

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 ADOBE SYSTEMS INCORPORATED,
a Delaware Corporation,

5 Plaintiff,

6 v.

7 WOWZA MEDIA SYSTEMS, LLC, a Delaware
8 Corporation, and COFFEE CUP PARTNERS, INC.
9 (F/K/A WOWZA MEDIA SYSTEMS, INC.), a
California Corporation,

10 Defendants.

Case No.: 3:14-cv-02778-JST

STIPULATED PROTECTIVE ORDER

JURY TRIAL DEMANDED

11
12 **I. PURPOSES AND LIMITATIONS**

13 Disclosure and discovery activity in this action are likely to involve production of
14 confidential, proprietary, or private information for which special protection from public disclosure
15 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
16 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
17 Order. The parties acknowledge that this Order does not confer blanket protections on all
18 disclosures or responses to discovery and that the protection it affords from public disclosure and
19 use extends only to the limited information or items that are entitled to confidential treatment under
20 the applicable legal principles. The parties further acknowledge, as set forth below, that this
21 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
22 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
23 applied when a party seeks permission from the court to file material under seal.

24 **II. DEFINITIONS**

25 2.1 Challenging Party. a Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.2 “Confidential” Information or Items: information (regardless of how it is generated,
28 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil

1 Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
3 as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
6 CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY CONFIDENTIAL– SOURCE
7 CODE.”

8 2.5 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
15 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
16 competitor.

17 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
18 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to the
19 Receiving Party (except those permitted to receive such information under this Order), another
20 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
21 restrictive means.

22 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
23 sensitive “Confidential Information or Items” representing computer code and associated comments
24 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
25 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
26 the Receiving Party (except those permitted to receive such information under this Order), another
27 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
28 restrictive means.

1 2.9 House Counsel: attorneys who are employees of a party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
4 entity not named as a Party to this action.

5 2.11 Outside Counsel of Record : attorneys who are not employees of a party to this
6 action but are retained to represent or advise a party to this action and have appeared in this action
7 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

8 2.12 Party: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this action.

12 2.14 Professional Vendors: persons or entities that provide litigation support services
13 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
14 storing, or retrieving data in any form or medium) and their employees and subcontractors.

15 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
16 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE.”

18 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 **III. SCOPE**

21 The protections conferred by this Stipulation and Order cover not only Protected Material
22 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
23 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

25 **IV. DURATION**

26 Even after final disposition of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and

1 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
3 time limits for filing any motions or applications for extension of time pursuant to applicable law.

4 **V. DESIGNATING PROTECTED MATERIAL**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
6 Non-Party that designates information or items for protection under this Order must take care to
7 limit any such designation to specific material that qualifies under the appropriate standards. To the
8 extent it is practical to do so, the Designating Party must designate for protection only those parts of
9 material, documents, items, or oral or written communications that qualify – so that other portions
10 of the material, documents, items, or communications for which protection is not warranted are not
11 swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
13 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
14 encumber or retard the case development process or to impose unnecessary expenses and burdens
15 on other parties) expose the Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it designated for
17 protection do not qualify for protection at all or do not qualify for the level of protection initially
18 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
19 mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or
21 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
26 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected
28 material. If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins) and must specify, for each portion, the level of protection being asserted.

3 A Party or Non-Party that makes original documents or materials available for inspection
4 need not designate them for protection until after the inspecting Party has indicated which material
5 it would like copied and produced. During the inspection and before the designation, all of the
6 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY,” or in the case or source code made available for inspection,
8 “HIGHLY CONFIDENTIAL – SOURCE CODE.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine which documents, or
10 portions thereof, qualify for protection under this Order. Then, before producing the specified
11 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
13 CODE”) to each page that contains Protected Material. If only a portion or portions of the material
14 on a page qualifies for protection, the Producing Party also must clearly identify the protected
15 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,
16 the level of protection being asserted.

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
18 the Designating Party identify on the record, before the close of the deposition, hearing, or other
19 proceeding, all protected testimony and specify the level of protection being asserted. When it is
20 impractical to identify separately each portion of testimony that is entitled to protection and it
21 appears that substantial portions of the testimony may qualify for protection, the Designating Party
22 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
23 to have up to 21 days to identify the specific portions of the testimony as to which protection is
24 sought and to specify the level of protection being asserted. Only those portions of the testimony
25 that are appropriately designated for protection within the 21 days shall be covered by the
26 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the
27 deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript
28 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY.”

2 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
3 other proceeding to include Protected Material so that the other parties can ensure that only
4 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
6 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.”

8 Transcripts containing Protected Material shall have an obvious legend on the title page that
9 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
10 (including line numbers as appropriate) that have been designated as Protected Material and the
11 level of protection being asserted by the Designating Party. The Designating Party shall inform the
12 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
13 day period for designation shall be treated during that period as if it had been designated “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
15 the expiration of that period, the transcript shall be treated only as actually designated.

