

CAST's Standard Software End User Licence Agreement

CAST IS WILLING TO LICENSE THIS SOFTWARE TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS EULA.

This is a legal agreement between you (either as an individual or corporate entity) as the End User and CAST Software Ltd. of 35 Ripley Avenue, Suite 1, Toronto, ON, Canada, M6S 3P2 ("CAST"), the proud maker of the *wysiwyg* suite and Vivien – Virtual Event Designer software products (collectively or singly, the Software), and its Authorized Dealers. CAST can be reached on business days during normal business hours (Eastern Time (GMT+5)) at +416.597.2278 or anytime by fax +416.597.9594 or by email info@cast-soft.com.

By using this Software, you, whether as owner or lessee of the license to use the Software, are agreeing to be bound by the terms and conditions of this Agreement. If you do not agree to the terms and conditions of this Agreement, promptly return the software and other items that are part of this product in their original package with your sales receipt to your point of purchase for a full refund, or if you have downloaded this Software from a CAST web site, then you must stop using the software and destroy any copies of the Software in your possession or control.

1. Definitions

- a. **"Authorized Dealers"** shall mean any or all dealers authorized by CAST to sell the Software.
- b. **"Dongle"** shall mean the hardware device, which meets the technical and operating specifications as set and/or changed from time to time by CAST, that is required to operate the Software. Your initial purchase or Lease Term of a License includes the purchase of your Dongle which is shipped with the initial Software and remains the property of the End User.

A Dongle has two principal uses. First, (except for Demo Versions which do not need a Dongle) a Dongle is the only way you can open the Software each time you use it. The Dongle, which is essentially a USB key onto which information is imbedded code that controls what version, specific module or level of the Software you can open/use as well as details concerning your Software Operating Period (see below) – the Membership Period (which can be extended by renewing) or Lease Term (you can purchase additional Lease Terms) during which you may download Software updates and obtain technical support and other benefits. Secondly, a Dongle is a security device used by CAST to prevent unauthorized use of the Software and protects your work as well as your investment in the Software.

From time to time, you agree that CAST may poll and test the technical performance of your Dongle to assure that it meets CAST's standards, to validate and/or update your Product Registration Information for security purposes, and/or amend the security protocol imbedded.

Finally, by interaction with CAST, you can upgrade or downgrade the Licence, and add Membership Periods or Lease Terms so that you can continue to be entitled to receive future updates, technical support and other benefits available only for End Users with Valid Memberships.

- c. **"Effective Date"** means this Agreement shall be deemed effective from the Software and/or Dongle is installed and properly registered, and shall be valid for so long as you use or possess the Software unless Terminated (as defined below) earlier by CAST for a violation of any term of the EULA.
- d. **"End User"** means the person or entity that has purchased or leased a license, granted by CAST for a certain period of time, to operate the Software, subject to the terms and conditions of CAST's product registration policy. As an End User, you agree that you must also purchase and use a Dongle that must be

registered to you on the Product Registration Information form (see below). You also agree that you are responsible for the safety of your Dongle. Further, you understand that CAST relies on the information in your PRI (Software level, Release #, Software Operating Period) and that your future rights to access certain areas of the CAST website and/or obtain certain discounts depends on the accuracy and currency of your PRI.

- e. **“Full Access Dongle”** means the End User is a Valid Member, which entitles you to all the benefits of a Valid Membership, in accordance with the Software Operating Period (see below).
- f. **“Lease”** shall mean the legal agreement, in addition to this EULA to which you are a party, governing the specific terms, entitlements and rights that define and limit your license to use the Software, as opposed to those End Users who purchase a license to use the Software. At the commencement of each new Lease Term, lessee gets the current Release, full version of *wysiwyg* or Vivien and during the Lease Term you get all the Member Benefits – free Releases (product updates), unlimited Tech Support, bimonthly PLAN, and other information via email.
 - i. *Lease Term*
 - a. All Lease Terms are prepaid in full and can be purchased only via CAST’s website www.cast-soft.com. A dongle will be delivered directly to you by CAST. You are obligated to properly register in CAST’s Product Registration Information.
 - b. Each Lease Term is 12 contiguous months, starting when the software is registered, and cannot be subdivided, or started, interrupted and restarted.
 - c. At the end of the Lease Term, unless a new Lease Term is purchased or is the lessee then purchases the license to use the Software, the Software will not run. (Note: For comparison, after the conclusion of a Valid Membership Period for an End User that is not a Valid Member, the Software will continue to run on a highly restricted basis only.)
 - d. A subsequent Lease Term can be purchased via CAST’s website which you can choose to start at either the time of the expiration of the current Lease Term or at any time thereafter. When you purchase the next Lease Term, CAST will email you a new Lease Code to initialize your Dongle. You will be able to download the most current Software release at that time.
 - e. For greater clarity, it is not necessary that Lease Terms (or SOPs) run continuously – there can be a gap of time between expiry and the new Lease Term without any penalty.
 - f. It is your responsibility to maintain your Dongle and to arrange a Lease Term to prevent interruptions to your work.
 - ii. *Lessee Rights*
 - a. For the initial Lease Term, lessees must properly **pre register** using CAST’s online PRI before the initial Lease Term and must confirm the completeness and accuracy of your PRI as a condition of purchasing each successive Lease Term and in order to qualify for and receive all benefits of Membership.
 - b. If you want to upgrade or downgrade the product level or module, you can do so either during a current Lease Term or contemporaneously at the beginning of a new Lease Term. Should you install an upgrade or downgrade during an existing Lease Term you will the forfeit any value of any unused portion of the existing Lease Term. In other words, you will not receive any credit toward either the new Lease Term or purchase of the Software.
- g. **“Library”** shall mean the separately installed e-file library of industry-specific objects and texture files that interact with the Software. Updates to the Library are available for download from time to time provided the End User has a Valid Membership.
- h. **“Membership Period”** means the first and each successive 12-month period during which, by virtue of either renewing the Membership so that it is in good standing, that the End User is entitled to receive the benefits of a Valid Membership, including free Releases (product updates), unlimited Tech Support, bimonthly PLAN, Library updates and other information via email.

