

FireCast EasyStart End User License Agreement (EULA)

FIRECAST EASYSTART END USER LICENSE AGREEMENT (EULA)
TERMS AND CONDITIONS
LAST UPDATED: January 25, 2011

Please read this document carefully before purchasing or using FireCast(R) EasyStart(TM).

This Agreement is made as of this day by and between WireSpring Technologies, Inc., a Florida USA corporation ("WireSpring") and you ("Licensee", "you", or "You"). It contains important information about your legal rights. By purchasing or using FireCast EasyStart, you agree to the following terms and conditions.

If you are entering into this Agreement on behalf of your company, you represent that you have complete authority to do so. In this case, terms such as "Licensee", "you" and "your" in this Agreement mean your company and any of its officers, directors, employees or agents that use FireCast EasyStart on the company's behalf.

1. OVERVIEW

As used herein, "EULA" means an end user license agreement, and "Software Programs" or "Programs" mean, collectively, the Open Source Programs, the Third-Party Programs, and the Proprietary Programs, as each of those terms is defined herein.

FireCast EasyStart is a modular operating system made up of individual software programs, each of which was written and copyrighted individually. Each component is a separate and distinct program and is merely aggregated on the disk image that you receive. Each program has its own applicable end user license agreement. Throughout this document the programs are referred to, individually and collectively, as "FireCast EasyStart."

Typically, FireCast EasyStart is sold as part of a hardware/software bundle. This means that the software is preinstalled on the hardware that you receive. However, the terms of this Agreement apply only to the software portion of FireCast EasyStart. The hardware is covered by a separate agreement between you and the manufacturer of the hardware. For the precise terms applicable to the bundled hardware, please see the separate document included in the shipping box, or contact WireSpring for a copy of the terms.

2. OPEN SOURCE PROGRAMS

Some of the Programs are licensed pursuant to an Open Source EULA (such as the GPL or MPL) that permits you to copy, modify, and redistribute the software, in source code and/or binary forms (the "Open Source Programs"). However, you must review the original documentation corresponding to the Open Source Programs for the applicable Open Source EULA. Such documentation and Open Source EULAs are widely available on the Internet. (For example, you may find a copy of the GPL at <http://www.gnu.org> [<http://www.gnu.org>].) If you would like to receive a list of the Open Source Programs and the locations of their corresponding documentation, Open Source EULA and source code, please contact WireSpring by sending an email to support@wirespring.com with the subject "Open Source Info Request".

Please review the Open Source EULAs carefully, in order to understand your rights under them and to realize the maximum benefits available to you with FireCast EasyStart. Nothing in this license agreement limits your rights under, or grants you rights that supersede, the terms of any applicable Open Source EULA.

3. THIRD-PARTY PROGRAMS

FireCast EasyStart includes an assortment of applications from third-party vendors. Throughout this document each of these software components are referred to, individually and collectively, as "Third-Party Programs." Generally, each of these Third-Party Programs is licensed to you by the vendor pursuant to an end user license agreement ("Third-Party EULA") that generally permits you to install each of these products on only a single computer for your own individual use. Copying, redistribution, reverse engineering, and/or modification of these components may be prohibited, and you must look to the terms and conditions of the Third-Party EULA to determine your rights and any limitations imposed on you. For the precise terms of the Third-Party EULAs for each of these Third-Party Programs, please contact WireSpring. If you do not agree to abide by the applicable license terms for these Third-Party Programs, then do not use FireCast EasyStart. If you wish to install these Third-Party Programs separately from FireCast EasyStart, please contact the vendor of the program to obtain additional licenses.

FireCast EasyStart includes software licensed to you from Adobe Systems, Inc. (the "Adobe Programs"). For the precise terms of the license to you for the Adobe Programs, please contact WireSpring for a copy of the license. If you do not agree to abide by the applicable Adobe license terms for the Adobe Programs, then do not use FireCast EasyStart. If you wish to install the Adobe Programs separately from FireCast EasyStart, please contact Adobe Systems, Inc. to obtain additional licenses.

FireCast EasyStart includes software licensed to you from Broadcom Corporation (the "Broadcom Programs"). For the precise terms of the license to you for the Broadcom Programs, please contact WireSpring for a copy of the license. If you do not agree to abide by the applicable Broadcom license terms for the Broadcom Programs, then do not use FireCast EasyStart. If you wish to install the Broadcom Programs separately from FireCast EasyStart, please contact Broadcom Corporation to obtain additional licenses.

