

**WOWZA MEDIA SOFTWARE
END USER LICENSE AGREEMENT (“EULA”) VERSION 3.5**

NOTICE: BY DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE. "YOU" MEANS (1) THE NATURAL PERSON OR THE ENTITY THAT IS AGREEING TO BE BOUND BY THIS EULA; (2) YOUR EMPLOYEES AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICES TO YOU; AND (3) ANY OF YOUR CUSTOMERS USING THE SOFTWARE OR ANY SERVICE BASED UPON THE SOFTWARE, AS PERMITTED IN THIS AGREEMENT. YOU SHALL BE LIABLE FOR ANY FAILURE BY SUCH EMPLOYEES, THIRD PARTY CONTRACTORS OR CUSTOMERS TO COMPLY WITH THE TERMS OF THIS EULA. THIS EULA IS ENFORCEABLE AGAINST ANY PERSON OR ENTITY THAT DOWNLOADS, INSTALLS, COPYS OR USES THE SOFTWARE AND ANY PERSON OR ENTITY THAT DOWNLOADS, INSTALLS, COPYS OR USES THE SOFTWARE ON ANOTHER PERSON’S OR ENTITY’S BEHALF. YOU AGREE THAT THIS EULA IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU.

1. DEFINITIONS

- 1.1 “AddOn” means any one (1) of the additional software features offered by Wowza as more fully described in the applicable documentation for such features.
- 1.2 “Channel” means one (1) unique media stream for input into one (1) unique Instance of the Software.
- 1.3 “Concurrent Connections” means the total number of simultaneous connections to the Software.
- 1.4 “Content” means any video, audio, data and any other output of the Software and any video, audio, data or other input into the Software.
- 1.5 "Instance" means one unique installation of the Software on a Server, whether used for development, production, service or testing purposes.
- 1.6 “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.
- 1.7 “Sample Code” means sample programs or scripts that may be distributed with the Software.
- 1.8 “Server” means a single physical computer running no more than one (1) unique copy of an operating system. Multiple Servers are (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.

- 1.9 “Software” means the software and any AddOns, if any, that are licensed to You under this EULA including, but not limited to, any related components purchased or provided with the Software, application programming interfaces, associated media, printed materials, online or electronic documentation, and any updates and maintenance releases thereto.
- 1.10 “Total Number of Instances” means the maximum concurrent number of Instances You are using or have used during any billing period.
- 1.11 “Total Number of Channels” means the maximum concurrent number of Channels You are using or have used during any billing period in connection with a Wowza Media Server 3 Monthly Edition License as set forth in Section 2.7 or a Wowza Media Server 3 Daily Edition License as set for in Section 2.8.
- 1.12 “Wowza” means Wowza Media Systems, Inc., 31207 Keats Way, Suite 102, Evergreen, CO 80439.

2. LICENSE GRANT AND LICENSE RESTRICTIONS

2.1 License.

- 2.1.1 The Software is licensed, not sold. Subject to the terms of this EULA, Wowza hereby grants You a world-wide, non-exclusive, non-transferable license, without rights to sublicense, to download and install the Software on one (1) Server and use the Software for the purposes as set forth in the applicable documentation for the Software and to the extent permitted by Your payment of applicable license fees, if any, under a Wowza license type and/or Your License Key subject to the Software license specific terms specified in this EULA.
- 2.1.2 Subject to Section 2.2 (License Restrictions), You are permitted to provide services to third parties under the terms of this EULA.
- 2.1.3 Unless evidenced to the contrary, You shall be deemed to have a Wowza Media Server 3 Starter Edition License.
- 2.1.4 The Software shall periodically call into and connect with any hardware, software or other system designated by Wowza to assist Wowza in validating Your Software license and 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 have installed, (ii) a global

unique identifier (“GUID”) based on such version, (iii) Your operating system information, (iv) Your processor information, (iv) Your Java version information, (v) whether You are using a particular feature or not, and (vi) Your AddOn usage information.

