INTERNATIONAL FILM CO-PRODUCTION PROGRAM

EFECTIVE 2 JULY 2021

TERM AND CONDITIONS





1. OBJECTIVES

- 1.1 These Terms and Conditions in respect of International Film Co-Production Program ("Program T&C") are to:
 - (a) specify how applications for the Provisional Approval and Final Approval are to be made;
 - (b) provide for the issuance of the Certificate of Provisional Approval and Certificate of Final Approval; and
 - (c) other terms relevant to the Program which are applicable to the Applicant.
- 1.2 Please note the following:
 - (a) these Program T&C are subjected to review, amendments and additions, from time to time, at the sole discretion of FINAS;
 - (b) in addition to the terms and conditions of these Program T&C, the Applicant shall be bound by the terms and conditions stipulated in the Agreement(s), Guidelines, Certificate of Provisional Approval (if granted) and Certificate of Final Approval (if granted); and
 - (c) additional terms and conditions may be stipulated on the Certificate of Provisional Approval or Certificate of Final Approval at the discretion of FINAS.

2. DEFINITIONS AND INTERPRETATIONS

The terms used in these Program T&C shall have the same meaning as defined in the Guidelines issued by FINAS, unless the context otherwise requires or otherwise defined as follows:

"Agreement(s)"	refers to the agreements entered into between the Government of Malaysia with the governments of other countries in relation to the Program;
"Applicant"	being the applicant for the application for Provisional Approval and/or Final Approval (whichever applicable);
"Application"	refers to application for Provisional Approval and/or Final Approval made by the Applicant (whichever is applicable);

"Business Day(s)"

means a day on which banks are open for business in Selangor and shall exclude Saturdays, Sundays and public holidays;

"Certificate of Final Approval"

refers to the document issued by the Program Committee to the Applicant pursuant to the Program Committee's approval of the Applicant's application for the Final Approval;

"Certificate of Provisional Approval"

refers to the document issued by the Program Committee to the Applicant pursuant to the Program Committee's approval of the Applicant's application for the Provisional Approval;

"Competent Authority"

refers to the government department or body nominated by that country's government which is responsible to administer the Program;

"Co-Producers' Contract"

being the contract to be executed/executed between coproducers which outlining the terms for the making of the Project;

"Co-Production Eligibility Tool"

refers to the tool which may assist the Applicant in the assessment of its eligibility for co-production (in respect of the Project) which is made available at FINAS website;

"Final Approval"

refers to the final approval as described in Paragraph 2 of Part 6 (Applying For Approval) of the Guidelines.

"Final Approval Co-Production Application Form"

refers to the application form in respect of the Final Approval;

"FINAS"

refers to *Perbadanan Kemajuan Filem Nasional Malaysia* or National Film Development Corporation Malaysia, a statutory body incorporates under National Film Development Corporation Act 1981 (Act 244). FINAS is the government agency under the Ministry of Communication and Multimedia of Malaysia (Kementerian Komunikasi dan Multimedia Malaysia - KKKM);

"Guidelines"

refers to the guidelines in respect of the Program, as issued by and may be amended or supplemented, from time to time, at the discretion of FINAS;

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"Independent Film Co-
Production Consultant
(IFPC)"

means a person who:

- (a) has recent experience in large budget film production management; and
- (b) in FINAS's opinion, is independent of the company in relation to which he or she is asked, under these Program T&C, to provide an assessment report which forms part of the Program's due diligence process;

"Malaysian Co-Production Audit Report"

refers to the audit report for the Applicant's cost on the Project in according to the film's cost categories which are co-produced in the form that is acceptable to FINAS;

"Program"

means the International Film Co-Production Program as described in **Paragraph 1 of Part 2 (Introduction)** of the Guidelines;

"Program Committee"

means the Program Committee that convenes:

- (a) to give decisions on either to approve or refuse the Applicant's application for either Provisional Approval or Final Approval; and/or
- (b) to give any other decisions relevant to the Program;

"Program T&C"

refers to these Terms and Conditions in respect of International Film Co-Production Program, as issued by and may be amended or supplemented, from time to time, at the discretion of FINAS;

"Project"

means the film as defined in the Guidelines being the film to be co-produced under the Program;

"Provisional Approval"

refers to provisional approval as described in **Paragraph 1** of Part 6 (Applying For Approval) of the Guidelines;

"Provisional Approval Co-Production Application Form"

refers to the application form in respect of the Provisional Approval;

"Secretariat"

refers to the secretariat of the Program being the relevant division in FINAS, established to process the Application. The terms "FINAS" and "Secretariat" may be used {00668134}4

interchangeably in these Program T&C and refers to the same organization i.e. FINAS; and

"Statutory Declaration"

means a statutory declaration in accordance with the Statutory Declarations Act 1960 of Malaysia.