- i. **“Product Registration Information”** or **“PRI”** means the data form that must be fully completed and accurate as a condition of this EULA. You will be asked to confirm or update the PRI as a condition precedent to initialization of the Software and a requirement for renewing Membership Periods, adding Lease Terms, as well as accessing any entitlement to Members’ Benefits, and, in any event you agree to keep your PRI current and accurate at all times. Further, you understand that the PRI includes information about your Dongle and respective Software (level, Release, Stepping dates) and that your rights, such as access certain areas of the CAST website and/or obtain certain discounts or other benefits for Members, depends on the accuracy and currency of the PRI. The PRI is kept private and confidential, and is only used by CAST as record of your entitlements and benefits should your Dongle fail, or it is stolen or lost.
- j. **“Software”** means all executable and object code, program files, software and programme modules, and associated documentation (including any images, photographs, library objects and texture files, animations, video, audio, music, and text incorporated into the Software) of the *wysiwyg* suite of software products, more particularly including *wysiwyg* Demo, *wysiwyg* Viewer, *wysiwyg* Report, *wysiwyg* Design, *wysiwyg* Perform, *wysiwyg* CE, *wysiwyg* AWT, *wysiwyg* Learn, and *wysiwyg* Network (separately or individually, each is called a module; depending on which Software module there could also be “levels” delineated by channel counts, for example), and the Vivien – Virtual Event Designer, and any new versions or modules of the Software and/or Library, plus updates (which may be called Releases or R+ a number to denote the release number), upgrades, patches and/or utilities issued from time to time for the Software, Library and/or Dongle.

Installation of the Software, whether delivered to you in the form of a boxed product or downloaded from the CAST download website, can only be completed once your Dongle is activated at which time you will be required to certify the completeness and accuracy of your PRI. Henceforth, you will need your Dongle inserted into a USB in the computer on which the Software has been loaded in order to operate the Software.

- k. **“Software Operating Period”** or **“SOP”** shall mean either a current Valid Membership Period, in the case of a purchased license to use the Software, or a current Lease Term in the case of a leased license. During the SOP an End User is deemed a Valid Member. The SOP commencing and ending dates are part of either the activation or lease code delivered by CAST and which is embedded on the Dongle. The Dongle is checked each time the Software is started to determine whether or not the SOP is current.

For a purchased license for the Software, the first 12-month period is included with the initial purchase of the license for the Software. End Users can purchase additional 12-month Membership Periods which tag onto the end of the current or the most recent Membership Period. It is your responsibility to maintain a Valid Membership. (More information about Membership is available on CAST’s website.)

For a Leased license for the Software, the Membership Period is the same as the Lease Term.

- l. **“Valid Member”** or **“Valid Membership”** shall mean that you have agreed to the terms of this EULA and that your Product Registration Information is current, correct and complete, and that the Dongle status is a Full Access Dongle which entitles the End User to the full rights and benefits ascribed End Users because their Membership Period or Lease Term is current.
- m. **“You”** or **“you”** shall mean the End User and customer who may either purchase or lease the license to operate the Software, but in any event will own the Dongle.

2. Grant of Licence for Software

This Licence permits you, as the registered End User, to use the Software on any computer in conjunction with your Dongle which is attached to that computer or a network security device (special Dongle) that is attached to your server for running multiple software licenses. The Software is "in use" on a computer when it is loaded into the temporary memory (i.e. RAM) or installed into the permanent memory (e.g. hard disk, CD-ROM or other storage device). This Licence permits you use the Software in conjunction with the Dongle on computers that you use.

