

Cumbria Computer Repairs  
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## **Terms & Conditions**

September 2015

## GENERAL TERMS AND CONDITIONS

### 1. Application

- 1.1 These Terms and Conditions shall apply to all and any provision of computer repair, diagnostic and related services of Paul Brown Services trading as Cumbria Computer Repairs, whose Registered Address is Midtown Farm, Kirkbampton, Carlisle, Cumbria, CA5 6JB.
- 1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by Cumbria Computer Repairs in writing.

### 2. Definitions and Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

**“Agreement”** means the Agreement, in any form (including but not limited to a quotation, support or repair request or ticket, written undertakings or contract) entered into by the Customer and Cumbria Computer Repairs to which these Terms and Conditions apply;

**“Commencement Date”** means the commencement date for these Terms and Conditions, as set out in the Specification of Services Schedule to these Terms and Conditions or as otherwise agreed in writing by Cumbria Computer Repairs;

**“Customer”** means the legal or natural person entering into the Agreement with Cumbria Computer Repairs;

**“Cumbria Computer Repairs”** means Paul Brown Services Ltd, trading as Cumbria Computer Repairs

<b>“Services”</b>	means the services to be provided by Cumbria Computer Repairs to the Cumbria Computer Repairs as set out in Schedule A;	means the services to be provided by Cumbria Computer Repairs to the Customer as set out in the Specification of Services Schedule, or as otherwise agreed in writing by Cumbria Computer Repairs;
<b>“Equipment”</b>		means the Equipment listed in the Equipment Schedule, or which it is otherwise agreed in writing shall be subject to diagnostic evaluation, repair or other similar treatment under the Agreement;
<b>“Fees”</b>		means any and all sums payable by the Customer to Cumbria Computer Repairs arising out of the performance of Cumbria Computer Repairs’ obligations under these Terms and Conditions;
<b>“Software”</b>		means any and all programs, applications, instructions or similar that may from time to time be installed on the Customers computer systems; and
<b>“Working Hours”</b>		means the normal working hours of Cumbria Computer Repairs which are 08:30 to 18:00 on any day (other than Sunday) on which ordinary banks are open for their normal business in England.

2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 2.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 2.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
- 2.2.4 a Schedule is a schedule to these Terms and Conditions; and
- 2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
- 2.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

### **3. Cumbria Computer Repairs' Obligations**

- 3.1 With effect from the Commencement Date, Cumbria Computer Repairs shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services specified under the Agreement.
- 3.2 Cumbria Computer Repairs will use reasonable care and skill to perform the Services, in addition to all reasonable endeavours to complete performance expeditiously subject to its existing commitments as at the Commencement Date.
- 3.3 Cumbria Computer Repairs will, subject to Clause 4, use reasonable endeavours to maintain the functionality of any Software which may be installed or otherwise operative on the Customer's Equipment and undertakes to re-install any Software which may have been corrupted or otherwise made unavailable due to hardware failure and to render such technical assistance as may be necessary to secure the satisfactory operation of the Equipment and Software.
- 3.4 Cumbria Computer Repairs will not guarantee the performance of any Software which Cumbria Computer Repairs has undertaken to re-install.

### **4. Customer's Obligations**

- 4.1 The Customer warrants that it is the legal owner, or is the authorised representative of the legal owner, of the Equipment and Software and of the data and components contained therein.
- 4.2 The Customer shall:
  - 4.2.1 allow and authorise Cumbria Computer Repairs access to the Equipment and all relevant Software to conduct a diagnostic evaluation, determine the nature of the damage and to provide an estimate of the cost and time needed for repair;

- 4.2.2 as appropriate –
- a) provide adequate working space and facilities for Cumbria Computer Repairs' staff; or
  - b) deliver, at the Customer's expense and liability, the Equipment and all relevant Software to Cumbria Computer Repairs; and
- 4.2.3 co-operate with Cumbria Computer Repairs in the diagnosis of any defect or malfunction in the Equipment or Software.
- 4.3 The Customer shall allow Cumbria Computer Repairs the use of any equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all communications media not supplied by Cumbria Computer Repairs.
- 4.4 The Customer will not allow any changes or modifications to the Software to be made by any party other than those authorised by Cumbria Computer Repairs. If such changes or modifications are carried out without authorisation or appropriate notification, Cumbria Computer Repairs reserves the right to review these Terms and Conditions and make adjustments accordingly.
- 4.5 The Customer will make freely available to Cumbria Computer Repairs all documentation associated with the Equipment, working documents, original Software installation media, licence keys, current data backups, equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software. Cumbria Computer Repairs shall not use, install or re-install any unlicensed or improperly licensed Software.
- 4.6 The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to Cumbria Computer Repairs as required. Cumbria Computer Repairs shall not be liable for any loss or damage resulting from data loss, including corruption of data, occurring as result of the performance of the Services.
- 4.7 Customers accept that it is their sole responsibility to ensure that all private information such as family photographs and financial information is backed up. Please inquire about our back-up services which can be performed before intensive diagnostic tests or virus scans are carried out.
- 4.8 If a reinstallation of the operating system (Microsoft Windows) is required, you will be contacted prior to Cumbria Computer Repairs performing the service. In order to carry out the reinstallation, we will make an image of your hard drive and back up your documents to avoid data loss. Thereafter to continue with the repair, we will require your Windows CD's/Recovery Disks and any software which you would like us to reinstall.
- 4.9 The Customer shall take all reasonable precautions and maintain adequate insurance to ensure the safety and health of Cumbria Computer Repairs' personnel while such personnel are at the Customer's premises.
- 4.10 After completion of the Services, the Customer is responsible for the return of the Equipment, Software and other items delivered to Cumbria Computer Repairs. Any items left with Cumbria Computer Repairs for more than 180 days following completion of the Services shall be disposed of without need for notice to the Customer and without any compensation or other liability on the part of Cumbria Computer Repairs.
- 4.11 Customers are welcome to contact us to inquire about the repairs being undertaken on their equipment. Cumbria Computer Repairs recommend that

most repairs take up to 2 business days to be completed, however we do offer a same day service. Please ask about this.

- 4.12 Cumbria Computer Repairs will recommend upgrades to aid functionality where required.
- 4.13 Cumbria Computer Repairs offer a managed anti-virus programme which is available on monthly subscription with a 30 day notice period. Please ask us for more information if you require this service.

## 5. Fees and Payment

- 5.1 The Customer agrees to pay the Fees in accordance with the Agreement.
- 5.2 Cumbria Computer Repairs shall be entitled to recover from the Customer his reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 5.3 Where performance of the Services is not possible, or only partial or incomplete performance of the Services is possible, the Customer shall pay to Cumbria Computer Repairs –
  - a) fees corresponding to the time spent by Cumbria Computer Repairs in accordance with Cumbria Computer Repairs' hourly rate in effect at the time of the performance or such other rate as may be agreed, if the non-performance or partial or incomplete performance is due to any reason other than an act or omission of Cumbria Computer Repairs; or
  - b) reasonable fees, as determined in Cumbria Computer Repairs sole discretion, corresponding to the proportion of the Services that have been completed, if the non-performance or partial or incomplete performance is due to an act or omission of Cumbria Computer Repairs.
- 5.4 The Customer shall pay Cumbria Computer Repairs for any additional services provided by Cumbria Computer Repairs that are not specified in the Services in accordance with Cumbria Computer Repairs' hourly rate in effect at the time of the performance or such other rate as may be agreed. Any such charge for additional services shall be invoiced separately from any Fees due under the Specification of Services Schedule.
- 5.5 All sums payable by the Customer shall be paid –
  - a) immediately upon completion of the Services, and where appropriate prior to the release to the Customer of the Equipment, Software and other items delivered to Cumbria Computer Repairs by the Customer; or
  - c) b) where in Cumbria Computers absolute discretion credit payment terms are offered, within 30 days of the date of the relevant invoice, in cleared funds to such bank account as Cumbria Computer Repairs may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

## 6. Variation and Amendments

- 6.1 If the Customer wishes to vary any details of the Specification of Services Schedule it must notify Cumbria Computer Repairs in writing as soon as is reasonably possible. Cumbria Computer Repairs shall use all reasonable endeavours to make any required changes and any additional costs thereby incurred shall be separately invoiced to the Customer.

- 6.2 If, due to circumstances beyond Cumbria Computer Repairs' control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. Cumbria Computer Repairs shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

## **7. Termination**

- 7.1 Cumbria Computer Repairs may terminate the Agreement forthwith if:
- 7.1.1 the Customer is in breach of any of its obligations hereunder;
  - 7.1.2 the Customer has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
  - 7.1.3 the Customer has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;
  - 7.1.4 the Customer ceases or threatens to cease to carry on business; or
  - 7.1.5 any circumstances whatsoever beyond the reasonable control of Cumbria Computer Repairs necessitate and justify the Termination of the Services.
- 7.2 In the event of Termination under clause 8.1 Cumbria Computer Repairs shall retain any sums already paid to it by the Customer without prejudice to any other rights Cumbria Computer Repairs may have whether at law or otherwise.

