

Wowza® Media Systems, LLC
END USER LICENSE AGREEMENT
for
Wowza Streaming Engine™ 4 Software
And Related Software Products and Services

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-- 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 offered by Wowza 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 "Concurrent Connections" means the total number of simultaneous connections to the Software.

1.5 "Content" means any video, audio, data, and other input to or output from the Software.

1.6 "EULA" means this End User License Agreement, including the preceding text and License Overview and Additional Terms.

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 "Offline License Key" means a type of License Key that is not required to "call into" and connect with Wowza licensing servers. Offline License Keys include License Keys tied to a "MAC address" or a USB device.

1.10 "Sample Code" means sample source code or scripts distributed by Wowza from time to time and identified as such when provided to you.

1.11 "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.

1.12 "Services" means maintenance and support services, and includes Support, Updates, and Upgrades.

1.13 “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.

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1.17 “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 Streaming Engine Monthly Edition License or a Wowza Streaming Engine Daily Edition License, as calculated by Wowza according to its then-current policies and procedures.

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4.1.2 A *developer license type* is denoted by the words “Developer” or “Developer Edition”, and a License Key beginning “EDEV4”.

4.1.3 An *R&D license type* is denoted by “R&D”, and a License Key beginning “ERDA4”.

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4.3.2 your license to the Software expires automatically without notice three-hundred and sixty-five (365) calendar days following the date the License Key is issued to you;

4.3.3 you shall not use the Software for any commercial purposes whatsoever or in any manner intended to benefit, aid, or assist a third party;

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

4.3.5 you shall not apply clustering, load balancing, or other operational performance improvements to any Server on which the Wowza Streaming Engine R&D Edition Software is installed, used, or accessed; and

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4.4.2 your license to the Software expires automatically without notice thirty (30) calendar days following the date the License Key is issued to you;

4.4.3 you shall not use the Software for any commercial purposes whatsoever or in any manner intended to benefit, aid, or assist a third party; and

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4.6.4 Wowza shall use the Total Number of Instances and Total Number of Channels to calculate your monthly or daily fee, as set forth on the Wowza Website. You shall pay the monthly or daily fee in U.S. dollars according to the payment policies set forth on the Wowza Website. The monthly or daily fee shall be a net amount, exclusive of all taxes, and is not subject to offset or reductions because of any costs, expenses, disputes, or liabilities incurred by you or imposed on you;

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4.6.9 Wowza may, in its sole discretion, discontinue or limit the supply or availability of the Software at any time;

4.6.10 in the event this EULA is terminated for any reason, your obligation to pay the monthly or daily fees accrued prior to the date of termination shall survive termination of this EULA; and

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4.7.2 you must obtain at least one (1) Wowza Streaming Engine Perpetual Edition license to use one (1) or more Wowza Transcoder AddOn (1-channel) licenses; and

4.7.3 you may use more than one (1) Wowza Transcoder AddOn (1-channel) license with each Wowza Streaming Engine Perpetual Edition Instance.

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6.2.2 The Services Period for R&D license type License Keys is the Services Period of your perpetual or subscription license type License Key.

6.2.3 The Services Period for subscription license type License Keys is the term of such subscription license for the Software.

6.2.4 The initial Services Period for perpetual license type License Keys is either one (1) or three (3) years from the date you obtained a Wowza Streaming Engine Perpetual Edition License Key from Wowza, as specified in your purchasing documents. 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 obtained a Wowza Streaming Engine Perpetual Edition License Key from Wowza.

6.2.5 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.

6.3 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 License Key.

6.3.1 Wowza will not provide Services related to: (i) prior versions of the Software; (ii) improper installation or use of the Software; (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.

6.3.2 In the event a Services Period expires for a given License Key and you elect to not purchase additional Services Periods but later wish to receive Services from Wowza related to such License Key, 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.

6.3.3 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.

6.3.4 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.

7. INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY.

7.1 License Keys and Software are valuable trade secrets and the confidential and proprietary information of Wowza.

7.2 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 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.

7.3 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.

7.4 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 Streaming Engine" and to identify the source of the Software as "Wowza" or "Wowza Media Systems." Please contact sales@wowza.com if you are interested in obtaining additional rights related to Wowza Trademarks.

7.5 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.

7.6 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, and may be used in any manner and for any purpose by Wowza without obligation of any kind to you.

8. TERMINATION.

8.1 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. Unless you have a Wowza Streaming Engine Perpetual Edition license, Wowza may terminate this EULA for any reason or no reason upon thirty (30) days advance notice to your Email Address.

8.2 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 licensed under this EULA. In addition, you must remove the Software and all copies thereof, including all backup copies, from all Servers, 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 within three (3) business days of such request.

9. INDEMNIFICATION BY YOU.

9.1 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; and (v) any failure to pay required taxes or other amounts due to third parties related to the Software or this EULA.

9.2 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; (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 or immediately preceding 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.

10. LIMITED WARRANTY AND LIMITATION OF LIABILITY.

10.1 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 earlier of the date Wowza issues the License Key or the date you downloaded the Software. 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.

10.1.1 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; (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.

10.1.2 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.

10.2 Limitation of Liability.

10.2.1 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, 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.

10.2.2 WOWZA'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE FEES, IF ANY, PAID BY YOU FOR THE SOFTWARE AND SERVICES 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. YOU AND WOWZA AGREE THAT, GIVEN THE PRICE OF THE SOFTWARE AND THE NATURE OF THE CIRCUMSTANCES, THE PRECEDING LIMITATIONS ARE FAIR AND REASONABLE.

11. **TAXES.**

11.1 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 11.1 shall not apply to taxes levied against the income or capital of Wowza or upon Wowza as employer of Wowza's employees.

11.2 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.

12. **GENERAL.**

12.1 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.

12.2 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.

12.3 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.

12.4 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, or use Software or Software upgrades or updates. This EULA supersedes prior EULA versions under which the Software was licensed to you.

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

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 Governing Law. This EULA will be governed by the laws of the State of New York, without regard to its choice of law principles. Except as provided in the following Section 12.13, you and Wowza hereby agree to submit to the exclusive jurisdiction and venue of the United States Federal District Court for the Southern District of New York 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.

12.13 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 NEW YORK, NEW YORK, 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.

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

12.15 Survival of Terms. The following terms shall survive termination of this EULA: Section 1 (Definitions); Section 2 (License Grants; Title; Usage by Third Parties); Section 3 (Licensee Restrictions); Section 4 License Types and Additional Licensee Restrictions); Section 5 (License Key Integrity; Data Collection); Section 6 (Maintenance and Support); Section 7 (Intellectual Property Rights); Section 8 (Termination); Section 9 (Indemnification by You); Section 10 (Limited Warranty and Limitation of Liability); and Section 12 (General).

13. NOTICE TO U.S. GOVERNMENT END USERS.

13.1 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.

13.2 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.