

**Wowza™ Media Systems, LLC**

**END USER LICENSE AGREEMENT for**  
**Wowza ClearCaster™ Software**  
**And Related Software Products and Services**

Thank you for choosing software from Wowza Media Systems, LLC. This End User License Agreement (this “**EULA**”) is a legally binding license agreement between you and Wowza Media Systems, LLC that describes your rights to use software and services provided by Wowza, including Wowza ClearCaster software and technical support and maintenance for that software.

This EULA is divided into various sections, including the following License Overview that provides a summary of the EULA. Please read this EULA carefully and in its entirety before clicking “I AGREE”, or activating, installing, or using Wowza ClearCaster software or other software provided to you by Wowza in connection with Wowza ClearCaster hardware.

For the avoidance of doubt, this EULA governs your use of Wowza ClearCaster software (the “**Software**”), which is the software installed on your Wowza ClearCaster hardware device (the “**Hardware**”). This EULA does not govern other Wowza software products governed by separate license agreements, like Wowza Streaming Engine software.

**BY SELECTING “I AGREE” DURING ACTIVATION OF YOUR HARDWARE OR INSTALLATION OF THE SOFTWARE, OR BY ACTIVATING YOUR CLEARCASTER HARDWARE OR INSTALLING, COPYING, OR USING THE SOFTWARE (OR BY OTHERWISE SIGNIFYING YOUR ACCEPTANCE OF THIS EULA), YOU ACKNOWLEDGE AND AGREE: (1) THAT YOU HAVE READ AND UNDERSTAND THIS EULA; (2) THAT YOU AGREE TO BE BOUND BY EACH AND EVERY TERM OF THIS EULA; AND (3) IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A COMPANY OR ORGANIZATION, THAT YOU HAVE THE POWER AND AUTHORITY TO DO SO AND TO BIND SUCH COMPANY OR ORGANIZATION.**

**IF YOU DO NOT AGREE TO EACH AND EVERY TERM AND CONDITION OF THIS EULA, YOU MAY NOT USE THE HARDWARE OR SOFTWARE.** If you do not agree with each and every of the terms and conditions of this EULA, do not click “I ACCEPT” or otherwise activate your Hardware or take any action that signifies your agreement to this EULA, and instead return the Hardware to Wowza immediately. Wowza will gladly provide you with a refund of any license fees paid if you have not installed or used the Software.

Although this EULA contains specific terms and conditions for how Wowza may update or modify this EULA, the most current version of license agreements for Wowza software are available on the Wowza Website, [www.wowza.com/legal](http://www.wowza.com/legal). If you have questions about this EULA or in the future would like to request a copy of the license agreement that you entered into, please email [info@wowza.com](mailto:info@wowza.com). WOWZA MAY UPDATE THIS EULA AT ANY TIME WITHOUT PRIOR NOTICE, BY PROVIDING EMAIL NOTICE TO YOUR EMAIL ADDRESS ON FILE WITH WOWZA. PLEASE PERIODICALLY CHECK [WWW.WOWZA.COM/LEGAL](http://WWW.WOWZA.COM/LEGAL) FOR THE MOST CURRENT VERSION OF THIS EULA.

**THIS EULA IS AN AGREEMENT TO LICENSE SOFTWARE,  
NOT AN AGREEMENT FOR THE SALE OF SOFTWARE OR HARDWARE.**

## -- LICENSE OVERVIEW --

*This license overview is provided as a convenience only. You are cautioned that this overview does not contain a summary of each term of the EULA and that you should read the EULA in its entirety to understand your and Wowza's respective rights and obligations. In the event of a conflict between this License Overview and the EULA, the EULA shall control and be given full force and effect.*

**What is covered by this EULA?** This EULA governs the relationship between you and Wowza related to: (i) all Wowza ClearCaster software licensed under this EULA, along with software AddOns and other related software components licensed under this EULA (collectively, "**Software**"); and (ii) support and maintenance for the Software.

**Who does this EULA apply to?** This EULA applies to you as an individual and to the company, companies, or organization that you represent if you are accepting this EULA or installing or using Software on behalf of a company, companies, or an organization. If you are accepting this EULA or installing or using Software on behalf of a company or organization, you are representing to Wowza that you have the full power and authority to do so on behalf of such company or organization, and that you have the full power and authority to bind such company or organization to the terms of this EULA. Regardless, your agreement to this EULA indicates your representation to Wowza that you are of sufficient legal age to enter into this EULA and to bind yourself, along with any company or organization that you are acting on behalf of, to its terms.

**What are License Keys?** License Keys are alphanumeric codes that may be provided to you by Wowza, which facilitate your use of Software.

