

Re-translation of the Azerbaijani Draft
English explanation of substantive legal changes to
Creative Commons Legal Code
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License (**hereinafter – Agreement according to Azerbaijani legislation**)

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BY EXERCISING ANY RIGHTS TO THE WORK PROVIDED HERE, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS OF THIS **Agreement**. TO THE EXTENT THIS **Agreement** MAY BE CONSIDERED TO BE A CONTRACT, THE LIENSOR (**HEREINAFTER - Author of the work**) GRANTS TO THE **USER OF THE WORK** THE RIGHTS CONTAINED HERE IN CONSIDERATION OF YOUR ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

1. Definitions

- a. “Adaptation” – According to the Azerbaijani legislation we will use hereinafter the term “derivative work” which means according to the law on Copyrights and Related rights of Azerbaijan Republic – intellectual product based on other work (translation, adaptation, staging, and recasting, etc.)

Derivative work - means a work based upon the Work, or upon the Work and other pre-existing works, such as a translation, adaptation, derivative work, arrangement of music or other alterations of a literary or artistic work, or phonogram or performance and includes cinematographic adaptations or any other form in which the Work may be recast, transformed, or adapted including in any form recognizably derived from the original, except that a work that constitutes a Collection will not be considered a **Derivative Work** for the purpose of this **Agreement**. For the avoidance of doubt, where the Work is a musical work, performance or phonogram, the synchronization of the Work in timed-relation with a moving image (“synching”) will be considered as a **Derivative work** for the purpose of this **Agreement**.

- b. “Collection” means a collection of literary or artistic works, such as encyclopedias and anthologies, or performances, phonograms or broadcasts, or other works or subject matter other than works listed in Section 1(f) below, which, by reason of the selection and arrangement of their contents, constitute intellectual creations, in which the Work is included in its entirety in unmodified form along with one or more other contributions, each constituting separate and independent works in themselves, which together are assembled into a collective whole. A work that constitutes a Collection will not be considered an **Derivative Work** (as defined above) for the purposes of this **Agreement**.

- c. “Distribute” (according to Azerbaijani legislation the appropriate term is – “Disclosure of a work”) – means the act performed with the author’s consent which first makes the work accessible to general public through releasing, public presentation, public performance, broadcasting or other means
- d. License Elements means “**License Elements**” means the following high-level license attributes as selected by Licensor and indicated in the title of this License: Attribution, Noncommercial, ShareAlike.
- e. “Licensor” (“Rights owner” – according to Azerbaijani legislation) means the individual, individuals, entity or entities that offer(s) the Work under the terms of this License.
- f. “Original Author” (hereinafter **The Author**) - means, a natural person or persons who directly created the work and not a legal entity.
- g. “Work” means the literary and/or artistic work offered under the terms of this License.

The following Works are subjects of copyright:

- literary works (books, articles, including computer programs and other);
- drama or dramatic-musical works and other works with a scenario;
- choreographic and mimed works;
- musical works with or without accompanying text;
- audiovisual works (cinematographic, television and video films, static projections, slide shows and other cinematographic and television productions);
- works of painting and sculpture, graphic and design works, cartoon strips and other works of figurative art;
- works of applied art and stage design;
- works of architecture, urban planning and park and garden design;
- photographic works and works obtained by processes similar to photography;
- maps, plans, sketches, illustrations plastic works relating to geography, topography and other sciences;
- derived works (translations, adaptations, annotations, essays, summaries, reviews, stage adaptations, arrangements and other remaking of scientific, literary and artistic works);
- collections (encyclopaedias, anthologies, databases) and other composite works which, by reason of the selection or arrangement of their contents, constitute the result of creative effort;

Derived works and collections shall be protected by copyright whether or not the works on which they are based, or which they themselves include are the subjects of copyright.

- the other works.

Azerbaijani legislation also recognizes the “related rights”. According to the legislation:

- The subjects of related rights are performers, producers of phonograms and broadcasting entities. Related rights shall provide without damaging on copyright.

- The producer of a phonogram and the broadcasting entities shall exercise their rights as specified in this Section within the limits of the rights that the performer and the author of the work recorded on the phonogram, broadcast, or transmitted by cable have granted them by contract.

- The performer shall exercise the rights specified in this Section without infringing the rights of the author of the work performed.

The origin and exercise of related rights shall not be subject to compliance with any formality. The producer of a phonogram and the performer may, in order to publicize their rights, make use of a reserved rights notice which should be placed on every copy or on every sleeve or inlay card of the phonogram and should consist of the following three elements:

- o a circled capital letter P;
- o the name of the owner of the related rights;
- o the year of first publication of the phonogram.

