

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT**, made and entered into as of this 12th day of September, 2005, among IPS Ltd., having its principal office at 33 Jije-dong, Pyongtaek-city, Gyeonggi-Do, Korea, VESTA Technology, Inc., having its principal office at 3003 N.First St. San Jose, CA95134, U.S.A., Hakuto Co., Ltd., having its principal office at 1-13 Shinjuku 1-chome, Shinjuku-ku, Tokyo 160-8910, Japan (collectively "Company") and Sony Corporation, having its principal office at 7-35 Kitashinagawa 6-chome, Shinagawa-ku, Tokyo 141-0001, Japan ("Sony"),

### **W I T N E S S E T H :**

**WHEREAS**, it may be necessary for Sony to disclose certain of its confidential and proprietary information to Company and Company is willing to receive such information from Sony, subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing premise and mutual covenants hereinafter contained, Company and Sony agree as follows:

### **SECTION 1. CONFIDENTIAL INFORMATION:**

The "Confidential Information" shall mean any and all confidential and proprietary information, documents and materials relating to Sony's composition, materials, process parameters, physical properties relating to metallic films for metal gate electrode, device characteristics, physical analysis of devices with metal gate electrode, including, but not limited to, process, hardware, software, firmware, samples, inventions, ideas, designs, know-how and trade secret, which are developed by, owned by, licensed to or under the control of Sony, and which are disclosed by Sony to Company during the period commencing on September 12, 2005 and ending on September 11, 2006 (the "Disclosure Period") and are clearly marked "Confidential" at the time of disclosure or, if orally or visually disclosed, are identified as confidential at the time of disclosure and confirmed by a written resume with "Confidential" marking to be issued to Company within thirty (30) days after the date of such disclosure.

### **SECTION 2. USE OF CONFIDENTIAL INFORMATION:**

It is agreed and understood that the disclosure by Sony and the receipt by Company of the Confidential Information under this Agreement will be made in order for the parties hereto to discuss and study the feasibility of Sony's purchase of Company's metal ALD system "VULCAN" for metal gate electrode fabrication.

### **SECTION 3. NON-DISCLOSURE OBLIGATIONS:**

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- (1) During the Disclosure Period and for a period of two (2) years thereafter, Company shall keep in confidence and not disclose or disseminate to any third party the Confidential Information and shall not use the Confidential Information for any purpose other than the discussion and feasibility study as specified in Section 2 hereof.
- (2) In order to protect the Confidential Information as required in Paragraph (1) above, Company shall, during the Disclosure Period and for a period of two (2) years thereafter, undertake the following:
  - (i) not to disclose the Confidential Information to any person other than its officers and employees whose duties justify a need-to-know and who have executed a written instrument in which such officers and employees have agreed not to disclose and to hold confidential all confidential information, inclusive of those of third parties, which may be disclosed to them or to which they may have access during the course of their duties;
  - (ii) to use the same degree of care, but not less than a reasonable degree of care, to avoid disclosure, publication or dissemination of the Confidential Information as Company would use with respect to its own confidential information, and to ensure that all tangible materials relating to or containing the Confidential Information be maintained in a restricted access area and plainly marked to indicate the confidential nature thereof to prevent unauthorized use or reproduction thereof;
  - (iii) not to disassemble the samples nor analyze the software or firmware contained in the Confidential Information;
  - (iv) not to make copy or reproduction of the Confidential Information without Sony's prior written consent; and
  - (v) at Sony's request, to return promptly to Sony any and all portions of the Confidential Information together with all copies and reproductions thereof, if any.
- (3) Company shall not disclose or disseminate the fact that Sony is now discussing and studying the feasibility as specified in Section 2 hereof with Company without Sony's prior written consent.