3. REQUIREMENTS WITH REGARDS TO APPLICANT

3.1 The Applicant shall ensure that:

- (a) the Applicant would meet the eligibility requirements and criteria of the Program at all times (as mentioned in the Agreement(s), Guidelines and these Program T&C) and that the Project belongs to the Applicant.
- (b) the Applicant is an eligible producer for the purpose of the Program with either:
 - (i) a valid Malaysian Company Registration issued by the Companies Commission of Malaysia and has a valid and subsisting FINAS film production license; OR
 - (ii) a foreign production company who has appointed and commissioned a Malaysian production services company that: (i) is a private limited company duly incorporated under the Companies Act 2016 of Malaysia and registered with Companies Commission of Malaysia; and (ii) has a valid and subsisting FINAS film production license; OR
 - (iii) a private limited production services company incorporated by a foreign production company under the Companies Act 2016 of Malaysia and registered with Companies Commission of Malaysia (i) with foreign shareholding and (ii) has a valid and subsisting FINAS film production license.
- (c) the Applicant has the necessary expertise and capability (including but not limited to financial and technical capability) to undertake and complete the Project.
- (d) there is no litigation, tax claim, dispute or administrative proceeding that is presently current or pending or, to the Applicant's knowledge, threatened, which is likely to have material adverse effect upon the Applicant or the Applicant's ability to perform the Applicant's financial or other obligation in relation to the Project.
- (e) the Applicant can pay the Applicant's debts as and when they fall due.

- (f) the Applicant (as the Malaysian producer) and the co-production company is neither a related corporation nor linked by common management, ownership or control (except to the extent that is inherent in the production) to the co-producer or co-producers entity.
- (g) the Applicant has obtained all documents which are relevant and required before the Applicant undertake the filming, which includes but not limited to Film Certification Letter (i.e Surat Perakuan Penggambaran SPP) issued by FINAS.

4. REQUIREMENTS WITH REGARDS TO PROJECT

- 4.1 The Applicant shall ensure that all aspects of the Project adhere and comply strictly with the terms and conditions set out in the Agreement(s), the Guidelines, these Program T&C, Certificate of Provisional Approval (if granted) and Certificate of Final Approval (if granted), at all times.
- 4.2 The Applicant shall ensure that all aspects of the Project are in strict compliance with the applicable laws and requirements in Malaysia at all times and such applicable laws and requirements includes without limitation, the Customs Act 1967 and its subsidiary regulations, the Explosives Act 1957 and its subsidiary legislations, the Malaysian Environmental Quality Act 1974 and its subsidiary regulations, the Arms Act 1960, the Employment Act 1955, the Workmen's Compensation Act 1952, the Employee's Social Security Act 1969, Malaysian Anti-Corruption Commission Act 2009, Occupational Safety and Health Act 1994, Immigration Act 1959/1963, Children and Young Persons (Employment) Act 1966, Film Censorship Act 2002 (if necessary/applicable) and such other applicable laws, regulations, requirements or directives which may from time to time be enacted and/or amended by the relevant authorities. Any transgression of these laws and regulations will result in the revocation of Provisional Approval and/or Final Approval.
- 4.3 The Applicant shall be responsible to apply for and obtain the necessary visa(s), passes, releases, approvals and permits (where necessary) for the Project as well as the cast and crew members of the Project (where applicable) before commencing the Project or production in Malaysia.
- 4.4 The Applicable shall be responsible for the acts and omissions of all the cast and crew members of the production throughout the cast and crew member's stay in Malaysia and to ensure that the acts and behavior of the cast and crew members will not in any way be considered to infringe upon the sensitivity of the Malaysia cultural, social and religious practices.