## **8. Warranty, Performance and Liability**

- 8.1 The sole and exclusive remedies for unsatisfactory performance or unsatisfactory consequential impacts of performance shall be, at Cumbria Computer Repairs exclusive election, additional attempts by Cumbria Computer Repairs to rectify performance or to rectify the unsatisfactory consequential impacts of performance or refund of the amount paid by the client.
- 8.2 Any claim by the Customer in relation to unsatisfactory performance or unsatisfactory consequential impacts of performance must be made within 30 days of the completion of the Services by Cumbria Computer Repairs.
- 8.3 The Customer acknowledges the inherent risks of damage to the Equipment, the Software, data and other property including, without limitation, risks due to destruction of or damage to equipment, machines, media or data, inability to repair the Equipment, inability to recover data and the Customer shall be responsible for providing insurance or shall otherwise assume liability in relation to all such risks and incidents of damage that may occur to the Equipment, the Software, data and other property provided by the Customer to Cumbria Computer Repairs under the Agreement during or as a result of the performance of the Services.
- 8.4 We will give a 30 days warranty on repairs carried out by us on work involving virus removal. However, virus removal is only covered if it is the same virus and the infection has not happened after collection by you. This is subject to your having an appropriate Anti-Virus/Internet Security system installed. If the Anti-

Virus / Internet Security system is either removed or disabled then we will not be able to give any warranty at all.

- 8.5 All new hardware sold by us comes with the benefit of a 12 month manufacturer warranty. In the case of refurbished hardware then the length of any warranty period provided will be as stated in the invoice relating to the purchase.
- 8.6 Cumbria Computer Repairs shall not be liable to the Customer or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of Cumbria Computer Repairs' obligations if the delay or failure was due to any cause beyond Cumbria Computer Repairs' reasonable control.
- 8.7 Please be advised that while nothing will be done by Cumbria Computer Repairs to purposely cause loss of data and files from your computer, mechanical failure of computer components can happen without warning, and virus infections can cause unpredictable functionality errors.
- 8.8 Cumbria Computer Repairs shall not be liable for any claims regarding the physical functioning of equipment or media or the condition or existence of data on storage media supplied before, during or after service.
- 8.9 In no event will Cumbria Computer Repairs be liable for any damage to or loss of the Equipment, the Software, loss of data or other property provided by the Customer to Cumbria Computer Repairs under the Agreement, or for loss of revenue or profits, or any special, incidental, contingent, or consequential damages, however caused, before, during or after service even if Cumbria Computer Repairs has been advised of the possibility of damages or loss to persons or property.
- 8.10 Cumbria Computer Repairs liability of any kind with respect to the services, including any negligence on its part, shall be limited to the contract price for the services.



## **9. Non-Repairable & Abandoned Goods**

- 9.1 Computers that have been diagnosed as non-repairable or not cost effective for repair, will be disposed of if not collected from Cumbria Computer Repairs within 90 days from submission at our sole discretion.
- 9.2 Cumbria Computer Repairs will contact you once goods are ready for collection. Should goods not be collected within four weeks, we will write to you and again request collection by a set date. If, after this date, items have not been collected, the goods left with us will belong to us automatically.

## **10. Returned Goods.**

- 10.1 We regret that we will not be prepared to accept software if opened
- 10.2 In all other cases goods returned within 30 days will be subject to a 25 % fee. This fee will be calculated on the total purchase price of the item. It represents the charge we have to pay to process the return to our suppliers.

## **11. Indemnity**

- 11.1 The Customer shall indemnify Cumbria Computer Repairs against all damages, costs, claims and expenses suffered by Cumbria Computer Repairs arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agents or employees.
- 11.2 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

## **12. Confidentiality**

- 12.1 During the term of the Agreement, the following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').
- 12.2 Subject to sub-Clause 10.3, the Receiving Party:
  - 12.2.1 may not use any Confidential Information for any purpose other than the performance of his obligations under these Terms and Conditions;
  - 12.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and
  - 12.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.
- 12.3 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information that:
  - 12.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;
  - 12.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

12.3.3 is required to be disclosed by any applicable law or regulation;

12.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other Party to these Terms and Conditions in respect of it and who imposes no obligations of confidence upon the Receiving Party.

12.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which he may be entitled.

12.5 The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

### **13. Sub-Contracting and Assignment**

13.1 Cumbria Computer Repairs may sub-contract to third parties all or any part of the work to be performed hereunder.

13.2 The Customer shall not assign to a third party any or all of its rights or obligations under these Terms and Conditions without the prior written consent of Cumbria Computer Repairs.

### **14. Force Majeure**

Neither Party to these Terms and Conditions shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

### **15. Waiver**

15.1 No waiver by Cumbria Computer Repairs of any breach of these Terms and Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.

15.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

### **16. Severance**

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not

be affected thereby.

**17. Law and Jurisdiction**

17.1 These Terms and Conditions shall be governed by the laws of England and Wales.

17.2 Any dispute between the Parties relating to these Terms and Conditions shall fall within the jurisdiction of the courts of England and Wales.