#### **SECTION 4. EXCLUSIONS:**

- (1) Notwithstanding the provisions of Section 3 hereof, the obligations set out therein shall not apply to any portion of the Confidential Information which Company can prove:
  - (i) was already a part of the public domain at the time of disclosure to Company;
  - (ii) was already known to Company at the time of disclosure to Company;
  - (iii) is or becomes a part of the public domain through no fault of Company;
  - (iv) is rightfully obtained by Company without restriction on disclosure or use; or
  - (v) was or is independently developed by officers or employees of Company who have not had access to the Confidential Information.

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- (2) If Company is required to disclose any of the Confidential Information by an administrative or judicial action, Company may so disclose such Confidential Information; provided that Company attempts to maintain the confidentiality of such Confidential Information by asserting in such action applicable privileges and immediately after receipt of the notice of such action notifies Sony of such action to give Sony the opportunity to seek any other legal remedies to maintain such Confidential Information in confidence as herein provided.

#### **SECTION 5. NO LICENSE AND NO COMMITMENT:**

- (1) Disclosure of the Confidential Information hereunder shall by no means constitute any option, grant or license to Company under any patent, copyright, know-how or other intellectual property rights now or in the future held or otherwise controlled by Sony.
- (2) It is understood and agreed that the disclosure and receipt of the Confidential Information hereunder shall by no means result in any obligation on the part of either party to enter into any further agreement or realize any transaction with the other with respect to the subject matter hereof or otherwise.
- (3) It is understood and agreed that each party may now market or have under development products and/or services which are competitive with products and/or services now offered or which may be offered by the other. Subject to the terms and conditions of this Agreement, discussions or communications between the parties hereto will not serve to impair the right of either party by itself or through any third party to develop, make, use, procure and/or market products or services now or in the future which may be competitive with those offered by the other, nor require either party to disclose any planning or other information to the other.

#### **SECTION 6. MISCELLANEOUS:**

- (1) It is understood and agreed that each party hereto shall be entitled to all appropriate relief, including injunctive and other equitable relief to enforce the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by either party and their assignees, and shall be binding upon either party and any of its assignees, successors and representatives.
- (2) Either party's failure to enforce any of the terms and conditions of this Agreement at any time shall by no means affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.
- (3) Notices hereunder shall be in writing and shall be deemed duly given upon delivery if delivered by hand, upon receipt if facsimiled or upon properly deposited in the mail if sent by registered mail to the undersigned at the addresses first set forth above or any other address as may be notified by either party to the other in writing.

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- (4) This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties hereto with respect to the subject matter hereof.
- (5) No modification of this Agreement shall be effective unless otherwise made in writing and signed by the parties hereto.
- (6) This Agreement shall become effective as of the first date of the Disclosure Period.
- (7) This Agreement shall be deemed to have been made and executed in Japan and any disputes arising hereunder shall be resolved in accordance with the laws of Japan.

**IN WITNESS WHEREOF**, the parties hereto by their duly authorized representatives have executed this CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT upon the date first set above.

**Company:**

IPS Ltd.

By T. W. Seo  
TW Seo  
Chief Technology Officer

**Sony:**

Sony Corporation

By Y. Okamoto  
Yutaka Okamoto  
President  
Semiconductor Technology Development Group  
Semiconductor Solutions Network Company

VESTA Technology, Inc.

By Chuck Kim  
Chuck Kim  
Executive Director

Hakuto Co., Ltd.

By J. Kohira  
Junji Kohira  
Director  
Electronic Equipment First Div.



**Hakuto Co., Ltd.**  
SEMICONDUCTOR EQUIPMENT THIRD DEPT.  
1-13, ShInjuku 1-Chome, ShInjuku-ku,  
Tokyo 160-8910 JAPAN  
Phone 03-3225-3424  
FAX 03-3225-9013

**To :** Mr. Seo Tae-Wook  
CTO/VP  
IPS Ltd.

**FROM :** Kenichi Jinbo

*Ref.: NDA*

Dear Mr. Seo Tae-Wook

Attached is signed NDA between IPS, VESTA, SONY and Hakuto.  
Please keep it.

Best Regards,  
*Kenichi Jinbo*  
Kenichi Jinbo