**How may I use the Software?** The Software is licensed, not sold. You are only permitted to use the Software on a Wowza ClearCaster hardware device sold to you by Wowza or a Wowza authorized reseller or distributor, as described further in the EULA.

**Are there things I may not do with the Software?** Yes. This EULA contains various restrictions on your use of the Software, including without limitation, that you may not remove the Software from the Hardware, that you may not copy the Software for any purpose whatsoever, and that you may not modify, create derivative works based on, or reverse engineer the Software.

**May I resell or distribute the Software, or include the Software in my product?** No. You may not resell, distribute, or bundle the Software or Hardware on which the Software is installed in any manner. Only authorized Wowza partners may resell, distribute, or include Software in their products. If you are interested in becoming an authorized Wowza partner, please contact [sales@wowza.com](mailto:sales@wowza.com).

**How may this EULA be modified or superseded?** This EULA may be modified in one of three ways: (i) by a writing signed by you and Wowza; (ii) by email notice from Wowza to you, to Your Email Address (as defined in the EULA); or (iii) by Wowza posting an updated version of this EULA on the Wowza Website (as defined in the EULA). Separately, this EULA may be superseded by a subsequent license agreement (including a subsequent version of this EULA) if you agree to such subsequent license agreement version, such as when you download, install, or use a patch, Software update, or bug fix.

## -- LICENSE AGREEMENT --

### 1. DEFINITIONS.

1.1 “**Additional Terms**” means those terms and conditions referred to herein, such as terms and conditions on the Wowza Website, along with the License Overview and the text preceding the License Overview.

1.2 “**AddOn**” is a subset of Software (defined below), and means any one (1) of the additional software features that may be offered by Wowza and that compliments the Software.

1.3 “**Channel**” means one (1) unique media stream for input into one (1) unique Instance of the Software.

1.4 “**Content**” means any video, audio, data, and other input to or output from the Software.

1.5 “**EULA**” means this End User License Agreement, including the preceding text and License Overview and Additional Terms.

1.6 “**Hardware**” means the Wowza™ ClearCaster™ hardware device.

1.7 “**Instance**” means one unique installation of the Software on a Server.

1.8 “**License Key**” means an alphanumeric code or similar installation, access, or usage control code issued to you by Wowza to activate and use one (1) or more Instances of the Software on one (1) or more single Servers, depending on your specific Wowza license type.

1.9 “**Sample Code**” means sample source code or scripts distributed by Wowza from time to time and identified as such when provided to you.

1.10 “**Server**” means a single physical computer running no more than one (1) unique copy of an operating system. Multiple Servers include: (i) multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a “server farm,” “cluster,” or similar arrangement; and (ii) multiple virtual machines within a technical environment that partitions a physical computer into multiple virtual machines such that each virtual machine has the appearance and capability of running on its own dedicated machine.

1.11 “**Services**” means maintenance and support services for the Software, and includes Support, Updates, and Upgrades.

1.12 “**Services Period**” means the period(s) of time during which you have purchased the right to obtain the Services. License Keys each have individual Services Periods.

1.13 “**Software**” means the Wowza™ ClearCaster™ software products originally installed on and included with the Hardware, along with future Updates, Upgrades, and modifications thereto, along with other software products owned or distributed by Wowza that are licensed to you under this EULA, including but not limited to, any related Software AddOns, components, Wowza application programming interfaces, associated media, printed materials, online or electronic documentation, and any Updates, maintenance releases, bug fixes, corrections, enhancements, or other modifications thereto.

1.14 **“Support”** means the provision of technical assistance by Wowza to you according to Wowza’s then-current policies. Support includes, at a minimum, technical support related to the Software provided by email communication with a Wowza representative.

1.15 **“Upgrade”** means newer versions of the Software that may utilize a distinct installer package and may require an additional License Key, commonly referred to as a “full version” or “dot” release. For example, transitioning from Wowza ClearCaster software version 1.0 to Wowza ClearCaster software version 1.1 would require an Upgrade.

1.16 **“Update”** means updates, fixes, or other relatively minor modifications to the Software, which are applied through Wowza’s update process. For example, transitioning from Software version 4.0 to Software version 4.0.1 or 4.0.0.01 would require an Update.

1.17 **“Wowza”** means Wowza Media Systems, LLC, 523 Park Point Drive, Suite 300, Golden, Colorado 80401 USA, and its affiliates.

1.18 **“Wowza Trademarks”** mean all names, trademarks, service marks, trade names, logos, designs, trade dress, domain names, and other brand designations used, registered, owned, or licensed by Wowza in connection with its products and services.

1.19 **“Wowza Website”** means www.wowza.com, its constituent pages, and other websites owned, managed, or operated by Wowza.