16 (c) for information produced in some form other than documentary and for any
17 other tangible items, that the Producing Party affix in a prominent place on the exterior of the item,
18 or container or containers in which the information or item is stored the legend
19 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
20 CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item
21 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
22 portion(s) and specify the level of protection being asserted.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items does not, standing alone, waive the Designating Party’s
25 right to secure protection under this Order for such material. Upon timely correction of a
26 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
27 in accordance with the provisions of this Order.

28

1 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
9 by providing written notice of each designation it is challenging and describing the basis for each
10 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
11 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
12 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
13 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
14 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
15 Party must explain the basis for its belief that the confidentiality designation was not proper and
16 must give the Designating Party an opportunity to review the designated material, to reconsider the
17 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
18 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
19 has engaged in this meet and confer process first or establishes that the Designating Party is
20 unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
23 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
24 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
25 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
26 competent declaration affirming that the movant has complied with the meet and confer
27 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
28 motion including the required declaration within 21 days (or 14 days, if applicable) shall

1 automatically waive the confidentiality designation for each challenged designation. In addition, the
2 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
3 good cause for doing so, including a challenge to the designation of a deposition transcript or any
4 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and confer
6 requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating
8 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
9 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
10 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
11 to retain confidentiality as described above, all parties shall continue to afford the material in
12 question the level of protection to which it is entitled under the Producing Party's designation until
13 the court rules on the challenge.

14 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
18 the categories of persons and under the conditions described in this Order. When the litigation has
19 been terminated, a Receiving Party must comply with the provisions below in the section regarding
20 "FINAL DISPOSITION."

21 Protected Material must be stored and maintained by a Receiving Party at a location and in a
22 secure manner that ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
24 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
25 information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
28 information for this litigation and who have signed the "Acknowledgment and Agreement to Be

1 Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the
3 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
4 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
6 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
7 Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, and
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
15 separately bound by the court reporter and may not be disclosed to anyone except as permitted
16 under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered
21 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
23 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
26 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
27 Bound” that is attached hereto as Exhibit A;

28 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably

1 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
3 have been followed;

4 (c) the court and its personnel;

5 (d) court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

8 (e) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
12 CODE” Information or Items to Experts.

13 (a) Unless otherwise ordered by the court or agreed to in writing by the
14 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
15 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first
17 must make a written request to the Designating Party that (1) identifies the general categories of
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
19 SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert,
20 (2) sets forth the full name of the Expert and the city and state of his or her primary residence,
21 (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s),
22 (5) identifies each person or entity from whom the Expert has received compensation or funding for
23 work in his or her areas of expertise or to whom the expert has provided professional services,
24 including in connection with a litigation, at any time during the preceding five years,¹ and
25 (6) identifies (by name and number of the case, filing date, and location of court) any litigation in

26 _____
27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
28 party, then the Expert should provide whatever information the Expert believes can be disclosed
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 connection with which the Expert has offered expert testimony, including through a declaration,
2 report, or testimony at a deposition or trial, during the preceding five years.

3 (b) A Party that makes a request and provides the information specified in the
4 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
5 within 7 days of delivering the request, the Party receives a written objection from the Designating
6 Party. Any such objection must set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with
8 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
9 agreement within seven days of the written objection. If no agreement is reached, the Party seeking
10 to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
11 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so.
12 Any such motion must describe the circumstances with specificity, set forth in detail the reasons
13 why disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
14 would entail, and suggest any additional means that could be used to reduce that risk. In addition,
15 any such motion must be accompanied by a competent declaration describing the parties' efforts to
16 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
17 and setting forth the reasons advanced by the Designating Party for its refusal to approve the
18 disclosure.

19 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
20 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
21 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

22 **VIII. SOURCE CODE**

23 (a) To the extent production of source code becomes necessary in this case, a Producing
24 Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE CODE" if it
25 comprises or includes confidential, proprietary or trade secret source code.

26 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"
27 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS'
28 EYES ONLY" information, and may be disclosed only to the individuals to whom "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in
2 Paragraphs 7.3 and 7.4.

3 (c) Any source code produced in discovery shall be made available for inspection, in a
4 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
5 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed
6 upon location. The source code shall be made available for inspection on a secured computer in a
7 secured room without Internet access or network access to other computers, and the Receiving Party
8 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable
9 media or recordable device. The Producing Party may visually monitor the activities of the
10 Receiving Party’s representatives during any source code review, but only to ensure that there is no
11 unauthorized recording, copying, or transmission of the source code.

12 (d) The Receiving Party may request paper copies of relevant portions of source code
13 that are reasonably necessary for analysis of the Parties’ claims and defenses, the preparation of
14 court filings, pleadings, expert reports, or other papers, for deposition or trial, or otherwise
15 necessary for the preparation of its case. The Producing Party shall provide all such source code in
16 paper form, including bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE
17 CODE.”

