

NON-DISCLOSURE AGREEMENT

Entered into by:

LIMEKILNS (PTY) LTD

Registration Number:	2014/073456/07
Physical Address :	Nelson Mandela Square, West Tower, Maude Str, Sandton, 2146
Postal Address :	Nelson Mandela Square, West Tower, Maude Str, Sandton, 2146
Vat Number :	4620304131
Email :	info@limekilnsgroup.co.za
Website :	www.limekilnsgroup.co.za

And

Company Name

Registration Number :	
Physical Address :	
Postal Address :	
Tax Number :	
Email :	
Website :	

1. PARTIES

1.1. The Parties to this Agreement are -

1.1.1. Limekilns Proprietary Limited;

1.1.2. The Parties whose details are set out on the cover page hereof.

1.2. The Parties agree as set out below.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement, unless inconsistent with or otherwise indicated by the context-

2.1.1. **“Agreement”** means the Agreement as set out herein;

2.1.2. **“Associate”** means any individual, firm or other unincorporated party which is associated with a Party, including any entity directly or indirectly controlled by or which controls the Associate;

2.1.3. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

2.1.4. **“Confidential Information”** means all information or data disclosed in writing, orally, graphically, electronically or by any other means to the Receiving Party by the Disclosing Party including (without any limitation) -

2.1.4.1. any information relating to any technical, commercial or scientific information, processes, machinery, drawings, technical specifications, terms of agreements, details of investment strategies, organizational strategies or structure, property, development proposals, plans, feasibility studies, Intellectual Property, products, research and development, market opportunities, customers, statistics, pricing, terms and conditions

- 2.1.4.2. (contained in agreements with customers, clients and suppliers), reports, systems, marketing, methods, promotional and advertising plans and strategies, financial plans and models, business plans, Employees and office bearers, and business affairs of the Disclosing Party and it's Group;
- 2.1.4.3. the contractual and financial arrangements between the Disclosing Party (and it's Group, if applicable) and others with whom it has business arrangements of whatsoever nature, including potential customers/clients, suppliers and service providers, and business associates of the Disclosing Party whom it has not yet contacted but intends contacting for the purposes of doing business;
- 2.1.4.4. all other matters or information which relate or may relate to the business affairs of the Disclosing Party or it's Group in respect of which information is not readily available in the ordinary course of business to a competitor of the Disclosing Party;
- 2.1.4.5. details of the financial structure and operating results of the Disclosing Party and/or it's Group;
- 2.1.4.6. details of any shareholding arrangements in respect of the Disclosing Party and/or it's Group;
- 2.1.4.7. the fact of and content of –
- 2.1.4.7.1. this Agreement;
 - 2.1.4.7.2. the discussions and/or negotiations between the Parties contemplated in 3; and

- 2.1.4.7.3. any Agreement which may be concluded between the Parties pursuant thereto;
- 2.1.4.8. information which is disclosed in circumstances of confidence or would be understood by the Parties, exercising reasonable business judgement, to be Confidential Information; and
- 2.1.4.9. all other Confidential Information in whatever form, disclosed or communicated to the Receiving Party or acquired by the Receiving Party from the Disclosing Party;
- 2.1.5. **“Disclosing Party”** means the Party disclosing or providing the Confidential Information to the Receiving Party;
- 2.1.6. **“Employees”** means, in relation to a Party, its Employees, office bearers, agents and representatives;
- 2.1.7. **“Group”** means, in relation to a Party, that Party and its shareholders, and holding, subsidiary or associated companies or legal persons;
- 2.1.8. **“Intellectual Property”** means all registered and unregistered intangible property of a Disclosing Party including (without any limitation) designs, know-how, trademarks, trade names, brand names, signs, symbols, trade secrets, copyright and patents, and any derivatives thereof and includes all future additions and improvements to the Intellectual Property;
- 2.1.9. **“Parties”** means, collectively, the Disclosing Party and the Receiving Party, and “Party” shall have a corresponding meaning;
- 2.1.10. **“Receiving Party”** means the Party receiving the Confidential Information from the Disclosing Party;
- 2.1.11. **“Signature Date”** means the date of signature of this Agreement by the last Party signing;

- 2.1.12. **“Start Date”** means the earlier of the Signature Date or the date that any Confidential Information is first disclosed by the Disclosing Party to the Receiving Party;
- 2.1.13. Any reference to the singular includes the plural and vice versa;
- 2.1.14. Any reference to natural persons includes legal persons and vice versa; and
- 2.1.15. Any reference to a gender includes the other genders.
- 2.2. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.3. This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

3. INTRODUCTION

- 3.1. The Parties wish to enter into discussions with each other regarding the possibility of concluding a mutually beneficial commercial arrangement between them, which, if successful, may result in negotiations and a formalized agreement being concluded between them, the nature and extent of which have not been determined at the Signature Date.
- 3.2. Arising from such discussions, investigations and negotiations, the Disclosing Party will disclose the Confidential Information to the Receiving Party, which, if disclosed to third parties by the Receiving Party, would cause substantial damage and/or prejudice to the Disclosing Party.
- 3.3. The Disclosing Party therefore wishes to protect the confidentiality of, and the Disclosing Party's proprietary interest in, the Confidential Information which is a valuable asset and requires certain undertakings from the Receiving Party.
- 3.4. The Parties wish to record the terms and conditions upon which the Disclosing Party shall disclose Confidential Information to the Receiving Party, which terms and conditions shall constitute a binding and enforceable agreement between the Parties and their agents.

