**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made the **....** day of ................ 20.......
**BETWEEN**

1. **.............................................................**, a company incorporated under the laws of ............................., with registered office at .............................................., registered with ..................................................................., acting for itself, its affiliates and employees (hereinafter “**Party A**”)
2. **...................................................**, a company incorporated under the laws of .................................., with registered office \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**,** company number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, acting for itself, its affiliates and employees (hereinafter “**Party b**”),

(each a "**Party**" and together the "**Parties**").

**WHEREAS**:

A. The Parties are interested in undertaking discussions in order to jointly evaluate additional optimization opportunities in the following areas ................................ ...................................... (hereinafter the “**Project**”).

B. In relation to and in order to facilitate such discussions, the Parties may reveal confidential information to each other.

C. The Parties wish to enter into this Agreement to establish the rights and obligations in respect of such information and other matters.

In consideration of the mutual promises and undertakings contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**

In this Agreement, unless the context otherwise requires:

 “**Affiliate**” means a company which, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a Party. For this purpose “control” means the direct or indirect ownership of in aggregate fifty percent or more of the voting capital.

“**Confidential Information**” means any and all data, reports, records, correspondence, notes, compilations, studies, know-how, specifications, drawings, samples and other information disclosed to the Recipient Party, directly or indirectly, by or on behalf of the Disclosing Party or any of its Representatives, relating to or in any way connected with the Project, with the Disclosing Party or any of its Affiliates or their business activities (actual or proposed), whether such information is disclosed orally, in writing, in machine readable form or by any other means, regardless of whether such information is identified as confidential, and includes, without limitation, any information ascertainable by inspection;

“**Disclosing Party**” means the Party providing certain Confidential Information.

 “**Project**” means the project described in Recital A.

 “**Recipient Party**” means the Party receiving certain Confidential Information.

 “**Representatives**” means, for the purposes of this Agreement, the Affiliates, agents and advisers of a Party and the directors, officers and employees of such Party or any of the aforementioned persons.

2. **UNDERTAKINGS BY THE PARTIES**

2.1 The Recipient Party acknowledges that any Confidential Information furnished to it hereunder is confidential and undertakes:

 (a) to use such Confidential Information solely for the purpose set out in Recital A;

 (b) to keep the Confidential Information in strict confidence;

###  (c) to keep confidential and not disclose to anyone the fact that the Confidential Information has been made available to it or the extent, nature or status of any discussions or negotiations which are taking place or have taken place in connection with the Project;

###  (d) not, without the prior written consent of the Disclosing Party, to disclose any Confidential Information furnished to it to anyone other than those of its Representatives, who have a legitimate need to know such Confidential Information in order to perform their duties relating to the Project;

1. to:
2. ensure that a Representative is aware of all of the Recipient Party’s obligations under this Agreement, before disclosing any Confidential Information to such Representative;

(ii) ensure compliance by its Representatives of the obligations imposed on the Recipient Party under this Agreement, as if its Representatives were the Recipient Party; and

1. so far as possible, to keep separate all Confidential Information from all its documents and other records.

The Recipient Party further acknowledges that any Confidential Information disclosed to the Recipient Party’s Representatives by or on behalf of the Disclosing Party or any of the Disclosing Party’s Representatives shall be deemed to be disclosure of such Confidential Information to the Recipient Party for the purposes of this Agreement.

2.2 The undertakings in clause 2.1 shall not apply to any Confidential Information which:

 (a) at the time of disclosure to the Recipient Party or thereafter has become part of public knowledge or literature without breach of any of the said undertakings by the Recipient Party;

 (b) the Recipient Party can show was in its possession at the time of disclosure hereunder and was not acquired by it under an obligation of confidence; or

 (c) the Recipient Party can show was received by it after the time of disclosure hereunder from a third party (other than one disclosing on behalf of the Disclosing Party or the Disclosing Party’s Affiliates) who could lawfully do so and who did not derive the Confidential Information from the Disclosing Party or the Disclosing Party’s Representatives.

 The foregoing exceptions shall not, however, apply to:

 (i) specific information merely because it is embraced by or included with other information which falls within any one or more of such exceptions; or

 (ii) any combination of information merely because specific information (but not the combination itself) fall within any one or more of such exceptions.

2.3 In the event that the Recipient Party or any Representative is required or requested by any court, legislative, regulatory or administrative body, including any recognised stock exchange, to disclose any Confidential Information furnished to it hereunder, then the Recipient Party will, to the extent that it is lawful to do so, promptly inform the Disclosing Party before such disclosure is made, so that an appropriate protective order and/or other action can be sought and/or other action can be taken if possible (and if it is not lawful to inform the Disclosing Party prior to disclosure, the Recipient Party shall inform the Disclosing Party as soon as it becomes lawful to do so). In the event that a protective order or other action is not, or cannot be, obtained, then:

 (a) the Recipient Party or the Representative (as appropriate), may disclose to the appropriate body that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information; and

1. the Recipient Party shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure that was not permitted under this Agreement.

