

Effective: January 1, 2020

1. Formation of TheCUBE Agreement

By clicking “I Agree” as part of the THECUBE sign up or renewal process, you become a Customer entering into a THECUBE Supply Agreement for the THECUBE System, consisting of these terms and conditions, and the responses you completed in the sign up or renewal process (including the Fees options and any Special Terms applicable to the System options you selected) (**Agreement**). Where you assign use of the System to your personnel, you will remain our customer and you will be responsible for everything your personnel do while they are using System.

2. Frequently used terms

We use some terms frequently in the Agreement – where they appear, this is what they mean:

Administrator User: employee designated by you to serve as technical administrator of the System on your behalf

Approved Software: any software approved by us for use in conjunction with the System.

Confidential Information:

- a. your data that we host on the System;
- b. the terms of the Agreement; and
- c. any other information in a party’s possession as a result of the Agreement, except information that:
 - i. is, or becomes, publicly available through no act or omission of the receiving party;
 - ii. is, at the date of its disclosure by one party to the other, already lawfully in the receiving party’s possession (from another source);
 - iii. lawfully becomes available to the receiving party on a non-confidential basis from a third party having no obligation of confidentiality to the disclosing party; or
 - iv. is independently developed by the receiving party having no knowledge of the Confidential Information.

Customer: those who agree to enter into a THECUBE Supply Agreement for use of THECUBE System, consisting of these terms and conditions, and the responses completed in the sign up or renewal process.

Documentation: any instruction manuals, user guides and other information relating to the System in online or printed form.

Fault: a failure of all or part of the System under normal use.

Fees: the Service Fees, the Setup Fee (if any) and any other amounts payable to us under the Agreement.

Force Majeure Event: any cause outside a party's reasonable control including but not limited to acts of God, natural disaster, riot, malicious damage, fire or acts of any governmental authority, but does not include any obligation to pay money.

Including and includes: implies no limitation.

Intellectual Property: copyright, patents, designs, trade marks, trade names, goodwill rights, trade secrets, confidential information, know-how and any other intellectual proprietary right or form of intellectual property.

Minimum Term: means any minimum term if applicable you select during the THECUBE sign up or renewal process.

Notify or provide notice: includes notification on our website, <https://thecube.network>.

Personnel: includes your officers, employees, contractors and agents.

Software: the THECUBE business coaching software platform, including all enhancements and modifications, used by us to provide you with the System.

Service Fees: the fees we charge for provision of the System and the Support Services.

Service Levels: the service levels for Support Services as published on our website, <https://thecube.network>.

Setup Fee: if applicable, the setup fee for the System as agreed between us.

Special Terms: means the terms applicable to specific System features or products, as set out in the Schedule.

Support Services: the support services we provide to correct Faults in the System or to assist you in operating the System, as further described in clause 6 of these terms.

System: means the THECUBE business coaching software platform, as described on our website, <https://thecube.network/>, including the Software and the Documentation, and which may include third party services to which we grant you rights of access. Where we provide you with any hardware to be used in conjunction with the System, that hardware will form part of the System for the purposes of the Agreement. A reference in the Agreement to the System includes all or any part of the System.

Term: means;

- a. the Minimum Term and any automatic renewal term under clause 12(ii)(b); or
- b. if you are paying for the System on a monthly or annual basis, the period up to the last day for which you have paid to use the System; or
- c. if you are on an unpaid plan, the period up to the date either you or we terminate the Agreement.

3. Supply of System and support

- a. While you are paying Fees, we give you a non-exclusive, non-transferable right to access and use the System during the Term, for your own internal business purposes and in accordance with the Agreement.
- b. As part of the provision of the System during the Term:
 - i. we will provide the Support Services; and
 - ii. you may use the Documentation solely for your internal business purposes.