1.20 **“You”** or **“you”** means, and references to **“Your”** or **“your”** shall be deemed references to: (i) the natural person, the legal entity, or both, that is or are agreeing to this EULA by downloading, installing, copying, or using the Software; (ii) your employees and third party contractors or the employees and third party contractors employed or engaged by the legal entity agreeing to this EULA; (iii) your customers who use the Software; and (iv) any other third party that uses or gains access to the Software or a License Key, whether with your permission or otherwise.

1.21 **“Your Email Address”** or **“your Email Address”** means the electronic mail (commonly referred to as “email”) address you provided Wowza, either when you downloaded the Software from the Wowza Website, obtained a License Key from Wowza, or at some other time. In the event you have provided multiple electronic mail addresses to Wowza, Wowza may use the electronic mail address of its choosing for purposes of communication regarding the Software or Services, or for communications required or permitted by this EULA, unless you have explicitly notified Wowza that a specific electronic mail address should be removed from Wowza’s records.

## **2. LICENSE GRANTS; TITLE; USAGE BY THIRD PARTIES.**

2.1 **Software Licensed, Not Sold.** The Software is licensed, not sold. This EULA does not transfer or modify any ownership rights related to the Software, which are exclusively held by Wowza and its licensors. While you may have purchased the Hardware, the Software is exclusively licensed, and not sold, to You.

2.2 **License Grant to the Software.** Subject to the terms of this EULA and payment of applicable fees, and provided you obtained the Hardware on which the Software resides from Wowza or an authorized Wowza reseller or distributor, Wowza hereby grants you a limited, world-wide, non-exclusive, non-transferable, revocable license, without rights to sublicense, to use the Software when and as installed on the Hardware by Wowza, or installed by You with regard to Updates or Upgrades,

and to use the Software for the purposes set forth in the applicable Software documentation. Source code, from which the Software object code is derived (except for source code contained in any Sample Code), is not being provided or licensed to you and is a valuable trade secret of Wowza and its licensors. IF YOU OBTAINED THE HARDWARE FROM A SOURCE OTHER THAN WOWZA OR AN AUTHORIZED WOWZA RESELLER OR DISTRIBUTOR, YOU ARE NOT GRANTED ANY LICENSE TO THE SOFTWARE AND MAY NOT USE THE SOFTWARE IN ANY WAY OR FOR ANY PURPOSE. PLEASE CONTACT WOWZA FOR INFORMATION ON OBTAINING A LICENSE TO THE SOFTWARE.

2.3 Sample Code. You may download, install and use on the Hardware Sample Code provided to you by Wowza, if any. Sample Code is distributed on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied.

2.4 Title. Wowza retains all right, title, and interest in and to the Software, copies of the Software, Sample Code, and License Keys, and in and to all related copyrights, trade secrets, patents, trademarks, service marks, domain names, and other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights.

2.5 Rights Reserved. Any and all rights not expressly granted to you by this EULA are reserved in all respects by Wowza.

2.6 Usage by Others. You agree to reasonably communicate the terms and conditions of this EULA, including but not limited to the restrictions regarding use of the Software in Section 3, to anyone who may or will come into contact with the Hardware, Software, License Keys, and other intellectual property of Wowza, including without limitation, your customers, employees, and contractors as applicable. You agree to use best efforts to ensure their compliance with the terms and conditions of this EULA and you agree to be solely responsible for any failure by a third party to comply with this EULA.

### 3. **LICENSE RESTRICTIONS.**

3.1 You hereby specifically represent and warrant that You will not export, re-export, sell, supply, or transfer the Software, or the hardware device on which the Software is installed, to any country or person to which the United States has embargoed or restricted the provision of the Software, including but not limited to, Cuba, Crimea, Iran, North Korea, Sudan (North), Syria, nationals of those countries, or to any other embargoed or restricted destination or person, including those owned or controlled by embargoed or restricted persons.

3.2 In addition to the other restrictions herein, you shall not:

3.2.1 remove the Software from the Hardware or in any way modify the manner in which the Software is installed on the Hardware;

3.2.2 use the Software in any way or for any purpose other than as an indivisible part of the Hardware, or unbundle, break apart, or repackage the Software or any of its component parts for any reason or in any manner whatsoever;

3.2.3 copy the Software under any circumstances (for the avoidance of doubt, you may not copy the Software even for backup or archival purposes);

3.2.4 remove, alter, or obfuscate any titles, Wowza Trademarks, trademarks, service marks, trade names, copyright notices, legends, watermarks, or other proprietary markings on or in the Software or Sample Code;

