

NON DISCLOSURE AGREEMENT

BETWEEN

**DA PORTFOLIO (PTY) LTD
REGISTRATION NUMBER 2010/024068/07
T/A THE PORTFOLIO
HEREINAFTER REFERRED TO AS "THE PORTFOLIO"**

AND

REGISTRATION NUMBER: _____

T/A _____

HEREINAFTER REFERRED TO AS " _____ "

INTRODUCTION

The Portfolio and ("_____"), (collectively "the Parties" and where the context requires, individually a "Party") are in the course of, or are about to enter into, discussions with regard to [] ("**the Facilities/the Project/the Proposed Transaction**").

Certain confidential and proprietary information relating to or in connection with [**the Facilities/the Project/the Proposed Transaction**] ("the Confidential Information") may be disclosed by one Party ("the Disclosing Party") to the other Party ("the Receiving Party") for the purposes of enabling the Receiving Party to assess and/or evaluate and/or provide advice and/or perform its obligations with regard to [**the Facilities/the Project/the Proposed Transaction**] ("the Permitted Purpose").

The Parties acknowledge that any Confidential Information exchanged between them should be kept confidential and have therefore agreed to enter into this confidentiality agreement ("this/ the Agreement").

The Confidential Information, without limiting the ordinary meaning thereof, includes all oral, written, printed, photographically and electronically recorded information of all types, documents, data, letters, agreements, undertakings, structures, products, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing methods, customer lists, supplier lists, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, direction, manner, timing and implementation of any projects to be undertaken.

UNDERTAKING

The Receiving Party undertakes:

not to disclose the Confidential Information to any third parties, except where the Confidential Information is disclosed:

by the Receiving Party to its members, directors, officers, employees and/or professional advisors to the extent necessary for the Permitted Purpose; or

by the Receiving Party with the Disclosing Party's prior written approval; or

to any party to whom the Receiving Party has assigned or transferred (or may potentially assign or transfer) any of its rights and/or obligations under any agreement(s) and provided such party has undertaken to the Receiving Party in writing to adhere to the provisions of this Agreement; or

by the Portfolio to any other division of the Portfolio and/or to any other subsidiary of the Portfolio, provided that the entity to which the Confidential Information is disclosed has undertaken to the Portfolio in writing to adhere to the provisions of this Agreement; or

by the Receiving Party to internal or external auditors, for internal or external audit purposes; or

necessarily by the Receiving Party in carrying out any obligations contained in any agreement between, inter alia, the Disclosing Party and the Receiving Party; or

by the Receiving Party after being requested or required to disclose such information in terms of any law or regulations or by any judicial, governmental, supervisory or regulatory body, court of law or legal process; or

in connection with any proceedings or action taken by the Receiving Party for the collection of any amounts and/or the enforcement of obligations and/or in relation to or in connection with any action taken by the Receiving Party in terms of the Companies Act 61 of 1973 (as amended) and read together with the Insolvency Act 24 of 1936 (as amended), or any like or replacement acts;

that it will not under any circumstances (other than those referred to in 2.1.1 to and including 2.1.8), use the Confidential Information or any part thereof for a purpose other than the Permitted Purpose;

to act in good faith at all times in performing its obligations under this Agreement, such efforts to be at least equal to the Receiving Party's effort employed to protect its own confidential, secret and proprietary data and information.

EXCLUSIONS

Confidential Information shall exclude information or any portion of information that:

is or becomes, before or after receipt thereof, published or generally available to the public, other than as a result of any unlawful act or omission on the part of the Receiving Party; or

is or was lawfully acquired from a third party who did not, to the Receiving Party's knowledge, obtain it in contravention of a confidentiality agreement with the Disclosing Party. The contents of this clause shall not be construed as placing an onus on the Receiving Party to ascertain or attempt to ascertain whether the information received was subject to a confidentiality agreement; or

is known to, or in the possession of, the Receiving Party prior to the disclosure thereof by the Disclosing Party; or

is independently developed by the Receiving Party; or

is disclosed to the Receiving Party for a purpose other than the Permitted Purpose.