18 (e) The Receiving Party shall maintain all paper copies of any printed portions of the
19 source code in a secured area. The Receiving Party may make additional copies where such
20 additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a
21 testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the
22 preparation of its case. Any copies used during a deposition shall be retrieved by the Producing
23 Party at the end of each day and must not be given to or left with a court reporter or any other
24 unauthorized individual.

25 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
26 **LITIGATION**

27 If a Party is served with a subpoena or a court order issued in other litigation that compels
28 disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
2 CODE,” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall include a
4 copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
6 other litigation that some or all of the material covered by the subpoena or order is subject to this
7 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
9 Designating Party whose Protected Material may be affected. If the Designating Party timely seeks
10 a protective order, the Party served with the subpoena or court order shall not produce any
11 information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.” Or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a
13 determination by the court from which the subpoena or order issued, unless the Party has obtained
14 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
15 seeking protection in that court of its confidential material – and nothing in these provisions should
16 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
17 directive from another court.

18 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
19 **THIS LITIGATION**

20 (a) The terms of this Order are applicable to information produced by a Non-Party in
21 this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced
23 by Non-Parties in connection with this litigation is protected by the remedies and relief provided by
24 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
25 additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
27 Party’s confidential information in its possession, and the Party is subject to an agreement with the
28 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1 1. promptly notify in writing the Requesting Party and the Non-Party that some
2 or all of the information requested is subject to a confidentiality agreement with a Non- Party;

3 2. promptly provide the Non-Party with a copy of the Stipulated Protective
4 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
5 the information requested; and

6 3. make the information requested available for inspection by the Non-Party.

7 (c) If the Non-Party fails to object or seek a protective order from this court within 14
8 days of receiving the notice and accompanying information, the Receiving Party may produce the
9 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
10 seeks a protective order, the Receiving Party shall not produce any information in its possession or
11 control that is subject to the confidentiality agreement with the Non-Party before a determination by
12 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
13 seeking protection in this court of its Protected Material.

14 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
16 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
17 the Receiving Party must immediately (a) notify in writing the Designating Party of the
18 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
19 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
20 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 If information is produced in discovery that is subject to a claim of privilege or of protection
25 as trial-preparation material, the party making the claim may notify any party that received the
26 information of the claim and the basis for it. After being notified, a party must promptly return or
27 destroy the specified information and any copies it has and may not sequester, use or disclose the
28 information until the claim is resolved. This includes a restriction against presenting the information

1 to the court for a determination of the claim.

2 **XIII. MISCELLANEOUS**

3 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
4 seek its modification by the court in the future.

5 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
6 no Party waives any right it otherwise would have to object to disclosing or producing any
7 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
8 Party waives any right to object on any ground to use in evidence of any of the material covered by
9 this Protective Order.

10 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
11 laws and regulations relating to the export of technical data contained in such Protected Material,
12 including the release of such technical data to foreign persons or nationals in the United States or
13 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
14 data, and the Receiving Party shall take measures necessary to ensure compliance.

15 13.4 Filing Protected Material. Without written permission from the Designating Party or
16 a court order secured after appropriate notice to all interested persons, a Party may not file in the
17 public record in this action any Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
19 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
20 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
21 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
22 to protection under the law. If a Receiving Party's request to file Protected Material under seal
23 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
24 Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
25 instructed by the court.

26 **XIV. FINAL DISPOSITION**

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
28 Receiving Party must return all Protected Material to the Producing Party or destroy such material.

1 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
3 the Protected Material is returned or destroyed, the Receiving Party must submit a written
4 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
5 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
6 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
7 abstracts, compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
9 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
10 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
11 and expert work product, even if such materials contain Protected Material. Any such archival
12 copies that contain or constitute Protected Material remain subject to this Protective Order as set
13 forth above in the section regarding "DURATION."

14 **ATTESTATION**

15 I, Michael A. Berta, hereby attest in accordance with General Order No. 45.X(B) that
16 Barry F. Irwin, counsel for Defendants Wowza Media Systems, LLC, and Coffee Cup Partners, Inc.
17 (f/k/a Wowza Media Systems, Inc.) has provided his concurrence with the electronic filing of the
18 foregoing document entitled STIPULATED PROTECTIVE ORDER.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 DATED: July 22, 2014.

20 /s/ Michael A. Berta
21 Attorneys for Plaintiff

22 DATED: July 22, 2014.

22 /s/ Barry F. Irwin
23 Attorneys for Defendants

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 DATED: July 28, 2014

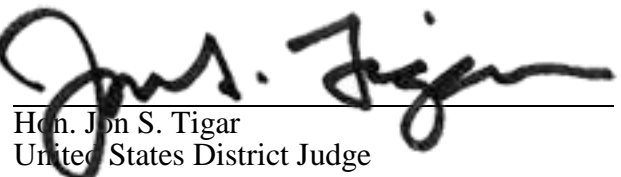
26 
27 Hon. Jon S. Tigar
28 United States District Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Adobe Systems Incorporated v. Wowza Media Systems LLC, et al.*, No. 3:14-cv-02778-JST (N.D. Cal.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[printed name]