3.2.5 sell, lease, license, sublicense, rent, assign, distribute, or otherwise transfer or share, in whole or in part, the Software or License Key(s), or your rights in or to the same, to another party, including rights on a membership, subscription, or hosted basis;

3.2.6 modify or create derivative works based upon the Software;

3.2.7 decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;

3.2.8 bundle or distribute the Software in any manner whatsoever;

3.2.9 provide use of the Software (whether on the Hardware or otherwise) in a third-party outsourcing facility, on a service or service bureau arrangement, or on a rental, application service provider, or timesharing basis;

3.2.10 use the Software to transmit, reproduce, store, or share Content that you do not have the right to transmit, reproduce, store, or share;

3.2.11 at any time provide an evaluation license to the Software to any other person or entity, or otherwise permit any other person or entity to evaluate the Software;

3.2.12 make any changes, modifications, or alterations to this EULA;

3.2.13 make any statements, warranties, or representations concerning the Software or Sample Code that exceed or are inconsistent with the documentation provided by Wowza;

3.2.14 export or re-export the Software except in compliance with applicable law, including, without limitation, the applicable provisions of the United States Export Administration Act and its related rules and regulations, along with applicable international export laws, rules, and regulations;

3.2.15 use the Software in way contrary to international and national laws that apply to the Software, including, but not limited to, the U.S. Export Administration Regulations, economic sanctions regulations administered by the Office of Foreign Assets Control, as well as similar restrictions issued by U.S. and other governments, which prohibit the provision of Software to specified destinations, end-users, and end uses;

3.2.16 use or collect information about people who come into contact with the Software, are the subject of Content streamed by the Software, or receive Content, that is in any way illegal, violates the rights of such people, or is otherwise prohibited; or

3.2.17 assist, encourage, or permit any other person or entity to do anything prohibited or not permitted by this EULA.

#### **4. LICENSE TYPES; ADDITIONAL LICENSE RESTRICTIONS; SOFTWARE VALIDATION.**

4.1 If you purchased the Hardware on which the Software governed by this EULA resides (as opposed, for instance, to obtaining a demonstration Hardware unit), the license grant to you in Section

2 is for a perpetual license to the Software, subject to this EULA. Your license to the Software is limited to one (1) Instance of the Software on one (1) unique Hardware unit. You may be required to obtain a separate license for additional related Software products and AddOns.

4.2 If you obtained the Hardware on which the Software governed by this EULA resides other than by purchase, such as obtaining a demonstration Hardware unit from Wowza or an authorized Wowza reseller or distributor, the license grant to you in Section 2 is for a time-limited license to the Software for the lesser of sixty (60) calendar days or the period of time for which you were provided the Hardware.

4.3 If you obtained the Hardware on which the Software governed by this EULA resides from a source other than Wowza or an authorized Wowza reseller or distributor, you are not granted any license to the Software and may not use the Software in any way or for any purpose. Please contact Wowza for information on obtaining a license to the Software.

4.4 The Software may periodically call into and connect with hardware, software, or other systems designated by Wowza to assist Wowza in validating your Software license and usage; you shall permit the Software to do so. Information that may be collected by Wowza for this purpose shall include, without limitation: (i) the version of Software you are using; (ii) a global unique identifier (“GUID”) based on such version; (iii) information about your streaming infrastructure and environment; (iv) information regarding your usage of the Software and Content destination or delivery points and services; (v) your Java version information; (vi) whether you are using a particular feature or not; and (vii) your AddOn usage, if any. Wowza will take ordinary care to protect information collected pursuant to this Section but may use such information in any way and for any purpose, in its sole discretion.

4.5 In the event the Software fails to periodically call into and connect with the hardware, software, or other systems designated by Wowza, Wowza shall have the right to terminate your license to use the Software without further notice to you three (3) days following of the last date of successful contact of the Software with the Wowza hardware, software, or designated system.

4.6 The Software may additionally periodically call into and connect with hardware, software, or other systems designated by Wowza, and Wowza may collect, maintain, process, and use diagnostic, technical, usage, and related information, including but not limited to information about your systems, application software, and peripherals, along with information about usage of the foregoing. Such information may also be collected in connection with Wowza’s provision of the Services. Wowza may use such information to facilitate the provision of Software updates and support, verify your compliance with this EULA, improve Wowza’s products and services, or for any other purpose in its sole discretion.

4.7 You agree to not take any action that is intended or likely to defeat, weaken, or threaten any security or License Key integrity measures employed by Wowza, including without limitation, measures intended to prevent duplicate, pirated, or similar unauthorized License Keys or use of the Software.