- h. “You”(User) (in Azerbaijani legislation the equivalent legal term is – User of the Work, hereinafter - User) means an individual or entity exercising rights under this License who has not previously violated the terms of this License with respect to the Work, or who has received express permission from the Licensor to exercise rights under this License despite a previous violation.
- i. “Publicly Perform” means to perform public recitations of the Work and to communicate to the public those public recitations, by any means or process, including by wire or wireless means or public digital performances; to make available to the public Works in such a way that members of the public may access these Works from a place and at a place individually chosen by them; to perform the Work to the public by any means or process and the communication to the public of the performances of the Work, including by public digital performance; to broadcast and rebroadcast the Work by any means including signs, sounds or images.
- j. According to the Azerbaijani law on Copyrights and Related Rights - PUBLIC PERFORMANCE – demonstration of an original or a copy of a work, performance, arrangement of direct broadcasts, either on the screen by means of a film, slide, shot or through the other technical means or processes (except by broadcasting or cable distribution) so that they could be perceived by number of persons not belonging to the usual family circle or close friends of family. Inconsequential demonstration of separated images of audiovisual works shall also be considered as public performance;
- k. “Reproduce” means to make copies of the Work by any means including without limitation by sound or visual recordings and the right of fixation and reproducing fixations of the Work, including storage of a protected performance or phonogram in digital form or other electronic medium.

As for the definition of the term “reproduction” in Azerbaijani legislation, reproduction is a production of one or more copies of the work or phonogram in any substantive form, including the audio or video recordings. Reproduction is also recording of the work or phonogram for temporary or permanent storing in electronic (including digital), optical or other machine-readable form;

2. Limitations on exclusive rights. Nothing in this License is intended to reduce, limit, or restrict

any uses free from copyright or rights arising from limitations or exceptions that are provided for in connection with the copyright protection under copyright law or other applicable laws.

For example, Public Rental is a transfer of a proprietary right for an original or a copy of a work for a definite time period to the libraries, archives, other entities and organizations providing free public services.

3. License Grant. Subject to the terms and conditions of this agreement, rights owner hereby grants to user a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright) license to exercise the rights in the Work as stated below:

- a. to Reproduce the Work, to incorporate the Work into one or more Collections, and to Reproduce the Work as incorporated in the Collections;
- b. to create and Reproduce derivative works, including any translation in any medium, takes reasonable steps to clearly label, demarcate or otherwise identify that changes were made to the original Work. For example, a translation could be marked “The original work was translated from English to Spanish,” or a modification could indicate “The original work has been modified.”;
- c. to Distribute and Publicly Perform the Work including as incorporated in Collections; and,
- d. to Distribute and Publicly Perform Derivative Works.

4. Restrictions. The license granted in Section 3 above is expressly made subject to and limited by the following restrictions:

a. User may Distribute or Publicly Perform the Work only under the terms of this Agreement. User must include a copy of, the internet address for, this Agreement with every copy of the Work which User is Distributing or Publicly Perform. User may not offer or impose any terms on the Work that restrict the terms of this Agreement or the ability of the recipient of the Work to exercise the rights granted to that recipient under the terms of the Agreement. User may not subAgreement the Work. User must keep intact all notices that refer to this Agreement and to the disclaimer of warranties with every copy of the Work which User is Distributing or Publicly Perform. When User Distribute or Publicly Perform the Work, User may not impose any effective technological measures on the Work that restrict the ability of a recipient of the Work from User to exercise the rights granted to that recipient under the terms of the Agreement. This Section 4(a) applies to the Work as incorporated in a Collection, but this does not require the Collection apart from the Work itself to be made subject to the terms of this Agreement. If User create a Collection, upon notice from any Rights Owner User must, to the extent practicable, remove from the Collection any credit as required by Section 4(d), as requested. If User creates a Derivative work, upon notice from any Right Owner User must, to the extent practicable, remove from the Derivative Work any credit as required by Section 4(d), as requested.

b. If User Distribute, or Publicly Perform the Derivative Works only under: (i) the terms of this Agreement; (ii) a later version of this Agreement with the same Agreement Elements; (iii) the (Unported) Creative Commons license or a Creative Commons jurisdiction license with the same Agreement Elements (e.g. an Attribution-Noncommercial-ShareAlike License 3.0 (Unported)) (“Applicable Agreement”).”