- 2.1.5 In the event the Software fails to periodically call into and connect with such Wowza hardware, software or other designated system, Wowza shall have the right to terminate Your License to use the Software according to the terms of this EULA after seven (7) business days of the last date of contact of the Software with the Wowza hardware, software or other designated system.
- 2.1.6 Wowza hereby agrees to maintain the confidentiality of Your information obtained in Section 2.1.4 using at least as great a degree of care as Wowza uses to maintain the confidentiality of Wowza’s own most confidential information. Notwithstanding this Section 2.1.6, Wowza shall be permitted to use the information obtained in Section 2.1.4 so long as it is not identified as belonging to You.
- 2.1.7 You shall be solely responsible for and shall pay directly, any and all taxes, duties and charges incurred in the performance of this EULA, including, but not limited to, sales and use taxes, withholding taxes, duties and charges imposed by federal, state or local governmental authorities in the United States or elsewhere, but excluding any taxes levied against the income or capital of Wowza or upon Wowza as employer of Wowza’s employees.
- 2.1.8 You shall collect, report, and pay to the relevant taxing authority, and indemnify Wowza for any liability relating to, all applicable excise, property, value-added tax (VAT), sales and use, or similar taxes, 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.
- 2.1.9 Wowza may, at its sole discretion, modify the Software at any time and without notice to You.
- 2.1.10 You are not granted any rights or interest in any Wowza copyrights, trademarks or service marks, and You shall not use any Wowza trademarks or service marks in Your domain names or URLs. Contact Wowza at sales@wowza.com if You are interested in obtaining a license to use the Wowza trademarks or service marks in connection with Your use of the Software.
- 2.1.11 Wowza retains all rights not expressly granted to You.

2.2 License Restrictions. You shall not:

- 2.2.1 Copy the Software except for a reasonable number of machine-readable copies of the Software for backup or archival purposes only, and except as expressly permitted in this EULA;
 - 2.2.2 Remove any titles, trademarks, service marks or trade names, copyright notices, legends, watermarks, or other proprietary markings on the Software or Sample Code;
 - 2.2.3 Sell, lease, license, sublicense, rent, assign, distribute or otherwise transfer in whole or in part the Software, the License Key or Your rights in the Software to another party, including rights on a membership, subscription or hosted basis.
 - 2.2.4 Modify or create derivative works based upon the Software;
 - 2.2.5 Decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;
 - 2.2.6 Unbundle, break apart or repackage the Software or any of its component parts for any reason whatsoever;
 - 2.2.7 Bundle or distribute the Software in any manner whatsoever;
 - 2.2.8 Provide use of the Software in a third party outsourcing facility on a service, service bureau arrangement, or time-sharing basis;
 - 2.2.9 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;
 - 2.2.10 Make any changes, modifications or alterations to the Wowza EULA that is distributed by Wowza with the Software; or
 - 2.2.11 Make any statements, warranties or representations concerning the Software or Sample Code that exceed or are inconsistent with the documentation provided by Wowza to You.
- 2.3 Wowza Media Server 3 Trial Edition License. This section applies only if You have obtained a unique valid Wowza Media Server 3 Trial Edition License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza Media Server 3 Trial Edition License Key:
- 2.3.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server;
 - 2.3.2 Your license to the Software is limited to thirty (30) days from the date the License Key is issued to You;

2.3.3 You shall not use the Software for any commercial purposes whatsoever; and

2.3.4 Your license to the Software may also include feature limitations as more fully described in the applicable documentation for the Software.

2.4 Wowza Media Server 3 Developer Edition License. This section applies only if You have obtained a unique valid Wowza Media Server 3 Developer Edition License Key to the Software. You shall not apply clustering, load balancing or other operational performance improvements to any Server on which the Wowza Media Server 3 Developer Edition Software is installed, used or accessed. In addition to the other terms contained herein, for each separate unique valid Wowza Media Server 3 Developer Edition License Key:

2.4.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server;

2.4.2 Your license to the Software is limited to a maximum number of ten (10) Concurrent Connections;

2.4.3 Your license to the Software is limited to one-hundred and eighty (180) days from the date the License Key is issued to You;

2.4.4 You shall not use the Software for any commercial purposes whatsoever; and

2.4.5 Your license to the Software may also include feature limitations as more fully described in the applicable documentation for the Software.

2.5 Wowza Media Server 3 Starter Edition License. This section applies only if You have obtained a unique valid Wowza Media Server 3 Starter Edition License Key to the Software. You shall not apply clustering, load balancing or other operational performance improvements to any Server on which the Wowza Media Server 3 Starter Edition Software is installed, used or accessed. In addition to the other terms contained herein, for each separate unique valid Wowza Media Server 3 Starter Edition License Key:

2.5.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server;