5. **SOFTWARE MAINTENANCE AND SUPPORT.** Wowza offers the Services during applicable Services Periods on a per-Hardware device basis. Additional terms and conditions regarding the Services may be posted on the Wowza Website or communicated to you by Wowza from time to time. For the avoidance of doubt, Services in this EULA relate exclusively to the Software and do not relate to Hardware support or Hardware warranty support, which are each exclusively governed by your Hardware terms of purchase.

5.1 Services Provided Per-Hardware Device Unit. The Services are provided on a per-Hardware device basis (which may be tracked by unique License Key), and not on a per-customer or per-

company basis. Each Hardware device and corresponding License Key has an individual Services Period that begins on the date you purchased the Hardware or purchased an additional Services Period for such Hardware device from Wowza. You agree to only access or obtain the benefit of the Services for the specific Hardware device ID or License Key provided to Wowza when requesting such Services and you agree to not use the Services, including Updates and Upgrades, for the benefit of any Hardware device unit not then entitled to the Services.

5.2 Services Periods. Services are only provided during the Services Period. Services Periods vary depending on your Hardware purchase terms, as described in your Hardware purchase documentation and on the Wowza Website.

5.2.1 The initial Services Period for a perpetual Software license type is either one (1) or three (3) years from the date you purchased the Hardware on which the Software governed by this EULA resides from Wowza, as specified in your purchasing documents and on the Wowza Website. In order to obtain the Services beyond the initial Services Period, you must purchase additional Services Period(s) from Wowza. In the event of any ambiguity, the Services Period for all perpetual type License Keys shall be deemed to be one (1) year from the date you purchased the Hardware on which the Software governed by this EULA resides.

5.2.2 If you obtained your Software, License Key, or both from a party other than Wowza (such as a Wowza authorized reseller or OEM partner), your Services Period may differ from those described herein.

5.3 The Services. Subject to the terms of this EULA and other terms and conditions on the Wowza Website and provided to you from time to time, Wowza will provide the Services to you during the Services Period for each individual Hardware device.

5.3.1 Wowza will not provide Services related to: (i) prior versions of the Software; (ii) improper installation or use of the Software or Hardware; (iii) software or other products or services not offered, licensed, and provided to you by Wowza, and the implementation or use of the Software with any of the foregoing; (iv) modified code; (v) other things not specifically described herein as within the scope of the Services.

5.3.2 In the event a Services Period expires for a given Hardware device unit and you elect to not purchase additional Services Periods but later wish to receive Services from Wowza related to such Hardware device unit, Wowza may, in its sole discretion, require you to purchase Services Periods retroactively to the date on which the relevant Services Period previously lapsed, pay a reinstatement fee, or both.

5.3.3 Wowza may suspend or terminate the Services without owing a refund to you if your use of the Services is determined by Wowza, in its sole and reasonable discretion, to be excessive or improper.

5.3.4 The Services will be provided within the timeframes described on the Wowza Website or in other documentation provided by Wowza. No failure to meet a timeframe to provide Services shall be deemed a breach of this EULA or any obligation of Wowza.

## **6. INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY.**

6.1 License Keys, the Software, and the design of the Hardware and Software, are valuable trade secrets and the confidential and proprietary information of Wowza.

6.2 The Software and any copies thereof are the exclusive intellectual property of Wowza and its licensors, and protected by copyright laws and international treaties as well as other intellectual property laws and treaties. The structure and organization of the Software, along with its source code and object code, are confidential information and valuable trade secrets of Wowza. You agree that any disclosure by you of Wowza's confidential information will cause immediate, irreparable harm to Wowza for which a court of competent jurisdiction may award equitable remedies, as well as any other available legal remedies. Except as expressly stated herein, Wowza does not grant you any intellectual property rights in or to the Software. Wowza reserves all rights not expressly granted herein.

6.3 You hereby agree to maintain the confidentiality of the Software, License Keys, and other intellectual property of Wowza using your best efforts, and in no case less than reasonably prudent care for extremely sensitive and proprietary confidential information. You agree to reasonably communicate the terms and conditions of this EULA to those persons employed or engaged by you, or who otherwise come into contact with the Software, License Keys, and other intellectual property of Wowza, and to use best efforts to ensure their compliance with the terms and conditions of this Section 7, including, without limitation, not permitting such persons to use any portion of the Software, License Keys, and other intellectual property of Wowza for the purpose of deriving the source code of the Software or copying, defeating, or otherwise circumventing License Key codes.

