

## **ELECTRONIC END USER LICENSE AGREEMENT FOR CYBERPOWER POWERPANEL**

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- 5. Termination.** Any violation of this EULA shall immediately terminate your license without prior notice or refund. You may also terminate this EULA by permanently deleting, destroying and returning at your own cost the Product and any copies thereof. Once terminated, you must stop using the Product.

- 6. Disclaimer of Warranties.** The Product is being delivered to you AS IS and its supplier makes no warranty as to its use or performance, compatibility, appropriateness, or other performance. Cyber Power Systems (USA), Inc., its affiliates and its suppliers do not and cannot warrant the performance or results you may obtain by using the product or documentation. Cyber Power Systems (USA), Inc., its affiliates, and its suppliers make no warranties, express or implied, as to noninfringement of third-party rights, merchantability, or fitness for any particular purpose. In no event will Cyber Power Systems (USA), Inc., its affiliates or its suppliers be liable to you for any consequential, incidental or special damages, including any lost profits or lost savings, even if Cyber Power Systems (USA), Inc. representative has been advised of the possibility of such damages, or for any claim by any third party.

You expressly acknowledge and agree that, to the extent permitted by applicable law, use of the CyberPower product and any services performed by or accessed through the CyberPower product is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you. You agree that CyberPower is not responsible for any losses, damages, malfunctions or other harm or damage as a result of your decision to select the product and use it with any of your hardware, software, or other electronics.

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No oral or written information or advice given by CyberPower or a CyberPower authorized representative shall create a warranty. Should the CyberPower product or services prove defective, you assume the entire cost of all necessary servicing, repair or correction. Some jurisdictions do not allow the exclusion of implied warranties or limitations on applicable statutory rights of a consumer, so the above exclusion and limitations may not apply to you.

Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, or the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to you.

- 7. Limitation on Liability.** Regardless of the basis on which you are entitled to claim damages from CyberPower (including material breach, negligence, misrepresentation, or other contract or tort claim), CyberPower's entire liability for all claims in the aggregate arising from or related to the product or otherwise arising under this EULA will not exceed the amount of any actual direct damages up to the greater of THE RETAIL PRICE PAID FOR THE PRODUCT (OR UP TO \$50 USD IF YOU ACQUIRED THE PRODUCT FOR NO CHARGE). In no event will CyberPower be liable to you for injury or damage to business, profits, revenues or your goodwill or for any consequential or incidental damages, however caused, whether for breach of warranty, breach of contract, repudiation of contract, termination, negligence, or otherwise, even if it has been advised of the possibility of such damages.
- 8. Limitation on Claims.** **ARBITRATION NOTICE:** You agree that disputes between you and CyberPower will be resolved by binding, individual arbitration before a single arbitrator agreed upon by the parties, via arbitration in Scott County, Minnesota, under rules and procedures agreed with the arbitrator or in the absence of the same, as if the case was pending in court upon Minnesota Law, with each party paying one half of the costs and fees for arbitration, and each party paying their own attorney's fees. You waive your right to participate in a class action lawsuit or class-wide arbitration. CyberPower reserves the right to protect its intellectual property and trade secrets by court action under applicable law, including by seeking an injunction, which rights shall not be abridged by this EULA. The parties agree that the that any breach of your obligations under this

EULA will cause irreparable harm to CyberPower, including by example and not limitation, loss of ability to protect important trade secrets, confidential and proprietary information and similar rights; therefore, CyberPower shall have, in addition to any remedies available at law, the right to obtain equitable relief to enforce this EULA.

**9. Consent to Use of Data.**

A. Diagnostic and Usage Data. If you choose to allow diagnostic and usage collection, you agree that CyberPower may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, information about your computer, system and application software, and peripherals, that is gathered periodically to provide and improve CyberPower's products and services, facilitate the provision of software updates, product support and other services to you (if any) related to the CyberPower Product, and to verify compliance with the terms of this EULA.

B. CyberPower may use this information, as long as it is collected in a form that does not personally identify you, for the purposes described above. To enable CyberPower's partners and third-party developers to improve their software, hardware and services designed for use with CyberPower products, CyberPower may also provide any such partner or third-party developer with a subset of diagnostic information that is relevant to that partner's or developer's software, hardware and/or services, as long as the diagnostic information is in a form that does not personally identify you.

C. Privacy Policy. At all times your information will be treated in accordance with CyberPower's Privacy Policy, which can be viewed at: <https://www.cyberpowersystems.com/company/privacy-policy/>

**10. Governing Law and General Provisions.** This EULA will be governed by the laws of the State of Minnesota, U.S.A., excluding the application of its conflicts of law rules. This EULA will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If any part of this EULA is found void and unenforceable, it will not affect the validity of the balance of the EULA, which shall remain valid and enforceable according to its terms. This EULA shall automatically terminate upon failure by you to comply with its terms. This EULA may only be modified in writing signed by an authorized officer of Cyber Power Systems (USA), Inc.

**11. Compliance with Law; Export Control.** You will comply with all national and international laws, rules and regulations that apply to the Product and your use of the Product as well as end-user, end-use and destination restrictions issued by the United States or other governments. You agree that the Product will not be shipped, transferred, exported or re-exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations. In particular, but without limitation, the Product may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Product, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Product for any purposes prohibited by United States law and the applicable laws where you are located, including, without limitation, the development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.