

End User License Agreement (EULA)

PowerMand, Inc., Revision 2.0

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COMPUTER FAILURE, EVEN IF POWERMAND, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Warranties on Third Party Hardware. Notwithstanding section 5, PowerMand, through its distributors, will honor manufacturer warranty terms for third party hardware products supplied by PowerMand to its distributors for resale to Licensee to be used in conjunction with PowerMand Inc Products.

7. Miscellaneous.

(a) Assignment. Neither this Agreement nor any interest herein may be assigned or otherwise transferred (by operation of law or otherwise) in whole or in part by Licensee.

(b) Notices. Any notice required to be provided pursuant to this Agreement shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof or (b) if mailed, three (3) days after deposit in the U.S. mails, postage prepaid, registered or certified mail, return receipt requested. A facsimile shall be deemed to be received upon completion of transmission, as verified by a printout showing satisfactory transmission, except that should a facsimile be sent on a non-business day, receipt shall be deemed to occur on the next business day. All notices shall be addressed to the parties at the respective addresses set forth on the cover page. If Licensee is located in a country other than the U.S., all notices shall be sent by facsimile. Each party shall promptly notify the other party of any address change.

(c) Waiver; Severability. No waiver of any breach of any provision of this Agreement constitutes a waiver of any prior, concurrent or subsequent breach of the same or any other provisions, and will not be effective unless made in writing and signed by an authorized representative of the waiving party. If any provision or portion of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly effects the parties' intent in entering this Agreement.

(d) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to principles of conflicts of laws. Application of the U.N. Convention of Contracts for the International Sale of Goods is expressly excluded.

(e) Entire Agreement. This Agreement is the entire agreement of the parties, and supersedes all prior and contemporaneous agreements and communications, whether oral or in writing, between the parties with respect to the subject matter of this Agreement, and no amendment or modification of this Agreement shall be effective unless made in writing and duly signed by authorized representatives of PowerMand, Inc. and Licensee.

(f) Government – Restricted Rights. The PowerMand, Inc. Products were developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the PowerMand, Inc. Products. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable.