Flowplayer SDK

END USER LICENSE AGREEMENT for THE FLOWPLAYER SOFTWARE DEVELOPMENT KIT (SDK)

Thank you for choosing the Flowplayer-SDK software development kit (along with associated documentation, APIs and API information, software code and sample software code, tools, libraries, data, files, updates, upgrades, bug fixes, patches, and other materials, collectively the "SDK") from Flowplayer AB a Wowza Media Systems, LLC ("Wowza") company. Flowplayer has developed and made this SDK available to the public to aid developers in integrating into their own mobile device applications certain functionality of the Flowplayer-SDK mobile device application ("Flowplayer-SDK") and other Flowplayer software products and services.

This End User License Agreement (this "EULA") is a legally binding license agreement between You ("You", "Your", or "Licensee") and Flowplayer AB, a Wowza Media Systems, LLC company (jointly referred to as "Flowplayer", "Wowza", or "Company")) that describes Your rights to use the SDK. "You" and "Your" herein shall be deemed a reference to the natural person, the legal entity, or both, that is or are agreeing to this EULA by downloading, installing, or using the SDK, along with Your employees and third party contractors or the employees and third party contractors employed or engaged by the legal entity agreeing to this EULA.

BY SELECTING "I AGREE" DURING YOUR PURCHASE OF A FLOWPLAYER PRODUCT OR SERVICE, OR DOWNLOADING OF THE SDK, OR BY OTHERWISE ACCESSING, DOWNLOADING, OR USING THE SDK, 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, THAT YOU HAVE THE POWER AND AUTHORITY TO DO SO AND TO BIND SUCH COMPANY.

IF YOU DO NOT AGREE TO EACH AND EVERY TERM AND CONDITION OF THIS EULA, YOU MAY NOT USE THE SDK. If Your do not agree with each and every of the terms and conditions of this EULA, do not click "I ACCEPT", do not use the SDK in any way, and do not otherwise take any action that signifies Your agreement to this EULA. Although fees paid are nonrefundable, Flowplayer will gladly provide Your with a refund of license fees paid if You have not installed or used the SDK in any way, have discontinued use of Your Flowplayer product to our reasonable satisfaction, and You promptly request a refund from us.

1.   GRANT OF SDK LICENSE. The SDK is licensed, not sold. Subject to Your compliance with this EULA and timely payment of all applicable fees, Flowplayer grants You a limited, non-exclusive, non-transferable, non-assignable, revocable license to access and use the items in the SDK solely for the purpose of You:
a.   internally designing, developing, and testing a mobile device application for the iOS or Android platforms that transmits (streams) audio and/or video content to a Flowplayer service or product, a Wowza Streaming Engine™ server, a Wowza Video service account, or any combination thereof (each, a "Licensee Application"); and

b.   licensing and distributing Your Licensee Application pursuant to the terms of this EULA.

2.   SDK AND LICENSE RESTRICTIONS. The license granted herein by Flowplayer to You does not grant You the right to, and You agree not to:
a.   use the SDK for any purpose that violates applicable law or that is not expressly permitted by this EULA, including without limitation, using the SDK to create any product or service other than the Licensee Application expressly permitted by Section 1;
b.   work around any technical limitation in the SDK;
c.   engage in any activity, including but not limited to development or distribution of an application or service, that is likely or intended to, or does in fact, interfere with, disrupt, damage, or access in an unauthorized manner, any Flowplayer or third party software, server, service, network, or other property;
d.   sublicense, sell, transmit, rent, lease, loan, distribute, disclose, publish, or otherwise transfer any part of the SDK to any third party, or permit access to or use of any part of the SDK by or on behalf of any third party;
e.   reverse engineer, decompile, or disassemble any part of the SDK (except and only to the extent permitted by applicable law despite this restriction);
f.   create or distribute any malicious, deceptive, or unlawful applications;
g.   make copies of the SDK;
h.   create another SDK or any other derivative work of the SDK;
i.   include any part of the SDK in Your product(s) except for sample code as expressly permitted herein;
j.   remove, obscure, alter, or interfere with any watermarks or other licensing mechanisms imposed by Flowplayer;
k.   remove, obscure, or alter any proprietary rights notice contained in or on any part of the SDK;
l.   export or use the SDK or Confidential Information in any manner that violates applicable law; or
m.   develop a Licensee Application that does not transmit (stream) audio and/or video content to a Flowplayer service or product, a Wowza Streaming Engine™ server, a Wowza Video service account, or any combination thereof (for the avoidance of doubt, You may of course develop such an application so long as You don't use the SDK to do so).

