

THIS SOFTWARE END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR, IF PURCHASED OR ACQUIRED BY OR FOR AN ENTITY, AN ENTITY) AND STEWART LYNCH. IT PROVIDES A LICENSE TO USE THIS SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE YOU ARE INDICATING YOUR ASSENT TO THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING TERMS, DO NOT DOWNLOAD OR INSTALL THE SOFTWARE, DISCONTINUE ITS USE IMMEDIATELY AND DESTROY ALL COPIES IN YOUR POSSESSION.

## **1. DEFINITIONS**

a) "Software" means the executable code of MemPro, additional tools, libraries, source files, header files, data files, any updates or error corrections provided by Stewart Lynch, any user manuals, guides, printed materials, on-line or electronic documentation.

b) "License Key" means a serial number issued to you by Stewart Lynch to activate and use the Software.

c) "Named User" is an individual authorized by You to use the Software through the assignment of a single user ID, regardless of whether or not the individual is using the Software at any given time. A non-human operated device is counted as a User in addition to all individuals authorized to use the Software, if such device can access the Software.

## **2. LICENSE GRANTS**

**2.1 Freeware Features License.** Stewart Lynch grants you an unlimited license to embed the MemProLib source code into commercial and non-commercial applications; this code can be modified, and distributed in source or binary format.

**2.2 Trial Period License.** You may download and use the Software for free for two (2) days after installation ("Trial Period"). During the Trial Period, Stewart Lynch grants You a limited, non-exclusive, non-transferable, non-renewable license to copy and use the Software for evaluation purposes only and not for any commercial use. At Stewart Lynch's discretion, Stewart Lynch may provide limited support through email or discussion forums at the [www.puredevsoftware.com](http://www.puredevsoftware.com) web site. The evaluation copy of the Software contains a feature that will automatically disable the Software at the end of Trial Period. Stewart Lynch will have no liability to you if this feature disables the Software.

**2.3 License After Trial Period.** This Software is licensed, not sold. During the Trial Period, You have the option of paying a license fee in order to use the Software after the expiration of the Trial Period. Upon your payment of the license fee, Stewart Lynch provides you with a permanent registration number ("License key") and grants you a limited, non-exclusive, non-transferable license to:

a) use the Software on a Named User basis meaning specific individuals are authorized to access the Software and the total number of named users may not exceed the total number licensed by You.

b) copy the Software in machine-readable form solely for archival and backup purposes.

**2.4** The Named User of the Software may install and use the Software on up to two computers (including operating systems and Virtual Machine Environments) that are connected to each other in a network (there has to be a TCP/IP connection between these computers).

**2.5** Floating License. Under the terms of a Floating License, you may install the Software on an unlimited number of machines. All machines using the Software must have the ability to communicate with a license server. The number of users that may use the Software concurrently at any time must not exceed the number of Floating User Licenses purchased for such use.

### **3. LICENSE RESTRICTIONS**

**3.1** You shall undertake any necessary steps to protect the License Key against unauthorized use.

**3.2** You may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.

**3.3** You may not sell, rent, lease, sub license, transfer, resell for profit or otherwise distribute the Software or any part thereof.

**3.4** You may not modify the Software or create derivative works based upon the Software.

**3.5** You may not remove or obscure any copyright and trademark notices relating to the Software.

### **4. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

**4.1** This Agreement gives you limited rights to use the Software. Stewart Lynch retains all rights, title and interest in and to the Software and all copies thereof, including copyrights, patents, trade secret rights, trademarks and other intellectual property rights. All rights not specifically granted in this Agreement, including International Copyrights, are reserved by Stewart Lynch. The structure, organization and code of the Software are valuable trade secrets and confidential information of Stewart Lynch.

### **5. LIMITATION OF LIABILITY**

**5.1** Stewart Lynch's cumulative liability to You or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed the license fee paid to Stewart Lynch for use of the Software.

**5.2** Stewart Lynch shall be relieved of any and all obligations for any portions of the software that are revised, changed, modified, or maintained by anyone other than Stewart Lynch.

## **6. PATENT AND COPYRIGHT INDEMNITY**

**6.1** Stewart Lynch represents and warrants that the Software shall not infringe or misappropriate any copyrights, patents, trade secret rights, trademarks and other intellectual property rights.

**6.2** In the event the Software is found to infringe, Stewart Lynch will have the option, at his expense, to

- a) modify the Software to cause it to become non-infringing;
- b) substitute the Software with other Software reasonably suitable to You, or
- c) if none of the foregoing remedies are commercially feasible, terminate the license for the infringing Software and refund any license fees paid for the Software.

**6.3** Stewart Lynch will have no liability for any claim of infringement based on

- a) code contained within the Software which was not created by Stewart Lynch;
- b) use of a superseded or altered release of the Software, except for such alteration(s) or modification(s) which have been made by Stewart Lynch or under Stewart Lynch's direction, if such infringement would have been avoided by the use of a current, unaltered release of the Software that Stewart Lynch provides to You, or
- c) the combination, operation, or use of any Software furnished under this Agreement with programs or data not furnished by Stewart Lynch if such infringement would have been avoided by the use of the Software without such programs or data.

## **7. LIMITED WARRANTIES**

**7.1** THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. STEWART LYNCH MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION, YOU ASSUME SOLE RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE. STEWART LYNCH MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES. IN PARTICULAR, THE SOFTWARE IS NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE. STEWART LYNCH EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR HIGH-RISK ACTIVITIES.

**7.2** Stewart Lynch warrants that he holds the proper rights allowing him to license the Software and is not currently aware of any actions that may affect his rights to do so.

**7.3** Stewart Lynch cannot guarantee that the Software will work at all times. If you change your operating system, the software may not work anymore. You acknowledge and agree that such changes are fair and reasonable.

**7.4** You should make sure that it is legal to use the Software in your country or jurisdiction. Stewart Lynch only provides a license for You to use the software. It is Your responsibility to make sure that You are allowed to use the Software.

**7.5** Stewart Lynch reserves the right at any time to cease the support of the Software and to alter prospectively the prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

## **8. SUPPORT**

**8.1** Software is provided on an AS-IS basis and without any support, updates or maintenance. Nothing in this Agreement shall require Licensor to provide Licensee with support or fixes to any bug, failure, mis-performance or other defect in the Software.

**8.2 Bug Notification:** Licensee may provide Licensor of details regarding any bug, defect or failure in the Software promptly and with no delay from such event; Licensee shall comply with Licensor's request for information regarding bugs, defects or failures and furnish him with information, screenshots and try to reproduce such bugs, defects or failures.

**8.3 Feature Request:** Licensee may request additional features in Software, provided, however, that (i) Licensee shall waive any claim or right in such feature should feature be developed by Licensor; (ii) Licensee shall be prohibited from developing the feature, or disclose such feature request, or feature, to any 3rd party directly competing with Licensor or any 3rd party which may be, following the development of such feature, in direct competition with Licensor; (iii) Licensee warrants that feature does not infringe any 3rd party patent, trademark, trade-secret or any other intellectual property right; and (iv) Licensee developed, envisioned or created the feature solely by himself.

## **9. INTERNET-BASED SERVICES**

**9.1** Consent for Internet-Based Services. Certain Software features connect to service provider computer systems over the Internet. In some cases, you will not receive a separate notice when they connect. BY USING THESE FEATURES, YOU CONSENT TO THE TRANSMISSION OF THIS INFORMATION. Stewart Lynch does not use the information to identify or contact you.

**9.2** Computer Information. The Software features use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software. Stewart Lynch uses this information to make the Internet-based services available to you.

**9.3** Customer Experience Improvement Program (CEIP). The Software uses CEIP, which automatically sends to Stewart Lynch anonymous information about your hardware and how

you use this software. We may use the computer information, and CEIP information, to improve our software and services.

## **10. HIGH RISK ACTIVITIES**

**10.1** The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Stewart Lynch and his suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

## **11. AUDIT RIGHTS**

**11.1** Stewart Lynch audits your use of the Software to verify compliance with this Agreement. The Software is configured to enable periodic HTTP communication with Stewart Lynch. During this communication, license information is transmitted from the Software to Stewart Lynch to ensure license compliance. The information transmitted during these periodic updates includes the operating system, license serial number, and other relevant information to verify compliance. If the usage of the Software is considered to be out of compliance with this Agreement, the Software may, without notice, cease to function.

**11.2** During the audit process, Stewart Lynch has the ability to personally identify the individual that registered with Stewart Lynch to acquire the Software license ("Registrant") through the identification number assigned to your account at the time of registration, by using the personal information the Registrant provided to Stewart Lynch during the registration process. Such personal information will only be used by Stewart Lynch in connection with such audit process.

## **12. SEVERABILITY**

**12.1** If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of all other provisions of this Agreement shall not be affected.

## **13. GOVERNING LAW**

**13.1** This Agreement is to be governed by and construed in accordance with the laws and jurisdiction of the defending party. Service of process upon either party shall be valid if served by registered or certified mail, return receipt requested and to the most current address provided by such party. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

## **14. TERMINATION**

**14.1** Your license to use the Software continues until terminated. This license will terminate automatically if you fail to comply with any term hereof. No notice shall be required from Stewart Lynch to effect such termination. You may also terminate this Agreement at any time by notifying Stewart Lynch in writing of termination. On termination, you must destroy all copies of the Software. Your obligation to pay accrued charges and fees shall survive any termination of this Agreement.

## **15. ASSIGNMENT**

**15.1** Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred, in whole or in part, by you, whether voluntary or by operation of law. Any such attempted assignment shall be void and of no effect without the prior written consent of Stewart Lynch.

## **16. ENTIRE AGREEMENT**

**16.1** This Agreement contains the entire agreement between Stewart Lynch and You related to the software and supersedes all prior agreements and understandings, whether oral or written. It may be amended only in writing executed by both parties.