- 3.5. This Agreement shall also bind the Parties, notwithstanding the date of signature hereof, in the event that the Disclosing Party shall have disclosed any Confidential Information to the Receiving Party prior to the Signature Date of this Agreement.
- 3.6. The Disclosing Party warrants that its officers, Employees, agents, legal successors-in-title, Associates and associated companies, whether existing now or incorporated in the future, to whom the information of the Disclosing Party is disclosed, shall adhere to the terms of this Agreement.

4. DURATION

- 4.1. This Agreement shall commence upon the Start Date and shall continue in force for a period of 2 (two) years *after* the termination of the discussions, investigations and/or negotiations contemplated in clause 3, or any Agreement entered into by the Parties pursuant thereto.

5. OBLIGATION OF CONFIDENTIALITY

- 5.1. The Receiving Party hereby undertakes in favor of the Disclosing Party, which undertaking is accepted, in order to protect the proprietary interest of the Disclosing Party in the Confidential Information, that –
- 5.1.1. the Receiving Party shall treat the Confidential Information of the Disclosing Party as private and confidential, and shall safeguard it as it would its own;
- 5.1.2. the Receiving Party shall keep the Confidential Information in a secure environment, and shall not copy the Confidential Information except as may be

reasonably necessary for the purposes of the discussions, investigations and/or negotiations contemplated in 3 above;

- 5.1.3. the Receiving Party shall not disclose the Confidential Information of the Disclosing Party to any of its Employees or advisers nor shall they be given access thereto by the Receiving Party, unless it is strictly necessary for the purposes of the discussions, investigations and/or negotiations contemplated in 3 above and the Receiving Party shall have procured that such Employee or adviser shall have agreed to be bound by all the terms of this Agreement, and, in such event, the Receiving Party hereby indemnifies the Disclosing Party against any loss, harm or damage which it may suffer as a result of the unauthorized disclosure of Confidential Information by a representative or adviser;
- 5.1.4. neither the Receiving Party, nor its Employees or advisers shall disclose to any third party whatsoever, in any form or manner whatsoever, either directly or indirectly, any of the Confidential Information without the prior written consent of the Disclosing Party; and
- 5.1.5. the Receiving Party, its Employees and advisers shall not for their own benefit, or for the benefit of any third party whomsoever, use, disclose, exploit, copy, publish, reverse engineer, or permit the use of, or in any other manner whatsoever apply the Confidential Information of the Disclosing Party for any purpose whatsoever other than for the purpose of the discussions and/or negotiations contemplated in 3 above.
- 5.2. Any documentation, data or records relating to or arising from the Confidential Information which comes into the possession of the Receiving Party as a result of the discussions, investigations and/or negotiations contemplated in 3 above –
- 5.2.1. shall be deemed to form part of the Confidential Information; and
- 5.2.2. shall not be copied, reproduced, published or circulated by the Receiving Party unless agreed to in writing by the Disclosing Party.
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6. EXCEPTIONS

6.1. The restrictions on the use or disclosure of Confidential Information received from the Disclosing Party shall not apply to any information –

- 6.1.1. that is or becomes generally available to the public through no act or default on the part of the Receiving Party or its Employees;
- 6.1.2. that was already in the Receiving Party's possession and at its free disposal prior to its disclosure in the context of this Agreement;
- 6.1.3. that is subsequently lawfully received by the Receiving Party free of restrictions from a third party who has not derived the information directly or indirectly from the Disclosing Party;
- 6.1.4. that is independently developed for the Receiving Party by Employees having no access to or use of any of the Confidential Information, and in circumstances that do not amount to a breach of the provisions of this Agreement; or
- 6.1.5. that the Disclosing Party agrees in writing is free of such restrictions.

6.2. The provisions of this Agreement shall not prevent either Party from disclosing information to the extent that disclosure is required by law to such authorities as may be empowered by law to demand such disclosure provided that, in these circumstances, the Receiving Party shall –

- 6.2.1. within 2 (two) days of such disclosure being required or demanded, inform the Disclosing Party of the requirement to disclose prior to making the disclosure:
 - 6.2.1.1. disclose only that portion of the Confidential Information which it is legally required to disclose;
 - 6.2.1.2. use reasonable endeavors to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances; and
 - 6.2.1.3. Co-operate with the Disclosing Party if the Disclosing Party elects to contest any such disclosure.

- 6.2.2. To rely on any of the foregoing exceptions, the Receiving Party shall prove by documentary evidence or other tangible proof that such an exception applies.