4. Fees and payment

- a. We will have no obligation to commence provision of the System or the Support Services until you have paid the Setup Fee (if applicable).
- b. You agree to pay the Fees you select as part of the THECUBE sign up or renewal process for the Term. Fees must be paid in advance and, except as expressly stated in the Agreement, are non-refundable. If you downgrade from a paid plan to a free plan, you will remain responsible for any unpaid Fees under the paid plan.
- c. If we agree to invoice you by email, full payment must be received within seven (7) days from the invoice date.
- d. If you dispute any amount we say is payable, you must notify us within 10 days of the date of the relevant invoice and explain in detail why you dispute the amount. If any invoice is disputed in part only, you must pay any undisputed amount in full. You and we will endeavour to resolve any dispute as quickly as possible.
- e. If you fail to pay, within 7 days of its due date for payment, any amount which is not properly disputed in accordance with clause 4(d), we may, at our absolute discretion and without prejudice to our other rights or remedies:
 - i. downgrade your paid plan to a free plan until those amounts are paid in full, provided we have given you five (5) or more days' prior notice that we intend to exercise this discretion. You acknowledge and agree that a downgrade will result in a decrease in certain features and functionality in the System, and some of your Confidential Information, becoming unavailable to you;
 - ii. suspend any services provided under the Agreement, including access to the System or any Support Services and your Confidential Information;
- f. If we downgrade you or suspend your access to the System, your obligations to pay Fees incurred up to the date of downgrade or suspension will continue. If you pay all amounts due within 14 days of the date of downgrade or suspension, we will upgrade you back to your paid plan, or reactivate your access to the System, but we may require you to pay an upgrade or reactivation fee first. If you do not pay all amounts due within 14 days of the date of downgrade or suspension, we may refuse to upgrade you or to reactivate your access to the System.

- g. You must indemnify us for our reasonable costs of enforcing the Agreement, including collection costs and legal costs on a solicitor - own client basis.
- h. All amounts exclude applicable goods and services tax, sales and similar taxes (unless expressly stated otherwise).
- i. Where you are required to deduct or withhold any amount from the Fees or any other charges by way of withholding tax (or similar), the Fees and/or charges will be deemed to be grossed up by the amount of the required deduction, so that the net amount payable to us will be equal to the Fees and/or charges payable without deduction.
- j. During the Term, we may amend the Fees payable under the Agreement at any time. We will give you at least 30 days written notice of any change. Where you selected a Minimum Term as part of the THECUBE sign up or renewal process, the change will not be effective until the end of the Minimum Term.
- k. Where your payment obligations for the provision of the System are owed to our reseller or distributor (**reseller**), and you do not pay our reseller in accordance with the terms of your agreement with them, we may exercise any of our powers in the Agreement as if you had failed to pay us in accordance with the Agreement.

5. Your obligations

- a. You must:
 - i. only use the System in accordance with the Agreement and all applicable laws, regulations, standards and industry codes of conduct;
 - ii. ensure that your personnel do not, use the System for any illegal, unlawful or offensive act;
 - iii. comply with our reasonable directions from time to time regarding the use of the System;
 - iv. indemnify us against any claims, loss or damage (including on a solicitor and client basis and whether incurred by or awarded against us) that we suffer or incur, whether directly or indirectly, as a result of any breach of this clause 5(a).
- b. The System is not designed for use in life-supporting or mission critical applications. You must indemnify us for any loss, damage, claims and other liabilities suffered by us and arising in whole or in part out of any use that does not comply with this clause 5(b).
- c. Subject to your agreement (not to be unreasonably withheld), we may identify you as our customer on our website and in any other marketing or promotional material we produce.

6. Our obligations

- a. During the Term, we must:
 - i. provide you with 24/7 access to our web-based self-service help centre;
 - ii. provide you with the ability to lodge support items via our web based help centre (see Schedule A)
 - iii. provide you with updates to the System as they are released;
 - iv. provide the Support Services and in doing so, use our reasonable endeavours to meet the Service Levels (see Schedule A)

7. Exclusions

- a. Support Services do not include (and the warranties in clause 11 do not cover) support for defects in the Software or Faults resulting from:
 - i. accident or other external causes;
 - ii. misuse or abuse of the System by you or your personnel;
 - iii. use of the System otherwise than in accordance with the Documentation;
 - iv. use with any hardware or software that is not Approved Hardware and Software; or
 - v. unauthorised attempts to repair, replace, modify or maintain the System by persons other than us or our personnel.
- b. The successful resolution of any Fault by the provision of Support Services shall be your sole remedy for any loss or damage suffered by you as a result of that Fault.
- c. The provision to you of the System does not constitute, and you acknowledge that you have not engaged us to provide professional advice, whether in relation to business, health and safety or otherwise.
- d. Any stated times for delivery or provision are estimates only. We will not be liable for any loss, expense, injury, damage or claim resulting from any delay howsoever caused.