- 4.5 The Applicant shall ensure that the Project and the contents of the Project:
 - (i) does not contain issues deemed insulting, offensive and/or portraying Malaysia in a negative light;
 - (ii) does not contain any images which damages the image of Malaysia;
 - (iii) does not insult, offend and affect the sensitivity of any religion in Malaysia;
 - (iv) does not threaten the security and harmony in Malaysia;
 - (v) is not prohibited for distribution, inter alia in Malaysia;
 - (vi) does not contain other material that could give rise to any civil or criminal liability under the applicable law in Malaysia;
 - (vii) comply with the terms and conditions provided by FINAS in relation to the Program which includes but not limited to the Certificate of Provisional Approval (if granted), Certificate of Final Approval (if granted), Guidelines and these Program T&C; and
 - (viii) comply with all applicable laws, requirements, regulations and guidelines in Malaysia at all times.
- 4.6 The Applicant has acquired the underlying rights and all other rights and consents necessary for the development, production and exploitation of the Project.
- 4.7 The Applicant has the necessary rights required to undertake pre-production and production activity(ies) in connection with the underlying rights of the Project, including but not limited to the preparation and submission of treatments, synopsis, outlines and/or screenplays based on the scripts, pre-sales and arrangement for financing and/or distribution of the Project.
- 4.8 The Applicant shall ensure that the Personnel listed as Malaysian are Malaysian nationals or have Malaysian residency status and there will be no non-party personnel involved in the making of the Project other than confirmed in this application and subsequently approved by the Program Committee.
- 4.9 The Applicant shall ensure continuing compliance of the Project and to get the Program Committee's approval before changing any of the details on which official co-production was approved.

5 APPLICATION FOR PROVISIONAL APPROVAL

5.1 Pre-application

- (a) The Applicant shall ensure the following before applying for Provisional Approval:
 - (i) the Applicant has read the Guidelines;
 - (ii) the Applicant has read the relevant Agreement(s);
 - (iii) the Applicant has completed the Co-Production Eligibility Tool; and
 - (iv) the Applicant has consulted the Secretariat about the Project and the Program.
- (b) The Applicant shall ensure that they would meet the eligibility requirements and criteria of the Program as stipulated in the Agreement(s) and Guidelines as generally listed below:
 - (i) Minimum Contributions;
 - (ii) Location Filming;
 - (iii) Participation;
 - (iv) Soundtrack and Footage;
 - (v) Making Up to First-Release or Digital Equivalent;
 - (vi) Working Conditions;
 - (vii) Acknowledgements and Credits;
 - (viii) Screenwriters;
 - (ix) Underlying Works;
 - (x) Co-Producers' Contract; and
 - (xi) Multipartite Co-Productions.
- (c) The Applicant shall ensure that the conditions set out in the Agreement(s) and Guidelines as well as these Program T&C will be met, or likely to be met.
- (d) The Applicant shall fully complete the Provisional Approval Co-Production Application Form and ensure that the same is duly executed by the authorized representative and signatory. Photocopying and collating the required number of copies of documents is the responsibility of the Applicant.
- (e) The Applicant shall use the latest version of the Provisional Approval Co-Production Application Form (as at the date of the submission) as provided on FINAS's website.

- 5.2 Submission of application for Provisional Approval
 - (a) The Applicant shall submits to the Secretariat (the details of which as provided under **Paragraph 14** of this Program T&C) with one (1) hard copy and one (1) soft copy (in USB flash drive) of the completed Provisional Approval Co-Production Application Form together with all the relevant supporting documents.
 - (b) The Applicant shall submits, among others, the following documents together with the Provisional Approval Co-Production Application Form:
 - (i) a Statutory Declaration to certify the accuracy of all the details/information contained within the Provisional Approval Co-Production Application Form and the supporting documents provided in respect of the application for Provisional Approval;
 - (ii) a completed Co-Production Eligibility Tool; and
 - (iii) other documents as identified in the Provisional Approval Co-Production Application Form.
 - (c) The Applicant shall ensure that its co-producer is lodging an application for Provisional Approval to its Competent Authority at the same time as Program Committee's approval can only be granted once all the relevant Competent Authorities have provided their approval towards the co-producer's application.