RETURN OF MATERIAL CONTAINING OR PERTAINING TO THE CONFIDENTIAL INFORMATION

The Disclosing Party may at any time after a breach of this Agreement by the Receiving Party or the finalisation of, or the termination of, the discussions relating to **[the Facilities/the Project/the Proposed Transaction]** require that the Receiving Party return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement.

As an alternative to the return of the material as contemplated in clause 0 above, the Receiving Party may destroy such material and furnish the Disclosing Party with a written warranty to the effect that all such material has been destroyed.

The Receiving Party shall comply with a request in terms of this clause within 14 (fourteen) days of receipt of such request.

This clause shall not apply to the extent that the Receiving Party is obliged to retain any Confidential Information in terms of any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with reasonable internal policy.

ADDRESSES FOR NOTICES AND SERVICE OF LEGAL PROCESSES

The Parties choose their respective addresses set out in this clause 0, as their *domicilium citandi et executandi* ("Domicilium") for the purposes of giving of any notice, the serving of any process and for any purpose arising from this Agreement.

For the purpose of this Agreement the Parties' respective addresses are:

The Portfolio
Lone Creek Office Suite B16
Waterfall Park
Cnr Mac Road and Howick Clse
Vorna Valley x21
MIDRAND

Facsimile Number: (011) 312 3162

E-mail: alsimons@dportfolio.co.za

Attention: Annelize Simons

For the purpose of this Agreement the Parties' respective addresses are:

FACSIMILE NUMBER: _____

E-MAIL: _____

ATTENTION: _____

Each of the Parties shall be entitled, by written notice to the other, to vary its Domicilium from time to time to any other address within the Republic of South Africa which is not a post office box or *poste restante*, or to vary the facsimile number forming an element of such Domicilium.

Any notice given by one Party to the other ("the Addressee") which:

is delivered by hand during the normal business hours of the Addressee at the Addressee's Domicilium for the time being shall be deemed, (unless the contrary is proved by the Addressee), to have been received by the Addressee at the time of delivery;

if transmitted by facsimile to the facsimile number forming a part of the Addressee's Domicilium, be deemed to have been received by the Addressee (unless the contrary is proved by the Addressee) one Business Day after the date of dispatch.

Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile transmission will be adequate written notice or communication to such Party.

DURATION

THIS AGREEMENT SHALL COMMENCE ON THE DATE THAT THIS AGREEMENT IS SIGNED BY THE PARTY SIGNING LAST IN TIME AND SHALL CONTINUE FOR A PERIOD OF ____ THEREAFTER.

JURISDICTION AND APPLICABLE LAW

The Parties consent and submit to the non-exclusive jurisdiction of the Witwatersrand Local Division of the High Court of South Africa in respect of any proceedings relating to this Agreement.

This Agreement is subject to and shall be interpreted in accordance with the laws of the Republic of South Africa.

GENERAL

This Agreement constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof, and no addition to, variation, or amendment, or consensual cancellation of any of the terms contained in this Agreement and no suspension of any right under this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties.

No waiver by a Party of any right under this Agreement shall be effective unless reduced to writing and signed by or on behalf of such Party.

A failure to enforce or to require the performance at any time of any of the provisions of this Agreement (including the provisions of this clause) shall not be construed to be a waiver of such provision and shall not affect either the validity of this Agreement, or any part hereof, or the right of any Party to enforce the provisions of this Agreement.

This Agreement may be signed by the Parties in counterparts and each signed copy shall together constitute one document.

Each provision of this Agreement is severable, the one from the other and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.

Neither Party may assign its rights and obligations under this Agreement, entirely or partially, to any third party without the prior written consent of the other Party.

Each of the Parties will bear its own costs in respect of the drawing, negotiation and preparation of this Agreement.

SIGNED AT _____ on _____ 2012.

For: Da Portfolio (Pty) Limited (t/a The Portfolio)

Who warrants his/her authority hereto

SIGNED AT _____ on _____ 2012.

For: [_____]

Who warrants his/her authority hereto