6.4 You are granted no right, title, license to, or interest in the Wowza Trademarks or the copyrights owned by Wowza, and you hereby agree to not use the Wowza Trademarks without Wowza's prior written consent. Notwithstanding the foregoing, you agree that any use of the Wowza Trademarks, whether permitted or otherwise, shall inure to the sole benefit of Wowza. You agree to not: (i) file or prepare any application for registration of any of the Wowza Trademarks; (ii) assert any right, title, license to, or interest in the Wowza Trademarks; (iii) adopt, use, file for registration, or register any trademark, service mark, trade name, logo, or domain name which may be, in Wowza's sole discretion, either an infringement of a Wowza Trademark or Wowza domain name, or may result in a likelihood of confusion with a Wowza Trademark or Wowza domain name; or (iv) encourage, assist, or permit any other person or entity to do anything prohibited by this Section. Notwithstanding the foregoing, you are permitted to identify the Software as "Wowza ClearCaster software" and to identify the source of the Software as "Wowza" or "Wowza Media Systems." Please contact [sales@wowza.com](mailto:sales@wowza.com) if you are interested in obtaining additional rights related to Wowza Trademarks.

6.5 You agree that Wowza may use your name, organization name, logos, and other identifying information to identify you as a Wowza customer in marketing and similar efforts, such as marketing collateral, trade show signage, and website content. You agree that such use of your name shall be without royalty or other obligation to you by Wowza.

6.6 From time to time you may provide Wowza with feedback, suggestions, or ideas for changes to the Software (collectively, "**Ideas**"). Regardless of how Wowza receives or becomes aware of them, all Ideas are the exclusive property of Wowza, are confidential information of Wowza, and may be used in any manner and for any purpose by Wowza without obligation of any kind to you.

## **7. TERMINATION.**

7.1 Termination. Wowza may terminate this EULA immediately and without notice if you fail to comply with any term of this EULA or fail to timely pay any amounts due Wowza hereunder or under any other agreement with or obligation to Wowza. Unless you have a perpetual Software license, Wowza may terminate this EULA for any reason or no reason upon five (5) days advance notice to your Email Address.

**7.2 Effect of Termination.** In the event of termination, you must immediately and completely cease using the Software in any way, and destroy all copies of the Software and License Keys in your possession or under your control. If requested by Wowza, you shall provide Wowza with written certification that you have complied with these requirements within three (3) business days of such request.

## **8. INDEMNIFICATION BY YOU.**

**8.1 Generally.** You will indemnify, defend, and hold harmless Wowza and its affiliates, and each of their respective officers, directors, shareholders, unitholders, members, employees, agents, advisors, and representatives (collectively, the “**Indemnified Parties**”) against all liabilities, obligations, losses, costs, damages, and other expenses and attorneys’ fees (collectively, “**Indemnified Costs**”) arising out of or relating to your breach of this EULA or any other of your acts, omissions, or representations. Without limiting the foregoing, your indemnification under this paragraph shall include, without limitation, indemnification for Indemnified Costs incurred by the Indemnified Parties caused by or related to: (i) the Content; (ii) your violation of applicable law or regulation; or (iii) your provision of services to any third party utilizing the Software; (iv) any Claims alleging that Wowza is liable as a fiduciary; (v) any failure to pay required taxes or other amounts due to third parties related to the Software or this EULA; and (vi) your use of third-party products and services in connection with the Software.

**8.2 Intellectual Property Indemnification.** You will indemnify, defend, and hold harmless the Indemnified Parties against all Indemnified Costs arising out of or relating to a claim that any of the following infringes any patent, trademark, copyright, trade secret, or other IP right: (i) your modification of the Software, whether or not permitted hereunder; (ii) your use of the Software in combination with any products or services not provided by Wowza; (iii) your use of a version of the Software other than the most current version; (iv) information, design, specification, instruction or other material provided by you; or (v) your use of the Software other than in accordance with this EULA and other applicable documentation, instructions, and information provided by Wowza or its representatives.

## **9. LIMITED WARRANTY AND LIMITATION OF LIABILITY.**

**9.1 Limited Warranty.** Wowza warrants that the Software will substantially conform to the description contained in the applicable end user documentation for a period of 90 days after the date you purchased the Hardware on which the Software governed by this EULA resides. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WOWZA PROVIDES THE SOFTWARE AND SERVICES WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND WOWZA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WOWZA DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL MEET YOUR NEEDS OR THAT THE SOFTWARE OR SERVICES WILL BE OR PROVIDE FOR ERROR FREE OPERATION OR OPERATION WITHOUT INTERRUPTION. IN THE EVENT YOU OBTAINED THIS LICENSE FROM A RESELLER, DISTRIBUTOR, OR OTHER THIRD PARTY, WOWZA SHALL HAVE NO OBLIGATION TO YOU UNDER ANY WARRANTY GIVEN BY SUCH RESELLER, DISTRIBUTOR, OR THIRD PARTY, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES.

