under moral rights law:

- (i) not to have authorship of the Work falsely attributed; or*
- (ii) of integrity of authorship in respect of the Work,*

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