6 ASSESSMENT OF APPLICATION FOR PROVISIONAL APPROVAL

- 6.1 Upon submission of the Provisional Approval Co-Production Application Form and the relevant supporting documents to the Secretariat, to ensure smooth processing of the Application by Secretariat, the Applicant shall ensure the followings:
 - (a) to cooperate with Secretariat to enable Secretariat to understand the Project as well as to process the submitted Application i.e the Provisional Approval Co-Production Application Form and the relevant supporting documents;
 - (b) to respond to Secretariat's queries or request for any additional information or documents relevant to the Applicant's application under the Program in a timely manner as stipulated by Secretariat, failure of which the Application shall be deemed abandoned and FINAS / Secretariat / Program Committee shall not be liable for any matter arising from such abandonment thereto. For the avoidance of doubt, the Applicant may request for an extension of time to provide such information or documents as requested by Secretariat based on a valid reason(s)

- and such request must be applied in writing to the Secretariat within fourteen (14) Business Days from the date of Secretariat's guery and request; and
- (c) if required by the Secretariat and/or Program Committee, the representative of the Applicant shall attend to the necessary meeting arranged by Secretariat, in which cases the Applicant shall:
 - (i) present the Applicant's Project to the Secretariat and/or Program Committee to enable Secretariat and/or Program Committee to understand the Project; and
 - (ii) provide appropriate and relevant response(s) to Secretariat in respect of the posted inquiries made by Secretariat and/or Program Committee regarding the Applicant's Project during the said meeting.

For avoidance of doubt, such meeting is arranged to enable Secretariat and/or Program Committee to understand the Project and nothing under **Paragraph 6.1(c)** above shall indicate Program Committee's warranties and/or undertaking to approve the Application.

6.2 The Applicant agree that Secretariat may seek information or advice from any person or source or solicit information or advice from a third (3rd) party, including but not limited to, an Independent Film Production Consultant - including advice on the compliance of the Applicant and the Project in respect of the terms and conditions as stipulated in the Agreement(s) and Guidelines as well as these Program T&C.

7 DECISION OF APPLICATION FOR PROVISIONAL APPROVAL

- 7.1 Pursuant to the Program Committee's assessment on the Application, the Program Committee will provide its decision whether to approve or refuse the Application.
- 7.2 Approval of Application In the event where the Program Committee is satisfied that the conditions set out in the Agreement(s) and Guidelines as well as these Program T&C will be met, or likely to be met, the Program Committee will issue the Certificate of Provisional Approval to the Applicant.
- 7.3 Refusal of Application In the event where the Program Committee is satisfied that the Applicant and/or the Project fail to comply with any of the terms and conditions set out in the Agreement(s) and Guidelines as well as these Program T&C, the Program Committee will notify the Applicant of its refusal.

- 7.4 Applicant may within thirty (30) Business Days from the receipt of notice of refusal of Provisional Approval from Program Committee, submit written appeal to the Program Committee containing proposals, conditions, amendments, modifications or limitations in respect of the Project, to the Secretariat (the details of which as provided under Paragraph 14 of this Program T&C). In the event the Applicant does not submit any written appeal within the stipulated period, the Application shall be deemed abandoned.
- 7.5 Grant of Provisional Approval neither provides a guarantee for the grant of Final Approval nor does it mean that any incentive or benefit made available is automatic, rather, it means you are eligible to apply for the relevant incentive/benefit in respect of the Project subject however to the terms and conditions applicable to such incentive or benefit.

8 APPLICATION FOR FINAL APPROVAL

8.1 Pre-application

- (a) The Applicant shall ensure the following before applying for Final Approval:
 - (i) the Applicant has read the Guidelines;
 - (ii) the Applicant has read the relevant Agreement(s);
 - (iii) the Applicant has completed the Co-Production Eligibility Tool; and
 - (iv) the Applicant has consulted the Secretariat about the Project and the Program.
- (b) The Applicant shall ensure that the eligibility requirements and criteria of the Program as stipulated in the Agreement(s) and Guidelines as generally listed below are met:
 - (i) Minimum Contributions;
 - (ii) Location Filming;
 - (iii) Participation;
 - (iv) Soundtrack and Footage;
 - (v) Making Up to First-Release or Digital Equivalent;
 - (vi) Working Conditions;
 - (vii) Acknowledgements and Credits;
 - (viii) Screenwriters;
 - (ix) Underlying Works;
 - (x) Co-Producers' Contract; and
 - (xi) Multipartite Co-Productions.