**9.1.1** The exclusive remedy for breach of the preceding warranty with regard to the Software is, at Wowza’s sole discretion and subject to Wowza’s limitation of liability, to either: (i) repair the

Software to Wowza's commercially reasonable specifications; (ii) replace the Software; or (iii) terminate the license to the Software granted to you and provide you with a pro-rata refund the fees paid by you for the Software for the period of time, if any, that you were prevented from using the Software.

9.1.2 The exclusive remedy for breach of any warranty with regard to the Services is, subject to Wowza's limitation of liability, to re-perform the Services in a commercially reasonable manner.

## 9.2 Limitation of Liability.

9.2.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WOWZA BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE RELATED TO THE SOFTWARE, HARDWARE, SERVICES, OR OTHER SUBJECT MATTER HEREOF. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU.

9.2.2 WOWZA'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE GREATER OF FIVE HUNDRED U.S. DOLLARS (U.S. \$500) OR THE FEES, IF ANY, PAID BY YOU SPECIFICALLY AND EXCLUSIVELY FOR THE SOFTWARE AND SERVICES LICENSED TO YOU UNDER THIS EULA (WHICH SHALL NOT INCLUDE THE FEES PAID BY YOU FOR THE HARDWARE DEVICE). THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER WOWZA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. YOU AND WOWZA AGREE THAT, GIVEN THE PRICE OF THE SOFTWARE AND THE NATURE OF THE CIRCUMSTANCES, THE PRECEDING LIMITATIONS ARE FAIR AND REASONABLE.

## 10. TAXES.

10.1 You shall be solely responsible for, and shall pay directly, all taxes, duties, and charges incurred related to this EULA or the Software or Services, including, without limitation, sales and use taxes, withholding taxes, duties and charges imposed by federal, state or local governmental authorities in the United States or elsewhere. This Section 10.1 shall not apply to taxes levied against the income or capital of Wowza or upon Wowza as employer of Wowza's employees.

10.2 You shall collect, report, and pay to the relevant taxing authority, and indemnify Wowza for, any liability relating to applicable excise, property, sales and use, value-added (VAT), or similar taxes, along with any withholding requirement in addition to or in lieu thereof, and any customs, import, export or other duties, levies, tariffs, taxes, or other similar charges that are imposed by any jurisdiction for any and all services provided to any third party as permitted by this EULA.

## 11. GENERAL.

11.1 Entire Agreement. This EULA, including the Additional Terms, sets forth Wowza's entire liability and your exclusive remedy with respect to the Software, Services, and other subject matter hereof, and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software, Services, and other subject matter hereof. You acknowledge that this EULA, including Additional Terms, is a complete statement of the agreement between you and Wowza

with respect to the Software, Services, and other subject matter hereof, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software, Services, and other subject matter hereof. Additional Terms referenced herein are deemed incorporated herein by reference. ANY PURCHASE ORDER OR OTHER DOCUMENT PROVIDED BY OR RECEIVED FROM YOU SHALL BE FOR YOUR INTERNAL USE ONLY AND SHALL NOT BE APPLICABLE TO WOWZA NOR SHALL IT MODIFY THE TERMS OF THIS EULA OR GOVERN YOUR USE OF THE SOFTWARE. WOWZA REJECTS ANY TERMS CONTAINED IN PURCHASE ORDERS OR SIMILAR DOCUMENTS.

11.2 Headings and Interpretation. Headings under this EULA are intended only for convenience and shall not affect the interpretation of this EULA. References herein to the singular include the plural, and vice versa. Wowza and You agree that, if an ambiguity or question of intent or meaning arises with respect to any provision of this EULA, this EULA will be construed as being drafted jointly by Wowza and you, and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this EULA.

11.3 Waiver and Modification. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. Wowza may modify this EULA from time to time by one of three methods: (i) posting the changes on the Wowza Website; (ii) providing notice of such changes to your Email Address; or (iii) signing a written agreement with you specifying changes to this EULA. You agree to be bound by such changes if you continue using the Software following the effective date of any such change to this EULA. Changes to this EULA are effective upon the earlier of: (i) Wowza posting notice of such changes on the Wowza Website; (ii) Wowza providing notice to your Email Address of such changes; or (iii) the signing of a written amendment modifying this EULA by both you and Wowza. Other than as provided in this Section 12.3, this EULA may only be modified, or any rights under it waived, by a written document executed by the party against which it is asserted.

11.4 Supersession. This EULA, Additional Terms, or both may be superseded by a subsequent version of this EULA or Additional Terms, as the case may be. Such supersession may occur if you download, install, activate, or use Software or Upgrades or Updates. This EULA supersedes prior EULA versions under which the Software was licensed to you.

