

Cubex Software End User License and Support Agreement - third party pass through terms:

This Software End User License and Support Agreement ("**License and Support Agreement**"), is between Cubex LLC ("**Cubex**") and ("**Customer**"). This License and Support Agreement contains the terms and conditions of Customer's licensing of the Cubex Software and use of the Cubex Customer Portal (as those terms are defined below) for the inventory storage and management system ("**System Hardware**") identified in the Netsmart contract, and the maintenance and support services to be provided by Cubex to Customer for the Cubex Software and System Hardware.

1. GENERAL

1.1 The term "**Cubex Software**" means the object code of (i) Cubex's system software that is pre-installed on the System Hardware, (ii) the current version of Cubex's web-hosted myQlink software, and (iii) so long as Customer is current on its monthly payments to Netsmart, all "Updates" to the Cubex Software made available by Cubex. The term "Cubex Software" does not include any third-party software that may be installed on or included with the System Hardware, including any software provided by the System Hardware manufacturer or any distributor. The term "Updates" means all bug fixes, patches, and error corrections to the Cubex Software that Cubex makes generally available.

1.2 The Cubex Software is licensed to the Customer, not sold. Any references to terms such as "sale", or "purchase", or similar terms with respect to the Cubex Software in any documentation related to Customer's purchase of the System Hardware will be interpreted as license rights only and will be subject to all the terms and conditions set forth in this License and Support Agreement.

2. SOFTWARE LICENSE

Subject to the terms of this License and Support Agreement, in consideration for Customer's current payment of the Software License and Support Fee (included as part of the payment to Netsmart), Cubex hereby grants to Customer (i) a non-exclusive, non-sublicenseable license to use the Cubex Software in connection with Customer's use of the System Hardware only and solely for Customer's internal purposes (the "**Cubex Software License**"); and (ii) the right to use the current version of Cubex's web-hosted myQlink software and the "**Cubex Customer Portal**" at www.myQlink.net (subject to Customer's compliance with the Terms of Use of such site). The Cubex Software License and related rights in clause (ii) above shall continue for the term hereof so long as Customer is current on its payments and the Software License and Support Fee contained therein to Cubex or any assignee thereof). Customer may not transfer the System Hardware (or the Cubex Software installed on the System Hardware) to any third party; provided, that in the event Customer sells its practice or business for which the System Hardware is used, Customer may transfer the Software License and Support Agreement in conjunction with any transfer of the related agreement that is consented to by Cubex ; provided, further, that such purchaser agrees in writing to abide by all the terms and conditions of this License and Support Agreement.

3. RESTRICTIONS

3.1 Customer shall not (i) use, copy, modify, sublicense, or assign the Cubex Software (or any of Cubex's intellectual property related thereto, including, without limitation, any of Cubex's patents, copyrights, trademarks, know-how and/or trade secrets), except as expressly provided herein; (ii) create any derivative works based on the Cubex Software, or create any custom applications with or custom interfaces to the Cubex Software without Cubex's prior written consent; (iii) reverse engineer, disassemble or otherwise attempt to discover the source code of the Cubex Software; or (iv) remove the Cubex Software from the System Hardware.

3.2 The Cubex Software and all intellectual property rights therein and related thereto are owned by Cubex and Cubex retains all right, title and interest in and to the Cubex Software (subject only to the Cubex Software License and the related rights granted in clause (ii) of Section 2). Cubex shall also own all copies, improvements, enhancements, modifications, and derivative works of the Cubex Software whether created by Cubex, or any other party. Customer will maintain and reproduce all trademark, copyright, patent and other proprietary rights notices included in the Cubex Software.

4. MAINTENANCE AND SUPPORT SERVICES

4.1 In consideration for the Software License and Support Fee included as part of the purchase during the term of this Agreement, Cubex shall provide Customer with the following "**Maintenance and Support Services**" for the Cubex Software and Hardware:

A. Telephone and email Support. Cubex shall provide Customer telephone support (English only) designed to provide assistance in diagnosing, troubleshooting and attempting to resolve technical problems involving the most current version of the Cubex Software. Telephone support may be accessed by any authorized Customer employee or representative calling Cubex at the following toll-free numbers:
Cubex Support lines:

United States: 1.866.930.9251

Cubex's support department is staffed 24 hours per day, 7 days per week. The email address for Maintenance and Support Services is support@Cubex.biz. Cubex also has a support chat feature on its myQlink.net website and on the Cubex Customer Portal. For all urgent support inquiries, Customer shall use the telephone numbers above and not the e-mail or support chat features.