3.   SAMPLE CODE. Flowplayer may include sample code within the SDK. Notwithstanding restrictions to the contrary in Section 2 and unless Flowplayer instructs You to the contrary, You may distribute sample code provided by Flowplayer so long as such sample code is distributed exclusively as part of Your Licensee Application and in object code form.

4.   DISTRIBUTION OF LICENSEE APPLICATION. You agree to:
a.   require each user of Your Licensee Application to agree to terms that protect Flowplayer, its intellectual property, and each part of the SDK at least as much as this EULA does;
b.   protect the privacy and legal rights of all users who may come into contact with Your Licensee Application; provide legally adequate privacy notices and protections for such users; and securely store and protect all information collected from or about users

of Your Licensee Application in a legally compliant manner;

c.   take reasonable measures to protect the intellectual property rights of third parties, take commercially reasonable measures to prevent the infringement of third party intellectual property rights, and take appropriate measures to respond to complaints regarding intellectual property infringement;

d.   meet all applicable requirements for distribution of the Licensee Application, including without limitation, requirements imposed by Apple or Google for distribution of applications through their respective application stores, and requirements imposed by applicable law;

e.   not distribute the Licensee Application in a manner that could or will cause the Licensee Application, any part of the SDK, or any application to which either links or relates, to become subject to an open source license or other license that requires or provides: that code be disclosed or distributed in source code form; that others have the right to modify or create derivative works from it; or that it becomes freely redistributable; and

f.   reproduce all titles, trademarks, copyright, and rights notices contained in the SDK.

5.   WOWZA AND FLOWPLAYER PRODUCTS & SERVICES. Wowza and Flowplayer may, individually or jointly provide products and services that interact with the SDK or with the Licensee Application. Wowza and Flowplayer may change or cancel such products or services or limit their availability at any time. You agree to not use the SDK in any way that could harm, or gain unauthorized access to, any Wowza or Flowplayer product, service, data, account, or network. Use of any other Wowza or Flowplayer product or service may be subject to additional terms and conditions.

6.   ANNUAL FEE. As more fully described on the Flowplayer website or in communication to you from time to time, Flowplayer may require an annual fee in order to permit You to continue using the SDK or to receive Support (as defined below). You agree to keep a valid credit card, PayPal account, or other form of payment reasonably acceptable to Flowplayer on file, and to allow Flowplayer to automatically charge that form of payment for the annual fee unless Your specifically notify Flowplayer otherwise in writing. Flowplayer will endeavor to provide reasonable notice to You of changes to the amount of the annual fee or billing practices related to the annual fee.

7.   MAINTENANCE & SUPPORT.

a.   Flowplayer will receive technical support inquiries and provide technical and other support related to the SDK ("Support") in a manner Flowplayer deems appropriate in its sole discretion. Flowplayer may modify Support offerings from time to time. Flowplayer will not provide any Support or Updates if You have not timely paid the Annual Fee described herein.

b.   Although Flowplayer will endeavor to respond to Support inquiries in a commercially reasonable manner, Flowplayer does not commit to any specific timeframe for such responses and does not commit to resolve all Support inquiries. Flowplayer may also, in its sole discretion, provide software updates with regard to the SDK (including without limitation, upgrades, improvements, bypasses, and bug fixes, collectively "Updates"). Support and Updates are each provided pursuant to this EULA and Flowplayer policies then in effect.

c.   Flowplayer may choose to release Updates at any time but is not required to do so

and does not commit to provide Updates according to any timeframe (for the avoidance of doubt and for example, Flowplayer does not commit to provide Updates within any timeframe following release of new operating system versions).

