



Dear Sir / Madam

Confidentiality deed

In the context of you considering an in.cube8r franchise (**Proposal**), IN.CUBE8R FRANCHISING PTY LTD ACN 141 529 357 (**in.cube8r**) proposes to disclose Confidential Information to (please print either individual person's full name or the full name of your company) and its related bodies corporate (**Receiving Party**), on the terms and conditions set out in this deed.

This deed becomes legally binding once you countersign.

Executed as a deed by In.cube8r Franchising Pty Ltd in accordance with the *Corporations Act 2001* (Cth):

.....

Signature of sole director and company secretary

Isabelle Galley

Signed, sealed and delivered by:

..... (*Individual person please sign*)

Signature of..... (*Individual person please print your full name*)

.....

Signature of witness

.....

Name of witness

Dated:.....

OR

Executed as a deed by..... (*please print the full name of your company*) in accordance with the *Corporations Act 2001* (Cth):

.....

Signature of director

Signature of director/company secretary

.....

Name of director

Name of director/company secretary

Dated:.....

1 Consideration

The Receiving Party gives the undertakings in this deed in consideration of in.cube8r disclosing the Confidential Information in accordance with the terms of this deed.

2 Obligation of confidence

The Receiving Party must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) not copy, write down or otherwise record any part of the Information except as is reasonably necessary for the Proposal;
- (c) only disclose Confidential Information:
 - (i) to any Authorised Person (other than a Professional Adviser) where:
 - (1) that person has a need to know that Confidential Information for the purposes of the Proposal;
 - (2) the Receiving Party has made that person fully aware of the confidential nature of the Confidential Information; and
 - (3) that person has undertaken to be bound by the terms and conditions of this deed as if he or she were the Receiving Party;
 - (ii) to any Professional Adviser where:
 - (1) that Professional Adviser has a need to know that Confidential Information for the purposes of the Proposal;
 - (2) the Receiving Party has made that Professional Adviser fully aware of the confidential nature of the Confidential Information;
 - (3) in.cube8r provides its prior written consent to the disclosure of the Confidential Information to the Professional Adviser;
 - (4) the Professional Adviser has undertaken to be bound by the terms and conditions of this deed as if he or she were the Receiving Party; and
 - (5) if required by in.cube8r, the Professional Adviser has signed a confidentiality undertaking in a form that is satisfactory to in.cube8r regarding their access to and use of the Confidential Information;
 - (iii) with the prior written consent of in.cube8r; or
 - (iv) as required by law, provided that the Receiving Party must give in.cube8r reasonable prior notice of the proposed disclosure and take all reasonable steps requested by in.cube8r to preserve the confidentiality of the Confidential Information; and
- (d) not use the Confidential Information for the Receiving Party's own or another's advantage, or to the competitive disadvantage of in.cube8r or any of its Associated Entities.

3 Security and control

The Receiving Party must:

- (a) take all reasonable and effective precautions to maintain the confidential nature of the Confidential Information; and
- (b) immediately notify in.cube8r of any potential, suspected or actual unauthorised access, disclosure, copying or use of the Confidential Information or breach of this deed.

4 Responsibility for Authorised Persons

If the Receiving Party discloses Confidential Information to an Authorised Person, the Receiving Party must ensure that the Authorised Person receiving the Confidential Information:

- (a) maintains its confidential nature and complies with the terms of this deed as if that person were the Receiving Party; and
- (b) does not do or omit to do anything that, if done by the Receiving Party, would constitute a breach of this deed.

The Receiving Party will be responsible for any failure by any of its Authorised Persons to comply with the terms of this deed.

5 Notification of breach

The Receiving Party must inform in.cube8r immediately upon becoming aware of an actual or threatened breach of this deed by any of its Authorised Persons.

6 Retrieval, return and destruction

- (a) In.cube8r may at any time require the Receiving Party to immediately deny one or more of its Authorised Persons access to all or particular Information and to retrieve all Information previously provided to such Authorised Person(s).
- (b) All Documentation remains the sole and exclusive property of in.cube8r or its Associated Entities (as the case may be). If requested to do so by in.cube8r, the Receiving Party and each of its Authorised Persons must immediately cease all use of the Information and must, at their own expense:
 - (i) return to in.cube8r or destroy, as in.cube8r directs, all Documentation, whether prepared by or for in.cube8r, the Receiving Party or any of its Authorised Persons, that is in the possession, power or control of the Receiving Party or any of its Authorised Persons;
 - (ii) delete entirely and permanently all of the Information from every computer disk, hard drive, server and any other form of electronic storage facility owned or used by them; and
 - (iii) provide to in.cube8r a certificate executed by an officer of the Receiving Party confirming that it and each of its Authorised Persons has complied with all of their respective obligations under this clause 6.
- (c) Return or destruction of Documentation does not release the Receiving Party from its obligations in this deed.

7 Acknowledgments

The Receiving Party acknowledges and agrees that:

- (a) nothing in this deed obliges in.cube8r to disclose any particular Information to the Receiving Party;
- (b) the Information, together with all intellectual property rights in the Information, are and will remain the exclusive property of in.cube8r;
- (c) in.cube8r does not make any representation or warranty as to the completeness or accuracy of the Information;
- (d) the Receiving Party is responsible for making its own enquiries in relation to the completeness and accuracy of the Information provided;
- (e) in.cube8r and its Associated Entities will not be liable for any loss or damage (whether foreseeable or not) incurred or sustained by the Receiving Party or its Authorised Persons as a result of their use or disclosure of any Information; and

- (f) this deed continues to bind the Receiving Party even when all discussions, communications or negotiations between the parties have ceased, unless in.cube8r has expressly agreed otherwise in writing.

8 No waiver

Any delay by in.cube8r in taking action against the Receiving Party for a breach of the terms of this deed will not constitute a waiver of any of in.cube8r's rights. The waiver of any right arising from a breach of this deed must be in writing and signed by in.cube8r.

9 Consequences of breach

The Receiving Party acknowledges and agrees that:

- (a) the Information constitutes valuable and proprietary property of in.cube8r;
- (b) any loss suffered by in.cube8r as a result of any breach of this deed may not be adequately compensated for by damages; and
- (c) in addition to any other remedies available to in.cube8r, in.cube8r may be entitled to specific performance or an injunction, as appropriate, against the Receiving Party and its Authorised Persons as a remedy for any potential, suspected or actual breach of these terms and conditions.

10 Restraints

(a) Restraint

During the Restraint Period, the Receiving Party agrees that it must not and must ensure that its Associated Entities does not, directly or indirectly, do any of the following without the prior written consent of in.cube8r:

- (i) approach, initiate, encourage or request any inquiries, proposals, discussions, arrangements or agreements with any person with the intention of negotiating the acquisition of an interest in any entity or business (whether by share sale or asset sale or otherwise) that is similar to or competes with in.cube8r;
- (ii) approach, initiate, encourage or request any inquiries, proposals, discussions or negotiations with any persons with the intention of negotiating a transaction that is similar in nature to the Proposal being evaluated by in.cube8r and the Receiving Party;
- (iii) engage in, participate in or enter into any agreements or other arrangements with any person for a transaction that is similar in nature to the Proposal being evaluated by in.cube8r and the Receiving Party;
- (iv) solicit or persuade or attempt to solicit or persuade a customer of in.cube8r or any of its Associated Entities or a person who becomes a customer of in.cube8r or any of its Associated Entities to stop or reduce its business with in.cube8r or the Associated Entity (as the case may be); or
- (v) induce or persuade or attempt to induce or persuade an employee of in.cube8r or an Associated Entity of in.cube8r, or a person who later becomes an employee of in.cube8r or an Associated Entity of in.cube8r, to cease his or her employment with in.cube8r or with that Associated Entity of in.cube8r.

(b) Construction

Each part of the restraints in clause 10 constitutes a separate restraint that is severable from the other

restraints. If any part of the restraint is judged to be void, voidable, unenforceable or illegal by a court or tribunal because it goes beyond what is reasonable to protect in.cube8r and its Associated Entities (**Relevant Parties**) and their respective businesses or for any other reason, then that part will be severed and the other restraints remain in force.