B. Updates. Cubex shall provide Customer with Updates to the Cubex Software if and when any such Updates are generally released by Cubex to its customers. Cubex makes no representation or warranty that there will be any particular number of Updates during the time that Customer is purchasing Maintenance and Support Services. Cubex will promptly notify Customer from time to time as Updates become available. Cubex will coordinate the delivery (via the Internet) and assist Customer with its installation of all Updates when necessary, and will use reasonable efforts to minimize any disruption to Customer's use of the Cubex Software when providing such Updates. Updates will be furnished

to Customer no later than the date the relevant Update is released to other customers of Cubex; provided, that Customer is then current on its Software License and Support Fee obligations and not otherwise in breach of its obligations to Cubex under this License and Support Agreement. All Updates will be provided with scripts and programs that install complete, working versions of the applicable Updates.

4.2 Cubex is not obligated to provide Maintenance and Support Services in the following situations: (i) Customer has not complied with its obligations under Section 8, (ii) Customer's use of the System Hardware is not in compliance with the manufacturer's conditions of use, (iii) the Cubex Software or the System Hardware is being used in combination with any item with which such software or hardware is not intended to operate or be used, (iv) the Cubex Software or the System Hardware has been modified or altered other than by Cubex or as permitted by Cubex in writing, (v) the problem is caused by Customer's negligence or damage to the Cubex Software or the System Hardware, (vi) Customer fails to follow the recommended operating environment for the System Hardware, (vii) the problem is with third party software or hardware not licensed through or sold by Cubex, (viii) Customer has not installed and implemented all Updates provided by Cubex, and (ix) Customer has moved the System Hardware after the initial installation and set-up.

4.3 Cubex reserves the right to contract with a third party to perform all or a portion of the Maintenance and Support Services. In the event Cubex chooses to use the services of a third party for any portion of the Maintenance and Support Services, Cubex shall remain obligated hereunder to ensure the quality and service level of service work in accordance with this License and Support Agreement.

6. WARRANTIES AND DISCLAIMERS

6.1 Subject to Customer's compliance with its responsibilities hereunder and the restrictions set forth herein, Cubex warrants that for the period from the completion of the installation of the System Hardware through the term of the agreement (the "**Warranty Period**"), that the Cubex Software and the System Hardware will substantially conform in accordance with the published specifications. This limited warranty is not transferrable without Cubex's prior written consent except as expressly permitted pursuant to Section 2. If, during the Warranty Period, Customer reports to Cubex any substantial non-conformance with the above warranty, Cubex will, as Customer's sole and exclusive remedy, make commercially reasonable efforts to repair or replace, at Cubex's option, the Cubex Software or System Hardware, as applicable. Any unauthorized use or misuse of the Cubex Software or System Hardware, as applicable, voids this warranty. In addition, this limited warranty does not apply if Customer has not properly operated, repaired or maintained the Cubex Software or the System Hardware, or if the System Hardware has been subject to abnormal physical or electrical stress. Cubex does not warrant that the operation of the Cubex Software or System Hardware will be uninterrupted.

6.2 Subject to Customer's compliance with its responsibilities hereunder and the restrictions set forth herein, Cubex warrants that the Maintenance and Support Services will be performed in a professional and workmanlike manner with personnel that are trained to provide such services. This warranty will continue for the term of this agreement from the completion of any Maintenance and Support Services (the "**Support Warranty Period**"). This limited warranty is not transferrable without Cubex's prior written consent, except as expressly permitted pursuant to Section 2. If, during the Support Warranty Period, Customer reports to Cubex any substantial non-conformance with the above warranty, Cubex will, as Customer's sole and exclusive remedy, make commercially reasonable efforts to redo the Maintenance and Support Services. This warranty does not apply if Customer has not properly operated, repaired or maintained the Cubex Software or the System Hardware, or if the System Hardware has been subject to abnormal physical or electrical stress.

6.3 EXCEPT AS EXPRESSLY WARRANTED ABOVE, THE CUBEX SOFTWARE AND THE SYSTEM HARDWARE AND THE MAINTENANCE AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND CUBEX DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF OPERABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN. IN ADDITION, NO WARRANTY IS MADE BY CUBEX ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE.