8. Third party software

- a. In the event any Fault is caused by software licensed to us by a third party, you agree not to make any claim against our licensor. We will use reasonable endeavours to ensure satisfactory resolution of the issue by the licensor, but we do not provide any warranties and have no responsibility or liability for resolution of issues with the licensor (or its products).

9. Intellectual Property and confidentiality

- a. All Intellectual Property rights in the System belong to us (or our licensors). The Agreement does not transfer any Intellectual Property rights in the System to you or any other person.

- b. You must:
 - i. not reproduce, translate, adapt, reverse engineer, vary or modify the System;
 - ii. take, and ensure your personnel take, all reasonable steps to prevent, any unauthorised access to the System and Software and to ensure the non-disclosure and confidentiality of the System and Documentation
 - iii. not transfer, assign or otherwise deal in the System or your rights under the Agreement;
 - iv. not to use or disclose the System other than as reasonably necessary for your legitimate use of the System for your internal business purposes;
 - v. maintain all copyright notices on the System;
 - vi. not, and you must ensure that your personnel do not, disclose any passwords used by you or your personnel to access or use the System;
 - vii. ensure that System passwords created by you or your personnel cannot be easily guessed and are changed regularly and as reasonably requested by us;
 - viii. notify us as soon as you become aware that any person may have unauthorised knowledge, possession or use of the System or any System password.
- c. If you or your personnel send us any feedback or suggestions regarding the System (**feedback**), you grant us (for yourself and on behalf of your personnel) an unlimited, irrevocable, perpetual, sub-licensable, transferable, royalty-free license to use that feedback for any purpose without any obligation or compensation to you or your personnel.
- d. You and we recognise and acknowledge the confidential nature of each other's Confidential Information. Each party will at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any copying, disclosure or use to be made, of any of the Confidential Information of the other party, except to the extent:
 - i. required by law or any stock exchange;
 - ii. that the parties otherwise agree in writing;
 - iii. necessary to obtain the benefit of, or to carry out obligations under, the Agreement; including to its personnel, advisers and other consultants on a "need to know" basis provided those persons first agree to observe the confidentiality of the information.
- e. The obligations under this clause will survive termination of the Agreement.\

10. Data

- a. By signing up for, or renewing your access to, and by using, the System you will transmit information (including personal information) to us about you and your personnel (**data**). We are not responsible for the content of your data or the way you or your personnel choose to use the System to store or process any data.
- b. You authorise us:

- i. to use, copy, modify, store, disclose and communicate your data and information but only to the extent necessary for us to provide and improve, or for you to use, the System;
 - ii. to disclose your data to third parties where you access, use or purchase those third parties' products or services (**third party products**) in connection with the System, but we will not be responsible for any use, disclosure, modification or deletion of your data that is transmitted to, or accessed or used by, third party products;
 - iii. provided we do not identify any individual, to aggregate your data with other customer data we have, and use and disclose that data for our own purposes, including compiling, analysing and reporting on statistics and trends, and we may receive payment from third parties for doing so; and
 - iv. if we reasonably believe any data transmitted to us, or used by you on the System, infringes any person's rights, to require you to remove or delete that data and, if you do not comply with our request within a reasonable time, to remove or delete it ourselves.
- c. When we store your data, we will take reasonable measures to prevent unauthorised access, use, modification, deletion and disclosure of data by our personnel. Before sharing data with any of our third party service providers, we will take reasonable steps to ensure that the third party maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of data and preventing unauthorized access. We are not responsible for your data when it is in your possession or under your control, or when you or your personnel use unencrypted gateways (e.g. via third party messaging clients) to connect to the System.
- d. We will always hold, and only disclose, your data in accordance with the Agreement and applicable laws.

11. Warranties and limitation of liability

- a. We warrant that:
 - i. we have the power and authority to provide you with the System on the terms of the Agreement;
 - ii. during the Term the System will function in accordance with the Documentation;
 - iii. the System is compatible with Approved Hardware and Software. This warranty only applies where:
 - 1. Approved Hardware and Software is used with the System only (and not with any hardware or software that is not Approved Hardware and Software); and
 - 2. each component of the Approved Hardware and Software has been installed and/or configured in accordance with our

requirements;

- iv. where we host any of your data on our servers, we will maintain those servers in accordance with accepted industry practice (which includes complying with accepted industry practice in relation to security, virus protection, intrusion prevention and back-ups);
 - v. to the best of our knowledge and belief the Software does not infringe any intellectual property rights of a third party.
- b. You acknowledge that the System:
 - i. is of a complicated and technical nature. It may have minor or inherent defects and it will not operate continuously or be error-free;
 - ii. may be interrupted for scheduled maintenance or for reasons beyond our control. If the System is likely to be interrupted for extended periods, we will use reasonable efforts to provide you with advance notice;
 - iii. depends on the availability and proper performance of third-party systems, such as computer networks, the Internet and cellular networks. These systems can be unpredictable and may from time to time interfere with use of, or limit access to, the System.
 - iv. stores data in a manner that meets or exceeds internationally accepted control objectives and practices for privacy, security and information systems (**best industry standards**). Where we maintain back-ups of data, we will do so in accordance with best industry standards, however you acknowledge that no back-up system is completely fail-safe and we will have no liability to you for any loss, corruption, destruction or alteration of your or anyone else's data;
 - v. has not been developed to meet your individual requirements and that it is your sole responsibility to ensure that the System meets your requirements and is suitable for your purposes. Except as otherwise provided in the Agreement, your access to and use of the System is on an "as-is" basis and at your own risk, and the warranties given in clause 11(a) are given subject to this clause 11(b); and
 - vi. the information generated within the System is provided as a guide only and should not form the sole basis for any recommendation without first obtaining proper professional advice.
- c. We may ask you or any of your personnel to test any part of the System (e.g. in "beta" or "pre-release" form) (**beta products**). If you or your personnel agree to test beta products for us, you agree that they are made available "as is". We do not provide any warranties, and we will not be liable to you, your personnel or any other person in respect of, any beta products.
- d. Except as expressly set out in the Agreement and to the maximum extent permitted by law, all representations, conditions and warranties (whether express or implied, statutory or otherwise, and including warranties as to the merchantable quality or fitness for any particular purpose of the System) are expressly excluded.

- e. Despite anything in clause 11(d), The System and Support Services are supplied and acquired in trade in terms of section 2 and 43 of the Consumer Guarantees Act 1993 (CGA), and the parties agree to contract out of the provisions of the CGA under section 43(2)(c) of the CGA.
- f. We will not be liable (whether liability arises in contract, tort (including negligence), equity or otherwise) to you (or any other person) for any consequential loss or damage, or loss of profits or revenue or data (whether that data is held on our servers or on any third party servers) suffered by you. Any liability we have to you will not exceed, in aggregate, the total amount actually paid by you to us under the Agreement in the twelve months prior to the time liability first arises.
- g. You must indemnify us against any loss, damage, liability or expense (including all legal costs and expenses on a solicitor and own client basis) incurred by us and arising out of any claim, suit, action or proceeding (**claim**) brought against us by a third party to the extent that the claim arises out of the use by you or your personnel of the System.

12. Term and termination

- a. The Agreement commences from the date we first provide you with access to the System and continues for the Term unless terminated in accordance with the terms.
- b. Unless stated elsewhere:
 - i. the Agreement will automatically renew for additional periods equal to 12 months or the most recently expired Term, whichever is shorter; and
 - ii. the Fees during any automatic renewal term will remain the same as they were during the immediately prior Term.
- c. Either you or we can give each other notice at least thirty (30) days before the expiry of the Minimum Term or any automatic renewal term that the Agreement will not automatically renew at the expiry of that Term.
- d. We may terminate the Agreement by written notice to you with immediate effect if:
 - i. you breach any material obligation owed to us that cannot be remedied; or
 - ii. you are otherwise in breach of any obligation owed to us, including the payment of any monies due to us, and you do not remedy the breach within 14 days after receiving a written notice requiring the breach to be remedied; or
 - iii. you become insolvent, bankrupt, commit an act of bankruptcy, are placed in liquidation or a similar event occurs;
 - iv. we are prevented from performing the Agreement due to a Force Majeure Event lasting longer than 60 days.