FireCast EasyStart includes software licensed from Microsoft Licensing GP (the "Microsoft Programs"). The following terms shall apply to your use of the Microsoft Programs: This product is protected by certain intellectual property rights of Microsoft Corporation. Use or distribution of such technology outside of this product is prohibited without a license from Microsoft or an authorized Microsoft subsidiary.

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FireCast EasyStart may include software licensed to you from S3 Graphics Co., Ltd. (the "S3 Graphics Software"). The following terms shall apply to your use of the S3 Graphics Software:

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FireCast EasyStart includes software licensed from MPEG LA, LLC (the "MPEG LA Programs"). Except as provided for in other applicable license agreements, the following terms shall apply to your use of the MPEG LA Programs:

THIS PRODUCT IS LICENSED UNDER THE MPEG-4 VISUAL PATENT PORTFOLIO LICENSE FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER FOR

(i) ENCODING VIDEO IN COMPLIANCE WITH THE MPEG-4 VISUAL STANDARD ("MPEG-4 VIDEO") AND/OR

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6.1. Term and Termination. This Agreement is effective from the date on which the first copy of the Proprietary Software is activated or otherwise used by Licensee, and shall remain in effect until terminated. Licensee may terminate this Agreement: (a) at any time upon written notice to WireSpring or (b) thirty (30) days after written notice to WireSpring in the event that WireSpring breaches any provision of this Agreement and has not cured such breach within the thirty (30) day period. WireSpring may terminate this Agreement: (a) at any time upon written notice to Licensee in the event of any breach of Section 3 hereof or (b) thirty (30) days after written notice to Licensee in the event that Licensee breaches any provision of this Agreement other than Section 3 hereof and has not cured such breach within the thirty (30) day period.

6.2. Actions to be Taken Upon Termination. Upon termination, Licensee shall immediately discontinue use of and destroy all complete or partial copies of the Proprietary Software, in whatever form or media, and shall delete the Proprietary Software from its computer(s).

6.3. Effect of Termination. Termination of this Agreement shall not bar WireSpring from seeking any other remedy it may have available against Licensee for breach of the Agreement. Licensee shall hold WireSpring harmless for any loss or other consequences of a termination of the License under this Article 6.

7. WARRANTY

7.1. Limited Warranty. WireSpring warrants that the Proprietary Software licensed to Licensee hereunder, if properly

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7.2. Notwithstanding the warranty provisions above, WireSpring shall have no warranty obligations with respect to any part or parts of the Proprietary Software which have been damaged in transit or by improper installation or operation, or by misuse, abuse or negligent use or repair or alteration or improper storage or which have been damaged by use which does not conform to the specific or general instructions of WireSpring or to the provisions of the Documentation, or if Licensee or any third party has modified or attempted to modify the Proprietary Software or if the damage has occurred due to causes external to the Proprietary Software, or if the Proprietary Software has been subjected to an extreme power surge or electromagnetic field, whether or not through the fault of Licensee, or if Licensee has refused to implement software changes recommended by WireSpring.

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9.1.1 Support – WireSpring will provide support to Licensee for current versions of the Proprietary Software for a period of twelve (12) months from the Shipment Date. Support is provided via online video tutorials and customer discussion forums.

9.1.2 Maintenance – WireSpring will supply to Licensee, at no additional charge, any patches and minor updates to the particular version of the Proprietary Software purchased by the Licensee for a period of twelve (12) months from the Shipment Date. These patches and minor updates are typically identified by a version number that varies only slightly from the original version, e.g. an update from version 1.0.1 to version 1.0.2. The specific method of delivering such patches and minor updates shall be at WireSpring's sole discretion. Any such patches and minor updates shall become part of the Proprietary Software for all purposes of this Agreement.

9.1.3 Licensee acknowledges and agrees that WireSpring may limit the Support and Maintenance provided hereunder to versions of the Proprietary Software released in the twelve (12) months prior to any request for Support and Maintenance.

9.2 Training/Installation. Licensee may purchase training from WireSpring at WireSpring's then current fees for training. The date and time of the training shall be scheduled by WireSpring. All travel, living, and other out-of-pocket expenses incurred by Licensee's employees will be paid by Licensee.