8.   TRADEMARKS.

a.   You shall not use any Flowplayer trademark or Flowplayer product or service name (collectively, the "Flowplayer Trademarks") to market the Licensee Application or for any other purpose unless authorized in advance by Flowplayer (or explicitly permitted under a separate agreement You have with Flowplayer).

b.   Notwithstanding the foregoing, Your agree that any use of a Flowplayer Trademark, whether permitted or otherwise, shall inure to the sole benefit of Flowplayer. You agree to not: (i) file or prepare any application for registration of any Flowplayer Trademark; (ii) assert any right, title, license to, or interest in the Flowplayer Trademarks; (iii) adopt, use, file for registration, or register any trademark, service mark, trade name, logo, or domain name which may be, in Flowplayer's sole discretion, either an infringement of a Flowplayer Trademark or Flowplayer domain name, or may result in a likelihood of confusion with a Flowplayer Trademark or Flowplayer domain name; or (iv) encourage, assist, or permit any other person or entity to do anything prohibited by this Section.

c.   You agree that Flowplayer may use Your name, organization name, logos, and other identifying information to identify You as a Flowplayer 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 Your by Flowplayer.

9.   IDEAS. As part of Your use of the SDK, You may notify Flowplayer of problems or defects encountered in the SDK, or of ideas for enhancements or changes to the SDK from time to time (collectively, "Ideas"). By providing such Ideas, whether such Ideas are conceived of or provided to Flowplayer during the Term of after, You grant to Flowplayer a worldwide, royalty-free, irrevocable and exclusive license, with the right to sublicense, to use and disclose the Ideas in any manner Flowplayer chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of Flowplayer's and its sublicensee's products embodying such Ideas in any manner and via any media Flowplayer or its sublicensees choose, without reference or obligation of any kind to You. You warrant that You will not give Flowplayer any Idea: (i) that You have reason to believe is subject to any patent, copyright, or other intellectual property claim or right of a third party; or (ii) subject to license terms that seek to require any Flowplayer product incorporating or derived from any Idea, or other Flowplayer intellectual property, to be licensed to or otherwise shared with any third party.

10.   TERM. This EULA is effective from the date You first agree to it or first downloaded or used the SDK (whichever came first) and will remain in effect until terminated as permitted herein (the "Term").

11.   TERMINATION.

a.   You may terminate this EULA by ceasing all use of the SDK and every API, and by notifying Flowplayer in writing of Your termination of this EULA. Upon receipt of Your notice of termination of this EULA, Flowplayer may require You to complete additional, commercially reasonable steps in order to terminate this EULA.

b.   Flowplayer may, at any time in its sole discretion, terminate this EULA, discontinue offering all or any part of the SDK, or restrict access to all or any part of the SDK, any API, or both.

c.   If You are dissatisfied with any aspect of the SDK, Your sole and exclusive remedy is to cease using the SDK.

12.   OBLIGATIONS UPON TERMINATION. Within five (5) business days following termination of this EULA for any reason, You agree to: (i) cease all usage of the SDK; (ii) destroy and erase from computer memory or return to Flowplayer the SDK and any copies thereof; (iii) return to Flowplayer or destroy all Confidential Information (as set forth in Section 12) and copies thereof; (iv) return to Flowplayer or destroy all copies of materials relating to the SDK or Confidential Information. You shall, upon request from Flowplayer, provide Flowplayer with written certification that it has complied with these requirements within fifteen (15) business days of such request.