7. LIMITATIONS

- 7.1. This Agreement shall not be construed as granting any rights in respect of any product, Confidential Information or Intellectual Property of either Party (or any third party), nor shall it be construed as an offer or invitation by either Party to enter into any further arrangement or agreement whatsoever.
- 7.2. No interest whatsoever in Confidential Information disclosed shall vest in or pass to the Receiving Party.
- 7.3. Confidential Information is provided in good faith, but without representation, warranty or guarantee of any kind, whether express or implied, statutory or otherwise.

8. OWNERSHIP IN THE CONFIDENTIAL INFORMATION

- 8.1. The Receiving Party hereby agrees that any documentation of whatsoever nature or description relating to the Confidential Information which it acquired or may acquire, or which may come into its possession shall remain the property of the Disclosing Party and shall not confer any rights to the Receiving Party of whatever nature in the Confidential Information.

9. RESTRICTIONS ON DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

- 9.1. The Receiving Party undertakes not to use the Confidential Information for any purpose other than that for which it is disclosed and in accordance with the provisions of this Agreement.

10. STANDARD OF CARE

10.1. The Receiving Party agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that the Receiving Party applies to safeguard its own proprietary, secret or confidential information and that the information shall be stored and handled in such a way as to prevent any unauthorized disclosure thereof.

11. RETURN OF INFORMATION

11.1. The Disclosing Party may at any time by written notice request the other Receiving Party to return any Confidential Information, in whatever form, disclosed in terms of this

Agreement or to destroy such information and to provide a written statement, if required, that all the information has been returned or destroyed. Any such information shall be returned or destroyed within a reasonable time but in any event within 10 (ten) Business Days from the date of the Disclosing Party's written notice.

12. PUBLICITY IN GENERAL

12.1. The Receiving Party shall not make any public announcements in the media in connection with the Confidential Information, Intellectual Property, property or the business venture(s) contemplated herein without the prior written consent of the Disclosing Party.

13. NO SOLICITATION

13.1. The Receiving Party agrees that it will not solicit, interfere with, or entice or endeavor to solicit, interfere with or entice away from the Disclosing Party, any Employee, agent, independent contractor, adviser or consultant for the duration of this Agreement.

14. BREACH

14.1. Should the Receiving Party breach any of the terms and/or conditions of this Agreement, the Disclosing Party is entitled, without any notice to the Party in breach, to seek whatever remedy may be available to the Disclosing Party in the circumstances, including obtaining an interdict and/or claiming damages, in addition to whatever remedy may be available to the Disclosing Party in terms of this Agreement or at law.

14.2. It is specifically recorded that the Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information and that the Disclosing Party shall be entitled, without waiving other rights and remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction including without limitation, direct and consequential damages.

15. INDEMNITY

15.1. The Receiving Party indemnifies and holds the Disclosing Party harmless against any loss, expense, claim, harm, damage or liability of whatever nature suffered or sustained by the Disclosing Party resulting from any action, proceeding or claim made by any person against the Disclosing Party as a result of the breach of this Agreement by the Receiving Party or any of its Employees, agents, independent contractors, advisers or consultants.

16. ARBITRATION

16.1. All disputes arising out of or in connection with this Agreement shall be referred for arbitration under the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an

arbitrator appointed by AFSA, provided that the arbitration shall be held in English in Midrand. The arbitrator's decision shall be final and binding on the Parties, and may be made an order of court.

16.2. Nothing herein contained shall preclude any of the Parties from approaching a court of competent jurisdiction for an interdict or for relief on an urgent basis.

17. NOTICES AND DOMICILIA

17.1. The Parties choose as their *domicilia citandi et executandi* the addresses, fax numbers and email addresses set out on the cover page of this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

17.2. The Parties may from time to time by written notice change their chosen addresses to any other street address in the Republic of South Africa.

17.3. Any notice given to a Party ("the addressee") in terms of this Agreement shall be in writing and shall –

17.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

17.3.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;

17.3.3. if transmitted by fax to the number set out on the cover page of this Agreement be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved;

17.3.4. if transmitted by email to the email address set out on the cover page of this Agreement be deemed to have been received by the addressee on the date of dispatch, unless the contrary is proved.

17.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one Party from the other Party, including by way of fax transmission or by email, shall be adequate written notice or communication to such Party.

18. GENERAL

18.1. Each Party represents that it has the authority to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

18.2. If any provision of this Agreement is found to be unlawful, unenforceable or invalid, it shall be deemed to be severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.

18.3. This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

18.4. No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorized representatives.

18.5. No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

18.6. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be taken together and deemed to be one instrument.

18.7. This non-disclosure is applicable to all divisions of Limekilns (Pty) Ltd and Associations

CONFIDENTIAL

SIGNED AT _____ ON THIS _____ DAY OF _____ 20____

SIGNATURE

LIMEKILNS (PTY) LTD

CONFIDENTIAL

SIGNED AT _____ ON THIS _____ DAY OF _____ 20____

Signature

SIGNATURE

Company Name

CONFIDENTIAL