



Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-disclosure Agreement is entered into effective _____, 2007, between

GILLYFROST 61 (PTY) LTD. (hereinafter referred to as "**mediate**"), and

(hereinafter referred to as "Recipient").

mediate and Recipient may individually be referred to as a "Party" and shall collectively be referred to as the "Parties" to this Agreement.

INTRODUCTION:

As a result of extensive research and development, **mediate** is the originator of certain proprietary and confidential information (defined below). This information is referred to in this Agreement as "Confidential Information." **mediate** considers its Confidential Information to be secret and confidential and a valuable commercial asset. Because the Parties are entering into discussions to investigate the potential for, and feasibility of, a possible business relationship between the Parties (the "Possible Business Relationship") before any binding offers and/or agreements, if any, are made, and in conjunction therewith, the Parties wish to exchange or have already exchanged certain Confidential Information. The Parties agree that the disclosure of any Confidential Information shall be subject to the confidentiality and nondisclosure restrictions imposed by this Agreement.

NOW THEREFORE, Recipient and **mediate** agree as follows:

DEFINITIONS USED IN THIS AGREEMENT

1. "Confidential Information" includes all non-public information, whether written, electronic or oral, relating to **mediate** business operations, assets and/or financial condition including, without limitation, all financial statements, books and records, other financial information, Trade Secrets, knowledge, design specifications, design criteria, inventions, discoveries, know-how, patents and patent rights and all other information that is reasonably treated as proprietary and/or confidential and not otherwise known to the general public, whether or not patented or patentable and whether or not copyrighted or copyrightable. Confidential Information shall not include: (a) information which at the time of disclosure is published or otherwise in the public domain, (b) information which after disclosure becomes part of the public domain unless this disclosure was the result of a breach of this Agreement, (c) information which was known by Recipient prior to its disclosure by **mediate**, (d) information which becomes known by Recipient from a source on a non-confidential basis, and (e) information which is independently developed by Recipient otherwise than pursuant to this Agreement.
2. "Trade Secrets" include any and all written material, instruction manuals, art work, technical specifications, account information, customer records, procedures, detail drawings, graphic designs, inventions, discoveries, know-how, and any other material owned or produced by or for **mediate**, whether or not patented or patentable and whether or not copyrighted or copyrightable, **mediate's** business plan, marketing strategy, clients and customers, consultants and employees, suppliers, dealers and resellers.
3. "Intellectual Property Rights" means all intellectual property or proprietary rights, including copyright rights, trademarks, service marks, patent rights (including patent applications and disclosures) and Trade Secrets, recognized in any country or jurisdiction in the world.

BY SIGNING THIS AGREEMENT RECIPIENT AGREES TO DO, OR REFRAIN FROM DOING, THE FOLLOWING:

1. Recipient agrees that it (a) will use reasonable care to prevent disclosure of **mediate's** Confidential Information to others and (b) shall not use or disclose to others Confidential Information of **mediate** for the purpose of performing services for others or any other purpose unless authorized in writing by **mediate**.
2. Recipient further agrees that it will not, without **mediate's** prior written consent, use any Confidential Information or Intellectual Property Rights of **mediate**, or any know-how derived from Confidential Information or Intellectual Property Rights of **mediate**, to create or develop, or to enable, cause or permit others to create or develop, any products or services the same as or similar to products or services developed by **mediate** and embodying **mediate's** Confidential Information and/or Intellectual Property Rights. All Confidential Information or Intellectual Property Rights of **mediate**, or any written or recorded information disclosed and all copies thereof shall, upon the termination of the evaluation of the Possible Business Relationship, or **mediate's** request, be returned to **mediate**, or be disposed of as **mediate** otherwise instructs. **mediate** may request that the Recipient certify in writing that all Confidential Information, including all copies, has been returned or destroyed.