3. Software operates only with a Dongle supplied by CAST

- a. Your Dongle is the key to open your Software also has the security protocol (to protect your investment) and other information imbedded on it that establishes you as the registered licensee. From time to time, CAST will update its security protocol to protect its intellectual property. Also from time to time, CAST will test your Dongle to ascertain it meets technical specifications. Your Dongle will be polled and information sent to CAST via the internet (so you must be online during testing which does not poll, investigate, attach to, alter any executable code of the Software or any other software) to validate its compatibility with the new security protocol. Dongles which pass the test can be updated using a unique update code that will be emailed by CAST to the registered End User and then pasted “onto the Dongle”. Conversely, Dongles that fail the test must be exchanged by CAST in order for you to run Software versions designated *wysiwyg* R23 or *Vivien2010*, or higher.
- b. It is understood and agreed that a Dongle is valuable property belonging to the registered owner/lessee and
 - i. it controls access and is required to operate the Software,
 - ii. has vital information about your entitlements as the End User imbedded on it according to your registration information provided initially to CAST and which you must always keep current and accurate for any future changes, including any transfer of the Dongle to a new end user, so that CAST can continue to provide your Member benefits without interruption,
 - iii. that a Full Access Dongle
 - 1. is required to access and use the full operational benefits accorded that particular Dongle,
 - 2. must meet the ongoing technical, hardware or protocol specifications set and updated from time to time by CAST,
 - 3. is the only access to updates, technical support and other special benefits available only during the SOP, and
 - 4. it is the sole obligation of each Member or lessee to keep the Dongle safely and to ensure that the requirement to renew either a Membership Period or Lease Term, as the case may be, is met on a timely basis,
 - iv. that any other authorized or unauthorized person can use the Dongle (with or without End User's knowledge or permission) to enjoy the entitlements,
 - v. that CAST cannot necessarily identify or prevent the unauthorized use of a lost or stolen Dongle after the fact,
 - vi. CAST does not warranty lost or stolen Dongles, and so
 - vii. End User agrees that CAST is not responsible for any costs or damages whatsoever arising directly or indirectly from the above.
- c. Warranty on Dongle
 - i. CAST will replace a defective Dongle at no charge for sixty (60) days from the date of delivery to you by CAST but only after receipt of that Dongle at CAST's designated office.
 - ii. CAST may replace, at its sole discretion, a non-functioning Dongle within twelve (12) months from the date of delivery to you by CAST but only after receipt of that Dongle at CAST's designated office.
 - iii. Otherwise, a replacement Dongle will be considered by CAST only
 - 1. after receipt of the non-functioning Dongle at CAST's designated office,
 - 2. to the registered End User who is a Valid Member or lessee during a current Lease Term, as determined by CAST in its sole satisfaction, in accordance with the PRI,
 - 3. in an identical registration as to Member/Lessee and authorized for the same Software, module, SOP, and
 - 4. provided that End User pays the replacement Dongle fee so quoted plus any handling and shipping cost, and customs and duties.

4. Intellectual Property Ownership, Copyright and Trademarks Protection

The Software is licensed, not sold, to you for use only under the terms and conditions of this Agreement, and CAST reserves all rights not expressly granted to you in this Agreement. CAST and/or its licensors retain title to the Software and all intellectual property rights therein. The Software and any authorized copies that you make are the intellectual property of and are owned by CAST.

The structure, organization and code of the Software are valuable trade secrets and confidential information of CAST. The Software, CAST logos and CAST trademarks are proprietary to CAST and protected by law, including without limitation the copyright laws of Canada, the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this Agreement does not grant you any intellectual property rights in the Software, logos and trademarks, and all rights not expressly granted are reserved by CAST.

You may however, make limited copies of the Software or transfer the Software onto a hard disk drive for backup, archival or networking purposes, and provided that said copies are used only by persons working for you and only in conjunction with the Dongle, and provided all copyright and other proprietary notices contained in the original copy of the Software are duplicated and appear as in the original copy on any and all such copies. However, it is your responsibility to erase installed Software from any computer that you do not or will not use.

You are prohibited from copying the printed documents, which are included with the software, other than specified manuals and documentation prepared by CAST. Except as set out above, you cannot use, reproduce nor alter any logos or trademarks regarding CAST or the Software that are included with the Software or any materials issued, downloaded or distributed in conjunction with the Software, whether or now such logos or trademarks are the property of CAST, without first obtaining written approval from CAST.

CAST may at any time and at its sole discretion require you to cease using any copies of any materials made from the Software.