- (c) The Applicant shall only apply for Final Approval for a Project once the Project is completed, subject to prior grant of Provisional Approval as evidenced via Certificate of Provisional Approval issued by Program Committee.
- (d) The Applicant shall ensure that the conditions set out in the Agreement(s), Guidelines, these Program T&C and Certificate of Provisional Approval has been met.
- (e) The Applicant shall fully complete the Final Approval Co-Production Application Form and the same is duly executed by the authorized representative and signatory. Photocopying and collating the required number of copies of documents is the responsibility of the Applicant.
- (f) The Applicant shall use the latest version of the Final Approval Co-Production Application Form (as at the date of the submission) as provided on FINAS's website.

8.2 Submission of application for Final Approval

- (a) The Applicant shall submits to the Secretariat (the details of which as provided under **Paragraph 14** of this Program T&C) with one (1) hard copy and one (1) soft copy (in USB flash drive) of the completed Final Approval Co-Production Application Form together with all the relevant supporting documents.
- (b) The Applicant shall submits, among others, the following documents together with the Final Approval Co-Production Application Form:
 - (i) a completed Co-Production Eligibility Tool;
 - (ii) the Malaysian Co-Production Audit Report;
 - (iii) the duly executed Co-Producers' Contract;
 - (iv) a copy of the finished Project;
 - (v) a Statutory Declaration verifying the accuracy of the information contained in the Application; and
 - (vi) other documents as clearly mentioned, identified and requested in the Final Approval Co-Production Application Form,
- (c) The Applicant shall ensure that its co-producer is lodging an application for Final Approval to its Competent Authority at the same time as Program Committee's approval can only be granted once all the relevant Competent Authorities have provided their approval towards the co-producer's application.

9 ASSESSMENT OF APPLICATION FOR FINAL APPROVAL

- 9.1 Upon submission of the Final Approval Co-Production Application Form and the relevant supporting documents to the Secretariat, to ensure smooth processing of the Application, the Applicant shall ensure the followings:
 - (a) to cooperate with Secretariat to enable Secretariat to understand the Project as well as to process the submitted Application i.e. the Provisional Approval Co-Production Application Form and the relevant supporting documents;
 - (b) to respond to Secretariat's queries or request for any additional information or documents relevant to the Applicant's application under the Program in a timely manner as stipulated by Secretariat, failure of which the Application shall be deemed abandoned and FINAS / Secretariat / Program Committee shall not be liable for any matter arising from such abandonment thereto. For the avoidance of doubt, the Applicant may request for an extension of time to provide such information or documents as requested by Secretariat based on a valid reason(s) and such request must be applied in writing to the Secretariat within fourteen (14) Business Days from the date of Secretariat's query and request,
- 9.2 The Applicant agree that Secretariat may seek information or advice from any person or source or solicit information or advice from a third (3rd) party, including but not limited to, an Independent Film Production Consultant including advice on the compliance of the Applicant and the Project in respect of the terms and conditions as stipulated in the Agreement(s) and Guidelines as well as these Program T&C.

10. DECISION OF APPLICATION FOR FINAL APPROVAL

- 10.1 Pursuant to the Program Committee's assessment on the Application, the Program Committee will provide its decision whether to approve or refuse the Application.
- 10.2 Approval of Application In the event where the Program Committee is satisfied that the conditions set out in the Agreement(s), Guidelines, these Program T&C and Certificate of Provisional Approval has been met, the Program Committee will issue the Certificate of Final Approval to the Applicant.
- 10.3 Refusal of Application In the event where the Program Committee is satisfied that the Applicant and/or the Project fail to comply with any of the terms and conditions set out in the Agreement(s), Guidelines, these Program T&C and the Certificate of Provisional Approval, the Program Committee will notify the Applicant of its refusal.

10.4 Applicant may within thirty (30) Business Days from the receipt of notice of refusal of Final Approval, submit written appeal to the Program Committee containing proposals, conditions, amendments, modifications or limitations in respect of the Project, to the Secretariat (the details of which as provided under **Paragraph 14** of this Program T&C). In the event the Applicant does not submit any written appeal within the stipulated period, the Application shall be deemed abandoned.