13.   CONFIDENTIALITY.

a.   Definition. Flowplayer may disclose to You certain confidential, proprietary, and trade secret information of Flowplayer ("Confidential Information"). Confidential Information includes without limitation, information You receive or have received from Flowplayer that is related to the SDK, that is designated as confidential by Flowplayer, or that, given the nature of the information, should reasonably be considered to be confidential. Confidential Information also includes without limitation, Ideas (once provided to Flowplayer), the SDK and all copies thereof, as well as computer programs, flowcharts, diagrams, manuals, documentation, development tools, marketing information, financial information, business plans, and Ideas (once provided to Flowplayer). Subject to the foregoing, Confidential Information does not include those things that Flowplayer designates or identifies as not being subject to this EULA or that are: (i) publicly available other than by a breach of this EULA; (ii) rightfully received from a third party not in breach of any obligation of confidentiality; (iii) independently developed by You without access or reference to the Confidential Information, as demonstrated by written records in Your possession; or (iv) known to You at the time of disclosure without breach of this EULA, as demonstrated by written records in Your possession.

b.   Protection of Confidential Information. You agree to use the Confidential Information only during the Term and solely for the purpose of utilizing the SDK as permitted herein. You agree to take all steps reasonably necessary to maintain and protect the secrecy of the Confidential Information for the benefit of Flowplayer. You agree to refrain from disclosing Confidential Information to third parties and agree to only disclose the Confidential Information to Your own employees with a need to know the Confidential Information and who are made aware of and agree to confidentiality obligations at least as great as those provided by this EULA. You acknowledge that unauthorized disclosure of the Confidential Information could diminish the value to Flowplayer of proprietary interests that are the subject of this EULA. If You breach any obligations hereunder, Flowplayer may be entitled to seek equitable relief to protect its interests therein, including but not limited to injunctive relief, in addition to any and all other rights and remedies, including monetary damages, available at law or equity. You

waive any requirement that Flowplayer post security in order to seek injunctive relief related to this EULA.

14. ALL RIGHTS RESERVED. Except for the limited license expressly granted herein, You agree that Flowplayer retains all rights, title, and interest in and to the SDK, including without limitation, any and all copies, improvements, enhancements, modifications, and derivative works thereof, along with Confidential Information and Ideas. Flowplayer's retention of rights includes, without limitation, all patents, copyrights, inventions, trade secrets, trade dress, trademarks, and any other intellectual property rights in and to the Assets. Flowplayer retains all rights not expressly granted to You.

15. DISCLAIMER OF WARRANTIES. You acknowledge that the SDK may include pre-release code. You acknowledge that the SDK may not function in or on all versions of iOS or Android, may contain errors and defects, and may be substantially modified or withdrawn in the future. YOU ACKNOWLEDGE THAT THE SDK IS PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE. The entire risk as to the quality of the SDK and arising out of or related to participation in the Program remains with You. Flowplayer does not ensure continuous, error-free, secure, or virus-free operation of the SDK. Flowplayer is not obligated to provide Support related to the SDK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO WARRANTY IS MADE THAT THE SDK WILL BE ERROR-FREE OR FUNCTION AS DESIRED BY YOU.

16. LIMITATION OF LIABILITY. In no event shall Wowza or Flowplayer, their affiliates or associated entities, and any of their respective employees, agents, officers, and/or directors, be liable for any damages (including direct, indirect, special, incidental, punitive, lost profits, or any other damages) arising out of or related to this EULA or the SDK, in an aggregate amount greater than the license and other fees paid by You related to the SDK during the immediate twelve (12) months preceding the date on which any claim is made, or $250, whichever is greater, regardless of the legal theory upon which any claim for such damages is based. The disclaimers and limitations in this EULA constitute an essential part of this EULA and You agree that Flowplayer would not have entered into this EULA or provided the SDK at the pricing it was provided to You, without these disclaimers and limitations.