7. LIMITATION OF LIABILITY

7.1 EXCEPT FOR ANY BREACH OF SECTIONS 3 OR 10, IN NO EVENT SHALL CUBEX, CUSTOMER OR NETSMART BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, COSTS OF DELAY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR BUSINESS OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 EXCEPT FOR ANY BREACH OF SECTIONS 3 OR 10, THE CUMULATIVE LIABILITY OF CUBEX, CUSTOMER OR NETSMART TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS LICENSE AND SUPPORT AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THIS LICENSE AND SUPPORT AGREEMENT FOR THE PRECEDING CONSECUTIVE 12-MONTH PERIOD. IN THOSE JURISDICTIONS THAT PURPORT TO DISALLOW THE EXCLUSION OR LIMITATION OF DAMAGES, EACH PARTY'S LIABILITY SHALL BE LIMITED OR EXCLUDED TO THE MAXIMUM EXTENT ALLOWED WITHIN THOSE JURISDICTIONS.

8. CUSTOMER RESPONSIBILITIES

8.1 Customer shall be solely responsible, at its own cost and expense, for preparing and maintaining an appropriate physical environment for the System Hardware, including clean commercial power, climate control and internet access at the System Hardware location. Internet access may be direct or through Customer's internal network and shall be at a speed equal to DSL or Cable (not dial-up). Customer shall also be responsible for providing, at its own cost and expense, suitable web-browsers (currently Microsoft Internet Explorer). Customer shall promptly install and implement any and all software Updates provided to Customer.

8.2 Customer shall ensure that its personnel receive adequate training in the use of the System Hardware and Cubex Software.

9. TERM AND TERMINATION

9.1 This License and Support Agreement shall remain in effect for the term of the agreement; provided, that Cubex may immediately terminate this License and Support Agreement (including, without limitation, the Cubex Software License and the delivery of the Maintenance and Support Services) for any breach of Customer's payment obligations hereunder or under the terms of the associated agreement, and upon written notice, if Customer breaches any other provision in this License and Support Agreement and fails to cure such breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to Cubex) within 5 days of such notice.

9.2 If this License and Support Agreement is terminated by Cubex pursuant to Section 9.1, Customer must immediately discontinue use of the Cubex Software.

9.3 Sections 1, 3, 5, 6.3, 7, 9.2, 10 and Section 9.3 of this License and Support Agreement shall survive any termination or expiration of this License and Support Agreement.

10. GENERAL

10.1 The parties recognize that each party (the "**Disclosing Party**") may provide confidential or proprietary information of such party (the "**Confidential Information**") to the other party (the "**Receiving Party**") in connection with this License and Support Agreement. Confidential Information does not include any information that the Receiving Party can document: (i) was in the public domain at the time of disclosure or entered the public domain subsequent to the time of disclosure, through no fault of the Receiving Party; (ii) was in the Receiving Party's possession free of any obligation of confidence at the time it was communicated to the Receiving Party; or (iii) was independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party. The Receiving Party agrees not to use or disclose the Confidential Information of the Disclosing Party, except as permitted in this License and Support Agreement, or as required by law. In addition, the Receiving Party will restrict access to the Confidential Information to those of its employees and agents who have a need to know for purposes of this License and Support Agreement. The Receiving Party will protect the confidentiality of the Confidential Information with the same degree of care the Receiving Party uses to protect its own confidential information of a similar nature, but in no event with less than reasonable care. Cubex may collect and use data generated through Customer's use of the System Hardware, Cubex Software, myQlink software and the Cubex Customer Portal, including using such data in the aggregate to provide system optimization and sharing such data with third parties. Cubex agrees to comply with all applicable privacy laws in its use of such data. Notwithstanding the foregoing, Customer shall remain responsible for compliance with all applicable customer data and privacy laws with respect to Customer's patients/customers.

10.2 This License and Support Agreement comprises the entire understanding between the parties with respect to the subject matter hereof. This License and Support Agreement supersedes all prior or contemporaneous oral, written or electronic communications, representations and warranties.

10.3 No amendment to this License and Support Agreement shall be valid unless such amendment is made in writing and is signed by authorized representatives of both parties. This License and Support Agreement may be executed by facsimile and may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.4 Cubex may freely assign or transfer this License and Support Agreement in connection with any merger, sale of all or substantially all of its assets or any other change of control of Cubex whether or not Cubex is the surviving entity.

10.5 Customer shall appoint a qualified employee to assist Cubex and to act as Cubex's primary contact during the delivery of the Maintenance and Support Services.

Version dated: January 2020