11.5 Assignment. You may not assign this EULA or any interest in this EULA without the prior written approval of Wowza.

11.6 Notices. Notices required by or related to this EULA from you must be sent via U.S. Mail or reputable overnight carrier, return receipt requested, to the attention of "Legal Department" at Wowza's then-current mailing address, which is presently 523 Park Point Drive, Suite 300, Golden, Colorado 80401 USA, with a copy by electronic mail to LegalNotices@wowza.com. Wowza may provide notices required by or related to this EULA to you at Your Email Address.

11.7 Severability. If a provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected.

11.8 Relationship of You and Wowza. This EULA shall not be construed to create any employment, partnership, joint venture, franchise, or agency relationship between you and Wowza, or to authorize either party to enter into any commitment or agreement binding on the other party.

11.9 No Responsibility for Content. You acknowledge and understand that the Content is entirely your responsibility. You acknowledge, agree, and agree to assert and acknowledge in legal

proceedings that Wowza exercises no control whatsoever over the Content and that Wowza will not be liable for Content.

11.10 Representations. You represent and warrant that you are authorized to enter into this EULA and comply with its terms, and are of legal age to do the same. Furthermore, you represent and warrant that you will at all times meet your obligations hereunder, and comply with all laws, regulations, and policies that apply to use of the Software. If you are entering into this EULA on behalf of an entity or organization, you represent and warrant that you have full authority to do so and to bind that entity or organization.

11.11 Force Majeure. Neither party shall be in default by reason of any failure in performance of this EULA, except for an obligation to pay money, if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, default by subcontractors or suppliers, acts of God or of the public enemy, terrorist act, United States of foreign governmental acts in either a sovereign or contractual capacity, fire, flood, epidemic, restriction, strikes, or freight embargos.

11.12 Governing Law. This EULA will be governed by the laws of the State of Colorado, without regard to its choice of law principles. Except as provided in the following Section 11.13, you and Wowza hereby agree to submit to the exclusive jurisdiction and venue of Colorado State Courts or United States Federal Courts situated in Denver or Jefferson Counties, Colorado, USA for any dispute arising out of or related to this EULA or any of the subject matter hereof. The United Nations Convention for the International Sale of Goods shall not apply to this EULA or the Software.

11.13 ARBITRATION FOR NON-U.S. LICENSEES. IF YOU RESIDE (IF YOU ARE AN INDIVIDUAL) OR ARE DOMICILED (IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF AN ENTITY) OUTSIDE OF THE UNITED STATES, ANY CLAIM OR DISPUTE BROUGHT BY YOU AND ARISING OUT OF OR RELATED TO THIS EULA OR THE SOFTWARE SHALL BE SUBMITTED TO BINDING ARBITRATION IN DENVER, COLORADO, USA UNLESS WOWZA AGREES IN WRITING TO WAIVE SUCH REQUIREMENT. Such arbitration shall be before an arbitrator-member of the American Arbitration Association (“**AAA**”) to be mutually agreed to by the parties, or, in the event the parties cannot agree on a single such arbitrator-member, to a panel of three arbitrator-members selected in accordance with the rules of the AAA. The dispute shall be settled in accordance with the Commercial Arbitration Rules of the AAA and the decision of the arbitrator(s) shall be final and binding upon the parties and judgment may be obtained thereon in a court of competent jurisdiction. The prevailing party shall be entitled to recover from the other party the fees and expenses of the arbitration as well as reasonable attorneys' fees, costs and expenses incurred by the prevailing party. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall apply to this EULA if you reside or are domiciled outside of the United States.

11.14 Contact Information. If you have any questions about this EULA, please contact Wowza at [info@wowza.com](mailto:info@wowza.com).

11.15 Survival of Terms. The following terms shall survive termination of this EULA: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

## **12. NOTICE TO U.S. GOVERNMENT END USERS.**

12.1 Commercial Items. The Software, including all related documentation, are “Commercial Item(s),” as that term is defined at 48 C.F.R. Section 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R.

Section 12.212 or 48 C.F.R. Section 227.7202, as applicable. Consistent with 48 C.F.R. Section 12.212 or 48 C.F.R. Sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (i) only as Commercial Items; and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

12.2 U.S. Government Licensing of Wowza Software. You agree that when licensing the Software for acquisition by the U.S. Government, or any contractor therefore, you will license consistent with the policies set forth in 48 C.F.R. Section 12.212 (for civilian agencies) and 48 C.F.R. Sections 227-7202-1 and 227-7202-4 (for the Department of Defense). For U.S. Government End Users, Wowza agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence shall be incorporated by reference in this Agreement.