17. INDEMNIFICATION. You agree to indemnify, defend, and hold harmless, and hereby release Flowplayer, its licensors, affiliates, and associated entities, and their respective officers, directors, employees, contractors, and agents from and against any and all losses, liabilities, claims, including product liability, warranty, and intellectual property claims, obligations, costs, and/or expenses, including reasonable legal fees, which result from, arise out of, or are in any way related to: (i) this EULA; (ii) Your design, creation, testing, or distribution of Licensee Applications or sample code provided in the SDK; (iv) services or activities related to the SDK; (v) any actual, threatened, or anticipated breach by You of this EULA; or (vi) any other of Your activities.

18.   GENERAL.

a.   Assignment. You may not assign this EULA without the prior written consent of Flowplayer.

b.   Relationship. This EULA shall not be construed to create any employment, partnership, joint venture, franchise, or agency relationship between Flowplayer and You, nor shall this EULA be construed to authorize either party to enter into any commitment or agreement binding on the other party.

c.   Governing Law. This EULA shall be governed by and construed and enforced in accordance with the laws of the state of Delaware, United States excluding conflict of law rules and principles. You and Flowplayer agree to submit to the exclusive jurisdiction and venue of the state of Delaware, United States 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 SDK.

d.   Notice. Any notice required by this EULA to any party shall be in writing and in English and deemed to be sufficient and effective: (i) upon sending if given in writing by certified U.S. mail, postage prepaid, return receipt requested, or by overnight delivery by an internationally recognized carrier; or (ii) upon sending if given in writing by email and acknowledged by the receiving party or followed within five (5) business days by a writing delivered as stated in subsection "(i)", above. Flowplayer's address for notices is Regeringsgatan 29, 5th Floor, 111 53 Stockholm, Sweden; legal@flowplayer.com. Your address for notices is deemed to be the contact information You provided when obtaining the SDK or establishing an online account with Flowplayer. Either Party may designate a different or additional recipient for notices by like notice to the other Party.

e.   Headings and Interpretation. The headings used in this EULA are provided for convenience only and shall not be used to construe meaning or intent. The parties acknowledge that they have participated jointly in the negotiation and drafting of this EULA and, in the event an ambiguity or question of intent or interpretation arises, this EULA shall be construed consistent with the joint drafting of this EULA by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this EULA.

f.   Survival and Severability. If any provision of this EULA shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable and most closely approximate the intent and economic effect of the invalid provision, and the validity and enforcement of all other provisions in this EULA shall not be affected thereby. Sections 1, 2, and 4 through 18 shall survive termination of this EULA.

g.   Changes to this EULA. Flowplayer may modify this EULA at any time in its sole discretion provided that Flowplayer reasonably endeavors to provide notice of such change to You and posts the updated version of this EULA on the Flowplayer website. In the event Flowplayer modifies this EULA and You do not agree to the modification, You may cease using the SDK following Flowplayer's notice of such modification, and the modification shall not apply to You.

h.   Entire Agreement. This EULA constitutes the complete and exclusive agreement between Flowplayer and You relating to the subject matter hereof, and supersedes all oral or written communications, proposals, representations, negotiations, commitments,

understandings, or agreements not specifically incorporated herein. ANY PURCHASE ORDER OR OTHER DOCUMENT PROVIDED BY OR RECEIVED FROM YOUR SHALL BE FOR YOUR INTERNAL USE ONLY AND SHALL NOT BE APPLICABLE TO FLOWPLAYER NOR SHALL IT MODIFY THE TERMS OF THIS EULA OR GOVERN YOUR USE OF THE SDK. FLOWPLAYER REJECTS ANY TERMS CONTAINED IN PURCHASE ORDERS OR SIMILAR DOCUMENTS. FOR THE AVOIDANCE OF DOUBT, WOWZA MAY ENFORCE ANY PROVISIONS OF THIS AGREEMENT IN THE SAME MANNER AS FLOWPLAYER.