5. Other Restrictions

Unless specifically agreed in writing by CAST, you may not modify, distribute, rent, lease or sell the Software but you may transfer your rights under this Agreement by selling your Dongle. It is the responsibility of you and your purchaser to ensure that the sold Dongle is properly re-registered on the PRI. Failure to do so will prevent your purchaser from renewing the Membership Period or purchasing a new Lease Term, and from all other benefits accorded the Dongle sold by you.

You may not reverse engineer, decompile, or disassemble the software. Removal, emulation or reverse engineering of all or any part the Software or Dongle constitutes an unauthorized modification to the Software and is specifically prohibited. Nothing in this Agreement permits you to derive the source or assembly code of files that are provided to you in executable or object forms.

6. Limited Express Warranty

- a. To the best of CAST's knowledge and believe the Software does not contain any malicious code, program, or other internal component (e.g. computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, or alter Software, firmware, or hardware or which could, in any manner, reveal, damage, destroy, or alter any data or other information accessed through or processed by the Software in any manner. CAST shall immediately advise End User, in writing, upon reasonable suspicion or actual knowledge that the use of the Licensed Software may result in the harm described above.
- b. Further, CAST warrants that
 - i. the Software will perform substantially in accordance with the accompanying printed materials for a period of ninety (90) days from the date of shipping or downloading, as the case may be,
 - ii. for a period of ninety (90) days from the date of shipping, the physical media (e.g., diskettes or CD-ROM) and physical documentation will be free from defects in materials and workmanship, and

iii. the Dongle or any hardware accompanying the Software will be free of or from defects in materials and workmanship under normal use and service for 12 months from the date of the original shipment of the Software by CAST.

c. CAST does not warrant that the Software will operate uninterrupted or error free.

7. Remedies for End User

For any other software or hardware not included in the Limited Express Warranty above, at CAST's option your exclusive remedy shall be either (a) refund the original purchase price paid, or (b) their repair or replacement. The Limited Express Warranty is void if failure of the Software or Dongle has resulted from accident, abuse, or misapplication. Any replacement software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

8. No Other Warranties or Conditions

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CAST AND ITS AUTHORIZED DEALERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE, THE ACCOMPANYING WRITTEN MATERIALS, AND ANY ACCOMPANYING HARDWARE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

9. Limitation of CAST's Liability

NEITHER CAST NOR ANY AUTHORIZED DEALER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOST DATA OR LOST PROFITS, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY YOU FOR THE INITIAL PURCHASE OF THE SOFTWARE.

10. U.S. Government Restricted Rights

The Software and documentation were developed at private expense, are commercial, and are published and copyrighted. The Software and the documentation may be transferred to the U.S. government only with the prior written consent of an officer of CAST. The Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions as set forth in subdivision (c)(1)(ii) of the Rights in Technical Data and Computer Software Clause at DFARS (48 CFR 252.227-7013) for DoD contracts, in paragraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause in the FAR (48 CFR 52.227-19) for civilian agencies, or in the case of NASA, in Clause 18-52.227-86(d) of the NASA Supplement to the FAR, or in other comparable agency clauses. The contractor or manufacturer is CAST.

11. Termination

CAST reserves all rights concerning the Software not expressly granted to you in this Agreement. You agree to comply with all of the terms of this Agreement and to take all reasonable actions to protect the Software from theft, use or copying contrary to the terms of this Agreement. If you violate any term of this Agreement, CAST may immediately terminate this Agreement and your rights granted herein. You agree to destroy or return to CAST the Software, Dongle(s), and Manual(s), in your possession or control immediately upon receiving notice of CAST's termination of this Agreement.

12. Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario, Canada without regard to its conflict of laws rules. For any suit, action or other proceeding arising from or relating to this Agreement, you hereby irrevocably agree to personal jurisdiction and exclusive venue of the Canadian Court, Province of Ontario in the City of Toronto. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

13. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written representations, agreements, promises, or other communications representations, discussions, undertakings, communications or advertising relating to the Software.

14. **General Provisions**

- a. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement which shall remain valid and enforceable according to its terms. This Agreement shall not prejudice the statutory rights of any party dealing as a consumer. This Agreement may only be modified in writing by CAST.
- b. Updates, upgrades and/or utilities, or additional or other modules may be licensed to you by CAST under the same terms and conditions and/or with the additional or different terms.
- c. CAST may assign its rights under this Agreement to any party for any reason whatsoever. Subject to Other Restrictions, you may not assign your rights under this Agreement, in whole or in part, to any party without the prior written consent of CAST.
- d. No party shall be liable for, nor shall any party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control (each a "Force Majeure Event"), including any act of God or a public enemy, any act of terrorism, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labour problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing; provided, however, that upon learning of any Force Majeure Event, the applicable party shall immediately notify the other party of such Force Majeure Event.