3. **NO COMMITMENTS OR WARRANTIES**

* 1. The nature and extent of any Confidential Information disclosed under this Agreement shall be at the sole discretion of the Disclosing Party.
	2. Each Party warrants to the other Party that it (and/or its Affiliates, as the case may be) has the right to disclose any Confidential Information actually provided hereunder by or on its (and/or its Affiliates’) behalf.No other representations or warranties, express or implied, are made concerning the accuracy or completeness of any Confidential Information provided under this Agreement.

Nothing in this Agreement shall be construed as granting the receiving Party a licence under intellectual property rights of the disclosing Party or its Affiliates, or any rights in respect of Confidential Information other than the restricted use and disclosure rights implied in Clause 2.

* 1. Neither Party shall be under any obligation or commitment to the other to enter into discussions or any further agreement in relation to the Project merely by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information and this Agreement shall not constitute nor should it be construed to constitute an offer or commitment to proceed with the Project.
	2. Each Party acknowledges that the decision or process of the other Party to proceed with the Project is within the absolute discretion of such other Party (or its Representatives, as the case may be) and unless and until mutually agreed definitive and legally binding written and executed agreements are entered into by the Parties (or their Affiliates, as the case may be) with respect to the Project, no duty of any kind is owed by a Party to the other Party (or its Representatives) in connection therewith and each Party shall be entitled to withdraw from discussions relating to the Project at any time for any reason without liability of any kind to the other Party (or the other Party’s Representatives).

3.5 It is agreed that discussions in relation to the Project are not exclusive and each Party shall be entitled to discuss, negotiate or agree any matter with any third party provided that the terms of this Agreement are otherwise respected.

4. **RETURN OF THE CONFIDENTIAL INFORMATION**

 Upon request at any time by the Disclosing Party, the Recipient Party shall promptly:

 (a) return or, at the option of the Disclosing Party, destroy all Confidential Information furnished to it that is in tangible form (including, without limitation, Confidential Information contained on computer disks, USB keys, memory cards, CD’s or DVD’s or other electronic or optical media or on any device or service (including cloud computing services) intended to store information), together with any copies or extracts thereof; and

1. destroy all analyses, compilations, studies or other documents which have been prepared by the Recipient Party and which reflect or are based upon any Confidential Information disclosed to it under this Agreement,

 save to the extent that the Recipient Party is required to retain any Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or to the extent that such Confidential Information is incorporated into organisational records which the Recipient Party is required to retain by law or in accordance with internal policies regarding the keeping of records generally, in which case the Recipient Party will take appropriate measures to preserve its continuing confidentiality.

5. **COMMENCEMENT AND TERMINATION**

 This Agreement shall enter into force on the date first above mentioned and shall remain in force until the **10th** anniversary of the date first above mentioned.

6. **GOVERNING LAW AND JURISDICTION**

 Any dispute, controversy or claim arising out of or in connection with this Agreement or its subject matter whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation or breach shall be governed by and construed in accordance with the laws of ............................................. [Belgium, or change into any other jurisdiction]. Any disputes shall be resolved through arbitration (in English, except if the Parties would agree to Dutch or French) in Brussels according to the rules of the Center for Dispute Resolution (www.cedires.com) by an arbitration panel consisting of three arbitrators.

7. **NO WAIVER; SPECIFIC PERFORMANCE**

7.1 Failure by a Party or its Representatives in exercising any right, power or privilege hereunder shall not act as a waiver, nor shall any single or partial exercise thereof preclude any further exercise of any right, power or privilege.

7.2 Each Party acknowledges that damages alone would not be an adequate remedy for any breach of this Agreement and agrees that the other Party shall be entitled to the remedies of injunction, specific performance or other equitable relief. Such remedy shall be in addition to and not in lieu or limitation of other remedies available at law.

**8. ENTIRE AGREEMENT**

 This Agreement constitutes the entire agreement of the Parties with respect to the subject matter thereof and supersedes any and all prior communications understandings, arrangements or agreements between the Parties, whether written, oral, express or implied relating thereto. No amendment or modification to or waiver of this Agreement shall be valid unless in writing and signed by a duly authorised representative of each of the Parties.

**IN WITNESS WHEREOF** this Agreement has been executed in duplicate originals by duly authorised representatives of the Parties.

By Party A

By:

Name:

Title:

By:

Name:

Title:

By **Party b**:

By:

Name:

Title: