

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT is made as of this \_\_\_\_\_, \_\_\_\_\_ by and between **Cubed Holding LLC, the "Company"** and \_\_\_\_\_ (**hereinafter referred to as "First Party"**) to assure the protection and preservation of the confidential and/or proprietary nature of information to be disclosed or made available to each other in connection with certain negotiations and discussions.

WHEREAS, the First Party and the Company (collectively referred to as "the parties") wish to assure the confidential and/or proprietary status of the information that they may disclose to the other;

NOW THEREFORE, in reliance upon and in consideration of the exchange and/or disclosure of valuable information, the adequacy of which is acknowledged and conceded, the parties agree as follows:

1. **Confidential Information.** The term "Confidential Information" refers to all documents or information: (i) which the disclosing party has marked "Confidential Information"; or (ii) pertaining to the disclosing party's operating, marketing, financial, or personnel matters, its present or future products, products formulae, services, sales, revenue, suppliers, customers, clients, employees, or business, whether such information is in oral, written, graphic, or electronic form, and whether such information is patented, copyrighted or categorized as a trade secret or know how. Confidential Information does not include information or documents that:

- a. was previously known to the receiving party free of any obligation to keep it confidential as shown by the written records of the receiving party, so long as the receiving party did not receive such information or documents directly or indirectly from the disclosing party;
- b. is or became publicly available, by other than unauthorized disclosure;
- c. other than for patents, is independently developed by the receiving party without knowledge of the Confidential Information as shown by the written records of the receiving party;
- d. is disclosed to third parties by the disclosing party without restriction; or
- e. is lawfully received from a third party whose disclosure would not violate any confidentiality or other legal obligation.

2. **Nondisclosure or Confidential Information.** The parties represent and warrant to each other that they will maintain the secrecy of all Confidential Information made available by the disclosing party and will disclose such information only to its officers, directors, accountants, attorneys, and/or shareholders and such other persons as the parties mutually agree. In the event that either party desires to make the Confidential Information available to any of its consultants, such party shall first require such consultant to deliver an executed copy of this Agreement to the other party. The parties covenant and agree that they will use the Confidential Information only for purposes of determining whether they are interested in entering into an agreement or business relationship with the disclosing party.

3. **Return of Confidential Information.** The parties agree that, whenever the disclosing party so requests, the receiving party shall promptly return all Confidential Information made

available to it, together with all originals and copies of financial statements, spreadsheets, manuals, documents, drawings, tapes, discs, or other materials relating to such Confidential Information.

4. **Prohibition of Use of Confidential Information.** Except as a subsequent written agreement between the parties may specifically permit, the parties covenant and agree that no Confidential Information supplied by the disclosing party will be used in any way except as specifically permitted by this Agreement, either by the receiving party or by any person receiving such Confidential Information through or from the receiving party, whether directly or indirectly.

5. **Duration.** The duration of this Agreement shall be perpetual, but the obligation to maintain the secrecy and confidentiality of Confidential Information made available under this Agreement and the obligation not to use or incorporate Confidential Information made available under this Agreement shall continue in full force and effect for as long as the Confidential Information remains confidential. If, however, a court finds this period is not reasonably necessary to protect the parties' legitimate protectable interests, then the duration shall be for a period of five (5) years from the date of this Agreement.

6. **Complete Agreement.** This Agreement contains the final, complete, and exclusive agreement of the parties relating to non-disclosure and confidentiality of Confidential Information, and this Agreement may not be changed, modified, amended, or supplemented except by a written instrument signed by both parties.

7. **Applicable Law.** This Agreement and the legal relations between the parties shall be governed by and in accordance with the laws of the State of Arizona in the United States of America.

8. **Dispute Resolution.** In the event a dispute under or relating to this Agreement cannot be settled by mutual consultation between the parties, both parties irrevocably consent to the jurisdiction of any state or federal court sitting in Maricopa County, Arizona for the resolution of any such dispute and the courts located in Maricopa County, Arizona shall be the sole jurisdiction and venue for any dispute between the parties. The prevailing party in any litigation filed with any such court, including appeals from such court, shall be entitled to an award of costs and reasonable attorneys' fees.

9. **Equitable Remedies.** Each party hereby acknowledges and agrees that, in the event of any breach of this Agreement by the receiving party, including, without limitation, the actual or threatened disclosure of the disclosing party's Confidential Information without the prior written consent of the disclosing party, the disclosing party will suffer an irreparable injury such that no remedy at law will afford the disclosing party adequate protection against, or appropriate compensation for, such injury. Accordingly, each party hereby agrees that the disclosing party shall be entitled to specific performance of a receiving party's obligations under this Agreement, as well as such further injunctive relief as may be granted by a court of competent jurisdiction.

10. **Severability.** In the event of invalidity of any provision of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of the

Agreement, and further agree to substitute for the invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision.

11. **Term.** The term of this contract shall be five (5) years from the greater of; the date of this document or the last business transacted between the parties.

12. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective successors.

13. As evidenced by the signatures below, the undersigned parties do hereby agree to comply and abide in good faith with the terms, conditions and requirement of this agreement.

**This document is executed under the penalty of perjury.**

A facsimile copy of this document, when executed and transmitted, shall be considered a legal, binding and enforceable document.

**AGREED TO AND ACCEPTED BY:**

**COMPANY:**

**The Cubed Holdings, LLC**

**FIRST PARTY COMPANY NAME:**

\_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_