9.3 Exclusions. WireSpring's obligation to provide Support and Maintenance is contingent upon proper use of the Proprietary Software. Moreover, WireSpring shall be under no obligation to provide Support and Maintenance should

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10. MISCELLANEOUS PROVISIONS

10.1 Indemnification. You shall defend, indemnify and hold harmless WireSpring and its officers, directors, shareholders, employees, independent contractors, agents, representatives and affiliates from and against all claims and expenses, including, but not limited to, attorneys' fees, arising out of, or attributable to: (i) any breach or violation of this Agreement by you; and/or (ii) your use of the Proprietary Software.

10.2 Assignment; Third Party Rights. Except as provided for under a separate Reseller Agreement between WireSpring and you, neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by you, and any purported assignment or transfer shall be null and void. This Agreement is for the benefit of WireSpring and its affiliates, each of which shall have the right to enforce and assert the terms and conditions of this Agreement directly against you on behalf of WireSpring.

10.3 Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY OR LIMITED WARRANTY IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

10.4 Breach and Remedies. No consent by either party to, or waiver of, a breach of this Agreement by the other party, whether express or implied, shall constitute a consent to, waiver of, or excuse for any other different, continuing, or subsequent breach. You acknowledge that WireSpring may be irreparably damaged if this Agreement is not specifically enforced, and damages at law would be an inadequate remedy. Therefore, in the event of a breach or threatened breach of any provision of this Agreement by you, WireSpring shall be entitled, in addition to all rights and remedies, to an injunction restraining such breach or threatened breach, without being required to show any actual damage or to post an injunction bond, and/or to a decree for specific performance of the provisions of this Agreement.

For purposes of this Section, you agree that any action or proceeding with regard to such injunction restraining such breach or threatened breach shall be brought in the courts of record of Broward County, Florida, USA or the United States District Court, Southern District of Florida, USA. You consent to the jurisdiction of such court and waive any objection to the laying of the venue of any such action or proceeding in such court. You agree that service of any court paper may be effected on such party by mail or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

10.5 Arbitration. Any civil action, claim, dispute or proceeding arising out of or relating to this Agreement, except for an injunctive action regarding a breach or threatened breach of any provision of this Agreement by you, shall be referred to final and binding arbitration, before a single arbitrator, under the commercial arbitration rules of the American Arbitration Association in Broward County, Florida, USA. The arbitrator shall be selected by the parties, and if the parties are unable to reach agreement on selection of the arbitrator within thirty (30) days after the notice of arbitration is served, then the arbitrator shall be selected by the American Arbitration Association. Judgment upon any award rendered by the arbitrator shall be final, binding and conclusive upon the parties and their respective administrators, executors, legal representatives, successors and assigns, and may be entered in any court of competent jurisdiction. Notwithstanding the previous sentence, in no event shall any party be entitled to punitive damages and all parties hereby waive their rights to any punitive, special, indirect or consequential damages, including, but not limited to, damages for any loss of profit, revenue or business.

10.6 Governing Law. The parties agree that this Agreement shall be governed and construed by the laws of the State of Florida, USA. You hereby submit to the jurisdiction and venue of the federal courts of the Southern District of Florida, the Circuit and County Courts of Broward County where appropriate, all located in the USA.

10.7 Convention on Contracts for the International Sale of Goods. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

10.8 Purchase Orders. No purchase order, other ordering document or any other document which purports to modify or supplement this Agreement or any schedule or attachment hereto shall add to or vary the terms and conditions of this Agreement unless executed by both WireSpring and you. WireSpring's acceptance of any purchase order placed by you is expressly made conditional on your assent to the terms set forth in this Agreement, and not those contained in your purchase order, and such purchase order terms shall have no effect on this Agreement.

10.9 Passwords and Security. You will choose or be given all applicable passwords to use in connection with FireCast EasyStart. You are entirely responsible for maintaining the confidentiality of your passwords (including, if applicable, the passwords of each user accessing FireCast EasyStart by means of an account established by you). Furthermore, you are entirely responsible for any and all activities that occur on your FireCast EasyStart system (including, if applicable, the activities of each user accessing FireCast EasyStart by means of an account established by you), and you shall ensure that you sign out from FireCast EasyStart at the end of each session. WireSpring cannot and will not be liable for any loss or damage arising from your failure to comply with these requirements.

10.10 Entire Agreement. This Agreement and any schedules and attachments hereto constitutes the entire agreement between WireSpring and you concerning FireCast EasyStart and supersedes all prior agreements, whether written or verbal, between WireSpring and you, except as expressly provided for under this Agreement.

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