(c) Value of business, and enforcement

The Receiving Party agrees that:

- (i) each restraint in clause 10 is reasonable in its scope and duration and goes no further than is necessary to protect the Relevant Parties and their respective businesses, goodwill or assets, having regard to the sensitive nature of the Confidential Information;
- (ii) any failure to comply with clause 10 will diminish the value of the Relevant Parties' businesses, goodwill or assets; and
- (iii) the undertakings in clause 10 are given for the benefit of, and are enforceable by, each Relevant Party even though the Relevant Party may not be a party to this deed.

(d) Legal advice

The Receiving Party agrees that it has received legal advice or has had the opportunity of obtaining legal advice in relation to clause 10.

(e) Relief

The Receiving Party agrees that:

- (i) monetary damages alone will not be adequate compensation for a breach of clause 10; and
- (ii) a Relevant Party may seek an injunction from a court of competent jurisdiction if:
 - (1) the other party or any of its Associated Entities breaches clause 10 (as the case may be) or threatens to do so; or
 - (2) the Relevant Party has reason to believe the other party or any of its Associated Entities may breach clause 10.

11 Severance and replacement of provisions

If any provision of this deed is void, voidable, unenforceable or illegal that provision is to be read down so as to be valid and enforceable. If it can not be read down, the provision is, or where possible, the offending words are, to be severed from this deed without affecting the validity or enforceability of the remaining provisions.

12 Governing law

This deed is governed by the laws in force in Victoria.

13 Definitions

In this deed:

Associated Entities has the meaning set out in section 50AAA of the *Corporations Act 2001* (Cth).

Authorised Persons means in relation to a party:

- (a) the Associated Entities of that party;
- (b) the directors, secretaries or any other person appointed to act as an authorised officer of that party or one or more of its Associated Entities;
- (c) the Professional Advisers of that party; and
- (d) the employees of that party or one or more of its Associated Entities.

Confidential Information means the Proposal Information and all Information that is disclosed to or acquired by the Receiving Party (or to or by a person on behalf of the Receiving Party) before or after the date of this deed, including without limitation:

- (a) at any meeting with representatives from in.cube8r;

- (b) in.cube8r franchise documents and systems including without limitation, the in.cube8r franchise agreement and in.cube8r operations manual;
- (c) my in.cube8r software system;
- (d) in.cube8r software system;
- (e) website content;
- (f) prices;
- (g) sales predications;
- (h) customer information;
- (i) merchandising data;
- (j) marketing techniques and procedures;
- (k) names of suppliers and supply chain strategies;
- (l) business methods and financial information; and
- (m) information developed by the Receiving Party (or by a person on behalf of the Receiving Party) to the extent that it includes, is based upon or is derived from any Information,

but does not include Information that:

- (a) the Receiving Party proves by contemporaneous written documentation was in its lawful possession before in.cube8r had any dealings with the Receiving Party or was independently generated by the Receiving Party or on its behalf;
- (b) is in the public domain otherwise than as a result of a breach of this deed or any other obligation of confidentiality owed to in.cube8r; or
- (c) was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

Documentation means any document or material regardless of form that contains, refers to or stores Information including emails, abstracts, memoranda, notes, correspondence, records, photographs, drawings, plans, papers, magnetic tapes, computer software or any other documents or medium capable of recording or storing Information.

Information means information whether oral, graphic, electronic, written or in any other form relating to or developed in connection with:

- (a) in.cube8r, any of its Associated Entities or their respective businesses, including (without limitation) financial affairs, projections, forecasts, accounts, prospects, strategies, business processes, business operations, assets, liabilities, interests, customers, personnel, suppliers, contracts and sales information; or
- (b) confidential information of a third party to whom in.cube8r or any of its Associated Entities owes an obligation of confidentiality.

Professional Advisers means in relation to a party the legal, financial and other advisers of that party or one or more of its Associated Entities (including the respective officers and employees of those advisers).

Proposal Information means:

- (a) the existence and terms of this deed; and
- (b) the Proposal and any evaluations, discussions and negotiations regarding the Proposal whether oral, graphic, electronic, written or in any other form.

Restraint Period

- (a) two years after the date of this deed or, if a court holds this period to be unreasonable or invalid for any reason, then;
- (b) 12 months after the date of this deed or, if a court holds this period to be unreasonable or invalid for any reason, then;
- (c) six months after the date of this deed or, if a court holds this period to be unreasonable or invalid for any reason, then;
- (d) three months after the date of this deed.