2.5.2 Your license to the Software is limited to a maximum number of ten (10) Concurrent Connections;

2.5.3 Your license to the Software does not permit the use of AddOns;

2.5.4 You shall not use the Software for any commercial purposes whatsoever; and

- 2.5.5 Your license to the Software may also include feature limitations as more fully described in the applicable documentation for the Software.
- 2.6 Wowza Media Server 3 Perpetual Edition License. This section applies only if You have obtained a unique valid Wowza Media Server 3 Perpetual Edition License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza Media Server 3 Perpetual Edition License Key:
- 2.6.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server; and
- 2.6.2 You must obtain a separate Software license and License Key for each paid AddOn for use with this Software license.
- 2.7 Wowza Media Server 3 Monthly Edition License. This section applies only if You have obtained a unique valid Wowza Media Server 3 Monthly Edition License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza Media Server 3 Monthly Edition License Key:
- 2.7.1 Notwithstanding Section 2.1.1, Your license to the Software allows You to use one (1) or more Instances of the Software on one (1) or more Servers;
- 2.7.2 Notwithstanding Section 2.2.3 (License Restrictions), You have the right to lease, sublicense and rent to another party Your rights to use the Software solely for the purposes of use in a membership, subscription or hosted service, subject to the terms of this EULA;
- 2.7.3 Notwithstanding Section 2.2.10, (License Restrictions), You have the right to provide use of the Software in a third party outsourcing facility on a service, service bureau arrangement, or time-sharing basis, subject to the terms of this EULA;
- 2.7.4 Wowza shall use the number of Total Number of Instances and Total Number of Channels to calculate Your monthly fee, as set forth on www.wowza.com. You shall pay the monthly fee in U.S. dollars according to the payment policies set forth on www.wowza.com. The monthly fee shall be a net amount, exclusive of all taxes, and is not subject to offset or reductions because of any costs, expenses or liabilities incurred by You or imposed on You in the performance of this EULA or otherwise due as a result of this EULA;
- 2.7.5 Wowza reserves the right to change the monthly fee to be paid by You, as set forth on www.wowza.com, at any time, in Wowza's sole discretion, by providing You with notice of the new monthly fee. Any such change in the monthly fee shall be effective sixty (60) days after the date of such notice is provided to You;

- 2.7.6 In the event You fail to pay Your monthly fee or Your monthly fee is not received by the due date, Wowza shall have the right to terminate Your license to the Software. Furthermore, in the event any overdue amount owed by You is not paid following ten (10) days written notice from Wowza, then in addition to the amount due, Wowza may impose and You shall pay a late payment charge at the rate of one percent (1%) per month on any overdue amount;
- 2.7.7 Wowza may, at its sole discretion, discontinue the supply of the Software at any time only if it is also discontinued for all customers and other licensees of Wowza. Wowza shall use its best effort to notify You sixty (60) days prior to such discontinuance; and
- 2.7.8 In the event this EULA is terminated for any reason, Your obligation to pay the monthly fee accrued prior to the date of termination shall survive termination of this EULA.

2.8 Wowza Media Server 3 Daily Edition License. This section applies only if You have obtained a unique valid Wowza Media Server 3 Daily Edition License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza Media Server 3 Daily Edition License Key:

- 2.8.1 Notwithstanding Section 2.1.1, Your license to the Software allows You to use one (1) or more Instances of the Software on one (1) or more Servers;
- 2.8.2 Notwithstanding Section 2.2.3 (License Restrictions), You have the right to lease, sublicense and rent to another party Your rights to use the Software solely for the purposes of use in a membership, subscription or hosted service, subject to the terms of this EULA;
- 2.8.3 Notwithstanding Section 2.2.10, (License Restrictions), You have the right to provide use of the Software in a third party outsourcing facility on a service, service bureau arrangement, or time-sharing basis, subject to the terms of this EULA;
- 2.8.4 Wowza shall use the number of Total Number of Instances and Total Number of Channels to calculate Your daily fee, as set forth on www.wowza.com. You shall pay the daily fee in U.S. dollars according to the payment policies set forth on www.wowza.com. The daily fee shall be a net amount, exclusive of all taxes, and is not subject to offset or reductions because of any costs, expenses or liabilities incurred by You or imposed on You in the performance of this EULA or otherwise due as a result of this EULA;
- 2.8.5 Wowza reserves the right to change the daily fee to be paid by You, as set forth on www.wowza.com, at any time, in Wowza's sole discretion, by providing You with notice of the new daily fee. Any such change in the daily

fee shall be effective sixty (60) days after the date of such notice is provided to You;

2.8.6 In the event You fail to pay Your daily fee or Your daily fee is not received by the due date, Wowza shall have the right to terminate Your license to the Software. Furthermore, in the event any overdue amount owed by You is not paid following ten (10) days written notice from Wowza, then in addition to the amount due, Wowza may impose and You shall pay a late payment charge at the rate of one percent (1%) per month on any overdue amount;

2.8.7 Wowza may, at its sole discretion, discontinue the supply of the Software at any time only if it is also discontinued for all customers and other licensees of Wowza. Wowza shall use its best effort to notify You sixty (60) days prior to such discontinuance; and

2.8.8 In the event this EULA is terminated for any reason, Your obligation to pay the daily fee accrued prior to the date of termination shall survive termination of this EULA.

2.9 Wowza Transcoder AddOn (2-channel) License. This section applies only if You have obtained a unique valid Wowza Transcoder AddOn (2-channel) License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza Transcoder AddOn (2-channel) License Key:

2.9.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server for use with no more than one (1) Instance of Wowza Media Server 3 Perpetual Edition Software, which shall permit You to transcode no more than two (2) Channels;

2.9.2 You must obtain at least one (1) Wowza Media Server 3 Perpetual Edition License to use one (1) Wowza Transcoder AddOn (2-channel) License; and

2.9.3 You are permitted to use more than one (1) Wowza Transcoder AddOn (2-channel) License with Your one (1) Wowza Media Server 3 Perpetual Edition License.

2.10 Wowza Transcoder AddOn (1-channel) License. This section applies only if You have obtained a unique valid Wowza Transcoder AddOn (1-channel) License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza Transcoder AddOn (1-channel) License Key:

2.10.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server for use with no more than one (1) Instance of Wowza Media Server 3 Perpetual Edition Software, which shall permit You to transcode no more than one (1) Channel;

- 2.10.2 You must obtain at least one (1) Wowza Media Server 3 Perpetual Edition License to use one (1) Wowza Transcoder AddOn (1-channel) License; and
- 2.10.3 You are permitted to use more than one (1) Wowza Transcoder AddOn (1-channel) License with Your one (1) Wowza Media Server 3 Perpetual Edition License.
- 2.11 Wowza DRM AddOn License. This section applies only if You have obtained a unique valid Wowza DRM AddOn License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza DRM AddOn License Key:
- 2.11.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server for use with no more than one (1) Instance of Wowza Media Server 3 Perpetual Edition Software;
- 2.11.2 You must obtain no more than one (1) Wowza Media Server 3 Perpetual Edition License for use with Your Wowza DRM AddOn License; and
- 2.11.3 You are permitted to use no more than one (1) Wowza DRM AddOn License with Your one (1) Wowza Media Server 3 Perpetual Edition License.
- 2.12 Wowza nDVR AddOn License. This section applies only if You have obtained a unique valid Wowza nDVR AddOn License Key to the Software. In addition to the other terms contained herein, for each separate unique valid Wowza nDVR AddOn License Key:
- 2.12.1 Your license to the Software is limited to one (1) Instance of the Software on one (1) Server for use with no more than one (1) Instance of Wowza Media Server 3 Perpetual Edition Software;
- 2.12.2 You must obtain no more than one (1) Wowza Media Server 3 Perpetual Edition License for use with Your Wowza nDVR AddOn License; and
- 2.12.3 You are permitted to use no more than one (1) Wowza nDVR AddOn License with Your one (1) Wowza Media Server 3 Perpetual Edition License.
- 2.13 Sample Code. You may download, install, use, copy, modify and distribute Sample Code which is distributed on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied.
- 2.14 Outsourcing and Third Parties. You are responsible for ensuring that any third party or facilities management contractor that operates the Software or Sample Code on Your behalf fully complies with the terms of this EULA. You shall remain completely liable for any and all acts and omissions of such third parties.

- 2.15 Customers. You are responsible for ensuring that any of Your customers using the Software or Sample Code or any service based upon the Software or Sample Code comply with the terms of this EULA. You shall remain completely liable for any and all acts and omissions of such customers.
- 2.16 Title. Wowza retains all right, title, and interest in and to the Software, copies of the Software, Sample Code and License Keys and in all related copyrights, trade secrets, patents, trademarks, service marks, domain names and any other intellectual and industrial property and proprietary rights, including but not limited to any registrations, applications, renewals, and extensions of such rights.
- 2.17 Government Restrictions. You may not export or re-export the Software except in compliance with the applicable provisions of the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions.

3. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 3.1 Any License Key to the Software is the confidential information of Wowza.
- 3.2 The Software and any copies thereof are the exclusive intellectual property of Wowza and protected by copyright laws and international treaties as well as other intellectual property laws and treaties. The structure, organization and code of the Software are confidential information and are 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 equitable remedies, as well as any other available legal remedies, may be awarded by a court of competent jurisdiction. Except as expressly stated herein, Wowza does not grant You any intellectual property rights in or to the Software. All rights not expressly granted herein are reserved by Wowza.
- 3.3 You hereby agree to maintain the confidentiality of the Software, License Key and other intellectual property of Wowza using at least as great a degree of care as You use to maintain the confidentiality of Your own most confidential information and in no case less than reasonably prudent care. You agree to reasonably communicate the terms and conditions of this EULA to those persons employed by You who come into contact with the Software, License Key and other intellectual property of Wowza, and to use reasonable best efforts to ensure their compliance with such terms and conditions, including, without limitation, not knowingly permitting such persons to use any portion of the Software, License Key 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.

4. TERMINATION

- 4.1 Termination. Wowza may terminate this EULA immediately and without notice if You fail to comply with any term of this EULA.

4.2 Effect of Termination. In the event of termination, You must destroy all copies of the Software and License Keys. In addition You must remove the Software and all copies thereof, including all backup copies, from the Server and all computers and other media on which it is installed, stored or archived. If requested by Wowza, You shall provide Wowza with written certification that You have complied with these requirements.

5. LIMITED WARRANTY AND LIMITATION OF LIABILITY

5.1 Limited Warranty. Wowza warrants that the Software will substantially conform to the description contained in the applicable end user documentation in each case for a period of 90 days after the date of issuance of the License Key. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WOWZA PROVIDES THE SOFTWARE 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. IN THE EVENT YOU OBTAINED THIS LICENSE FROM A RESELLER OR DISTRIBUTOR, WOWZA SHALL HAVE NO OBLIGATION TO YOU UNDER ANY WARRANTY GIVEN BY SUCH RESELLER OR DISTRIBUTOR, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES.

5.2 Limitation of Liability. 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. 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. WOWZA'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEES, IF ANY, PAID BY YOU FOR THE SOFTWARE LICENSED TO YOU UNDER THIS EULA. 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.

6. GENERAL

6.1 Entire Agreement. This Agreement sets forth Wowza's entire liability and Your exclusive remedy with respect to the Software and Sample Code and supersedes the

terms of any purchase orders and any other communications or advertising with respect to the Software and Sample Code. You acknowledge that this Agreement is a complete statement of the agreement between You and Wowza with respect to the Software and Sample Code, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software and Sample Code.

6.2 Headings. Headings under this EULA are intended only for convenience and shall not affect the interpretation of this EULA.

6.3 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. 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.

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

6.5 Severability. If any 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.

6.6 Independent Contractors. 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.

6.7 No Responsibility for Content. You acknowledge and understand that the Content resulting from the use of the Software is entirely the responsibility of the person from whom such Content originated. Wowza will not be liable for any Content resulting from the use of the Software.

6.8 Representations. You represent and warrant that You are authorized to enter into this EULA and comply with its terms. Furthermore, You represent and warrant that You will at any and all times meet Your obligations hereunder, as well as any and all laws, regulations and policies that may apply to the use of the Software.

6.9 Force Majeure. Neither party shall be in default by reason of any failure in performance of this EULA 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.

6.10 Governing Law. This EULA will be governed by California law and the United States of America, without regard to its choice of law principles, and You and Wowza hereby agree to submit to the exclusive jurisdiction and venue of the United States

Federal District Court for the Northern District of California. The United Nations Convention for the International Sale of Goods shall not apply.

6.11 Contact Information. If You have any questions about this EULA, please contact Wowza at info@wowza.com.

6.12 Survival of Terms. The following terms shall survive termination of this EULA: Section 1 (Definitions); Section 2.2.2 through and including Section 2.2.11 (License Restrictions); Section 2.7.8 (Wowza Media Server 3 Monthly Edition License); Section 3.8.8 (Wowza Media Server 3 Daily Edition License); Section 2.13 (Outsourcing and Third Parties); Section 2.14 (Customers); Section 2.15 (Title); Section 3 (Confidentiality and Intellectual Property Rights); Section 4.2 (Effect of Termination); Section 5 (Limited Warranty and Limitation of Liability); and Section 6 (General).

7. NOTICE TO U.S. GOVERNMENT END USERS

7.1 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.

7.2 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.