- e. You may terminate the Agreement by written notice to us with immediate effect:
 - i. if we are in breach of any material obligation owed to you that cannot be remedied; or
 - ii. if we are otherwise in breach of any obligation owed to you and do not remedy the breach within 28 days after receiving a written notice requiring the breach to be remedied;
 - iii. if we become insolvent, bankrupt, commit an act of bankruptcy, are placed in liquidation or a similar event occurs; or
 - iv. pursuant to clause 12(f).
- f. You may terminate the Agreement for convenience at any time before the expiry of the Minimum Term, provided you pay us an early termination fee equal to 90% of the Fees that would have been payable, up to the expiry of the Minimum Term, but for your early termination.
- g. If you are on an unpaid plan, either you or we may terminate the Agreement at any time.
- h. On any termination of the Agreement for any reason:
 - i. you will remain liable for payment of any charges accrued before termination;
 - ii. we will cease providing you with access to the System and the Support Services;
 - iii. you must immediately cease to use the System the Documentation.

13. General

- a. The agreement constitutes the entire agreement between the parties for the supply of the System. No modification, alteration, or addition to the Agreement will be binding on us unless we accept it in writing.
- b. You agree to comply with all applicable export control laws and regulations and not to export or re-export any component of the System or technical data received other than in compliance with the applicable export control laws and regulations.
- c. Any notice given under the Agreement must be in writing delivered to the relevant party at, or email to the following addresses:
 - i. Our address for notices is:
Attn: CEO
THECUBE IP Pty Ltd
Email: notices@thecube.network
 - ii. Your address for notice is any email address that you supply as part of the THECUBE sign up or renewal process.

We may change our address for notices by notice in writing to you (including by publishing that change on our website, <https://thecube.network/>).

- d. If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.
- e. If we waive any default or breach of the Agreement, this will not constitute a waiver of any other or subsequent default or breach. No waiver will be effective unless made in writing.
- f. You may not assign or transfer your rights and obligations under the Agreement without our prior written consent (which shall not be unreasonably withheld or delayed).
- g. We may assign or transfer our rights and obligations under the Agreement upon written notice to you.
- h. This agreement is for the benefit of and enforceable by our successors and assigns and shall bind your heirs, legatees, devisees, administrators, executors, successors and permitted assigns.
- i. A party will not be liable for any delay or failure in the performance of its obligations under the Agreement if such delay or failure is due to a Force Majeure Event.
- j. This agreement is governed by the laws of Australia and the parties submit to the exclusive jurisdiction of the New South Wales courts.

Schedule A

Faults reported in the System will be allocated a Severity level and an estimated Response Time using the guidelines in Table 1. Response means acknowledgement by Support Services of the Fault reported. These are estimates and are set at the sole discretion of Support Services.

Severity	Classification	Estimated Response Time
Critical	The fault affects critical functionality or critical data. It does not have a workaround. Example: Unsuccessful login, complete failure of a feature.	24 Hours
Major	The fault affects major functionality or major areas of data/information. It has a workaround but is not obvious and is difficult. Example: A feature is not functional from one module but the task is doable if 10 complicated indirect steps are followed in another module/s.	5 Days
Minor	The fault affects minor functionality or non-critical data. It has an easy workaround. Example: A minor feature that is not functional in one module but the same task is easily doable from another module.	30 Days
Trivial	The fault does not affect functionality or data. It does not even need a workaround. It does not impact productivity or efficiency. It is merely an inconvenience. Example: small layout discrepancies, spelling/grammatical errors.	90+ Days

Table 1: Fault Severity Classification and Response times