The User must include a copy of the internet address, for Applicable Agreement with every copy of each Derivative Work which User Distribute or Publicly Perform. The User may not offer or impose any terms on the Derivative Work that restrict the terms of the Applicable Agreement or the ability of the recipient of the Derivative Work to exercise the rights

granted to that recipient under the terms of the **Applicable Agreement**. The **User** must keep intact all notices that refer to the **Applicable Agreement** and to the disclaimer of warranties with every copy of the **Work** as included in the **Derivative Work** which **User** Distribute or Publicly Perform. When **User** Distribute or Publicly Perform the **Derivative Work**, the **User** may not impose any effective technological measures on the **Derivative Work** that restrict the ability of a recipient of the **Derivative Work** from the **User** to exercise the rights granted to that recipient under the terms of the **Applicable Agreement**. This Section 4(b) applies to the **Derivative Work** as incorporated in a Collection, but this does not require the Collection apart from the **Derivative Work** itself to be made subject to the terms of the **Applicable Agreement**.

c) **The User** may not exercise any of the rights granted to **User** 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 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 the **User** Distribute, or Publicly Perform the **Work** or any **Derivative Work** or Collections, **the User** must, unless a request has been made pursuant to Section 4(a), keep intact all copyright notices for the **Work** and provide, reasonable to the medium or means **the User** is utilizing:

(i) the name of the **Author** (or pseudonym, if applicable) if supplied, and/or if the **Author** and/or **Rights owner** designate another party or parties (e.g., a sponsor institute, publishing entity, journal) for attribution (“Attribution Parties”) in **Rights owner’s** copyright notice, terms of service or by other reasonable means, the name of such party or parties; (ii) the title of the **Work** if supplied; (iii) to the extent reasonably practicable, the URI, if any, that **Rights Owner** specifies to be associated with the **Work**, unless such URI does not refer to the copyright notice or licensing information for the **Work**; and (iv) , consistent with Section 3(b), in the case of an **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 **Author**”). The credit required by this Section 4 (d) may be implemented in any reasonable manner; provided, however, that in the case of a **Derivative Work** or Collection, at a minimum such credit will appear, if a credit for all contributing authors of the **Derivative Work** or Collection appears, then as part of these credits and in a manner at least as prominent as the credits for the other contributing authors. For the avoidance of doubt, **User** may only use the credit required by this Section for the purpose of attribution in the manner set out above and, by exercising **Users’** rights under this **Agreement**, **User** may not implicitly or explicitly assert or imply any connection with, sponsorship or endorsement by the **Author, Rights Owner** and/or Attribution Parties, as appropriate, of **User** or **Users’** use of the **Work**, without the separate, express prior written permission of the **Author, Rights Owner** and/or Attribution Parties.

e) For the avoidance of doubt:

Voluntary Agreement Schemes. **The Rights Owner** waives the right to collect royalties, whether individually or, in the event that the Licensor is a member of a collecting society that administers voluntary licensing schemes, via that society, from any exercise by **User** of the rights granted under this **Agreement**.

f. “**Moral Rights remain unaffected to the extent they are recognized and not**

waivable by applicable law.”

5. Representations and Warranties

The **Rights Owner** represents and warrants that:

- (a) The execution and performance of this **Agreement** are within the **Rights Owner’s** powers, and do not contravene any applicable law,
- (b) **Rights Owner** has full ownership title in the Work being licensed, and that there is no legal impediment to the **Rights Owner** proceeding with the licensing,

6. Limitation on Liability. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, IN NO EVENT WILL **RIGHTS OWNER** BE LIABLE TO YOU ON ANY LEGAL THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (**EXCEPT OF INTENTIONAL DAMAGE CAUSED BY ACTION OR INACTION BY NEGLIGENCE**) ARISING OUT OF THIS **AGREEMENT** OR THE USE OF THE WORK, EVEN IF **RIGHTS OWNER** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Termination

- a. This **Agreement** and the rights granted hereunder will terminate automatically upon any breach by **User** of the terms of this **Agreement**. Sections 1, 2, 5, 6, 7, and 8 will survive any termination of this **Agreement**.
- b. Subject to the above terms and conditions, the license granted here is perpetual (for the duration of the applicable copyright in the Work). Notwithstanding the above, **Rights Owner** reserves the right to release the Work under different license terms or to stop distributing the Work at any time; provided, however that any such election will not serve to withdraw this **Agreement** (or any other license that has been, or is required to be, granted under the terms of this **Agreement**), and this **Agreement** will continue in full force and effect unless terminated as stated above.

8. Miscellaneous

- a. Each time **User** Distribute or Publicly Perform the Work or a Collection, the **Rights Owner** offers to the recipient a license to the Work on the same terms and conditions as the license granted to **User** under this **Agreement**.
- b. Each time **User** Distribute or Publicly Perform the **Derivative Works**, **Rights Owner** offers to the recipient a license to the original Work on the same terms and conditions as the license granted to **User** under this **Agreement**.
- c. If any provision of this **Agreement** is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this **Agreement**, 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 **Agreement** 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 **Agreement** constitutes the entire agreement between the parties with respect to the

Work licensed here. There are no understandings, agreements or representations with respect to the Work not specified here. **Right Owner** shall not be bound by any additional provisions that may appear in any communication from **User**. This **Agreement** may not be modified without the mutual written agreement of the **Right Owner** and **User**.

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