3. Recipient, as a recipient of **mediate's** Confidential Information, agrees to limit the disclosure of such Confidential Information to those of its directors, officers, employees and advisors who have a legitimate need to know such information and will require such Confidential Information in order to evaluate the Possible Business Relationship and to conduct all necessary preliminary investigations related thereto. Such Confidential Information will be released to these directors, officers, employees and/ or advisors only after they have been informed of the nature of **mediate's** Confidential Information and have acknowledged that they understand and agree to the obligations of confidentiality and limited use set forth above.
4. Recipient agrees that all documentation containing or relating to **mediate's** Confidential Information or Intellectual Property Rights disclosed to it under this Agreement shall be and remain **mediate's** sole and exclusive property.

RIGHTS AND REMEDIES UPON BREACH THIS AGREEMENT.

1. Recipient agrees to notify **mediate** promptly upon discovery of any unauthorized use or disclosure of **mediate's** Confidential Information or Intellectual Property Rights, or any other breach of this Agreement, and will cooperate with **mediate** to help **mediate** regain possession of its Confidential Information or Intellectual Property Rights and prevent any further unauthorized use.
2. Recipient acknowledges and agrees that, in the event of any breach of this Agreement, **mediate** might be irreparably and immediately harmed and unable to be made whole by money damages. As a result, Recipient agrees that in addition to any other remedy to which **mediate** may be entitled at law or in equity, **mediate** will be entitled to seek an injunction or injunctions to remedy breach of this Agreement and/or to compel specific performance of this Agreement.

MISCELLANEOUS PROVISIONS.

1. No right or license, express or implied, is granted to Recipient by the terms and conditions of this Agreement, or by its performance or failure to perform under this Agreement, except to the extent necessary for the performance contemplated by this Agreement.
2. This Agreement shall be interpreted in accordance with the laws of South Africa.
3. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter indicated above and supersedes any previous oral or written agreement. Its terms may not be changed or amended except by an instrument in writing.
4. If **mediate** employs attorneys to enforce any rights arising out of or relating to this Agreement, **mediate** shall be entitled to recover reasonable attorneys' fees.
5. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns.
6. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
7. All obligations created by this Agreement shall survive change or termination of the Parties' business relationship.
8. Nothing in this Agreement shall be deemed to: (i) constitute either Party the partner of the other, (ii) constitute either Party the agent or legal representative of the other, or (iii) create any fiduciary relationship between them, save and except for those created under this Agreement.
9. Without further consideration, each Party agrees to take such further acts and execute such further documents as are necessary or appropriate to effectuate the purpose and intent of this Agreement.
10. Recipient acknowledges that **mediate** is not making any representation or warranty as to the completeness and/or accuracy of the Confidential Information. **mediate** nor any representative of **mediate** will have any liability resulting from the use of the Confidential Information in evaluating the Possible Business Relationship.
11. In the event Recipient is compelled through legal process to disclose any Confidential Information of **mediate**, Recipient shall first provide **mediate** advance notice so that **mediate** may seek a protective order or other appropriate remedies before the disclosure is made. In such event that disclosure is required under this paragraph, Recipient agrees to use its best efforts to disclose only that portion of the Confidential Information that is legally required to be disclosed and to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment.
12. Recipient agrees that for a period of twenty-four (24) months from the date of this Agreement, Recipient shall not directly solicit for employment any current directors, officers and/or employees of **mediate**. This prohibition shall not include any employment advertisements aimed at a broad, general audience.
13. The Parties agree that unless and until a definitive agreement between the Parties with respect to the Possible Business Relationship has been fully executed and delivered, neither **mediate** nor Recipient will be under any legal obligations, of any kind, by virtue of this Agreement or any other written or oral agreement with respect to the Possible Business Relationship.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SIGNED RECIPIENT: _____

FULL NAME: _____

COMPANY NAME AND REGISTRATION No: _____

AND

IMEDIATE REPRESENTATIVE: _____

FULL NAME: _____

GILLYFROST 61 (PTY) LTD T/A IMEDIATE

WITNESS: _____

FULL NAME: _____

WITNESS: _____

FULL NAME: _____

DATE: _____ **SIGNED AT:** _____