11. DUE DILIGENCE PROCESS

11.1 The Applicant agrees that:

- (a) The Application may undergo a due diligence process on interim basis. All audits will be conducted in accordance with all applicable accounting standards, including any standards relating to the independence of auditors.
- (b) Malaysian Co-Production Audit Report submitted by the Applicant to Secretariat pursuant to the Application may be re-examined if deemed necessary by Secretariat, and Secretariat may also solicit information and/or advice from a third (3rd) party, including but not limited to the qualified Independent Film Production Consultants who are also a member of FINAS's Program Audit Panel.

12. REVOCATION OF GRANT OF PROVISIONAL APPROVAL OR FINAL APPROVAL

- 12.1 Grant of Provisional Approval and/or Final Approval and the issuance of the Certificate of Provisional Approval and/or Certificate of Final Approval is in reliance that all information and/or supporting documents submitted by the Applicant to the Secretariat (including but not limited to the information and supporting documents subsequently requested and provided, if any) are and remained true, accurate reliable and complete.
- 12.2 Program Committee reserves the right to revoke the grant of Provisional Approval or to revoke the grant of Final Approval where:
 - (a) the Applicant or the Project fails to comply with the terms and conditions set out in the Agreement(s), the Guidelines, these Program T&C, Certificate of Provisional Approval (if granted) and Certificate of Final Approval (if granted);
 - (b) it is found that any part of the information and/or documentation submitted to Secretariat by the Applicant was obtained by fraud, contains material inconsistencies/inaccuracies and/or misrepresentation;

- (c) there is a transgression of any applicable laws and requirements in Malaysia during the co-production of the Project in Malaysia; and/or
- (d) such revocation is necessitated by any directive or regulation from any governmental or statutory authority having jurisdiction over the matters herein.
- 12.3 Program Committee reserves the right to revoke the Final Approval where:
 - (a) if not already delivered prior hereto, the Applicant fail to provide to the Secretariat with a soft copy (in USB flash drive) of the completed production of the Project or other proof or evidence which can be reasonably regarded to be acceptable to the Secretariat that the Project has been completed with thirty (30) days from the date of the production material is in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to general public; and/or
 - (b) the final production version vary significantly from the submitted documentations in a manner which damages the image of Malaysia.
- 12.4 Review of decision for revocation of the Grant of Provisional Approval and/or Grant of Final Approval may be sought from Program Committee within seven (7) days from the date of issuance of Program Committee's decision to revoke the Grant of Provisional Approval and/or Grant of Final Approval (whichever is applicable).

13. LIABILITY

13.1 The Applicant agrees that:

(a) All Applications or any application for any incentive or benefit pursuant to grant of Provisional Approval and/or Final Approval (whichever is applicable, if any) are made entirely at the Applicant's own risk. The Applicant is solely responsible for securing all necessary funding for the Project. In the event where the Applicant is no longer eligible for Program or unable to obtain the grant of Provisional Approval and/or Final Approval in respect of Program, the Secretariat / Program Committee / FINAS shall not be liable and/or held responsible for the Applicant's debts, loans and/or any financial obligations relating to the Project and/or any loss or damage suffered (whether direct or indirect, foreseeable or unforeseeable) pursuant to the Project (including but not limited to whatever arrangements and obligations that the Applicant has agreed upon with Applicant's co-producer(s) in respect of the Project); and

(b) FINAS reserve the rights in their sole discretion to revise these Program T&C and/or vary the provisions of the Program, at any time without notice to the Applicant. Without limiting the operation of any other terms herein, the Secretariat / Program Committee / FINAS will not be held liable for any loss or damage arising from the exercising of these rights.

14. COMMUNICATIONS

14.1 All communications which are required to be given under this Program T&C with regards to the Program shall be addressed to the Secretariat as follows:

Address: Secretariat

Bahagian Galakan Penggambaran

National Film Development Corporation Malaysia (FINAS)

Kompleks Studio Merdeka

Lot 1662, Batu 8 Jalan Hulu Kelang 68000 Ampang

Selangor Darul Ehsan

Malaysia

14.2 For pre-application advice or access to the Guidelines and application forms for the Program or any other matters relating to the Program, you may contact the Secretariat via the following means:

Telephone: +603-41041300

Website: www.filminmalaysia.com

Contact emails: azrina@finas.my or muzri@finas.my