

## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement ("Agreement") is entered into on 10 September 2008 ("Effective Date") by and between Gintech Energy Corporation ("Gintech"), with its principal place of business at 8F, No.396, Sec.1, Nei Hu Rd., Nei Hu Technology Park, Taipei 114, Taiwan, ROC, and Integrated Process System ("IPS"), with its principal place of business at 33 Jije-dong, Pyeongtaek-city Gyeonggi-do, Republic of Korea. Gintech and IPS together shall be referred to as the "Parties" and individually as a "Party".

**WHEREAS**, The Parties wish to exchange Confidential Information (as defined below in Article 1) for the following purpose(s): The Development of Dry Etching System (hereinafter referred to as "Purpose").

**NOW THEREFORE**, in consideration of the disclosure of Confidential Information by either Party, the Parties agree as follows:

### 1. Definitions:

- a. "Confidential Information" includes any information or data, whether oral, visual, or written, including, but not limited to, information regarding business, research, development, manufacturing, operation, performance, process, product, and any other technical information, know-how, samples, models apparatus and all other media disclosing such information or techniques which are disclosed or transmitted by Disclosing Party to Receiving Party. Confidential Information will be disclosed or furnished in the following manners: (i) If Confidential Information is disclosed in a written form or in non-written tangible form, it shall be clearly marked as "Confidential" or its equivalent; or (ii) if Confidential Information is disclosed orally or in other form which is not easily marked as "Confidential" or its equivalent, Disclosing Party shall identify that such information is confidential at the time of disclosure and, within thirty (30) days after such disclosure, deliver to Receiving Party a written notice identifying such Confidential Information.
- b. "Disclosing Party" is the Party disclosing Confidential Information.
- c. "Receiving Party" is the Party receiving Confidential Information.

### 2. Confidential Obligations:

- I. Receiving Party agrees that: (i) the Confidential Information shall be used solely for the Purpose described in the WHEREAS clauses of this Agreement; (ii) it shall not use any Confidential Information disclosed hereunder for any other purpose; (iii) it shall not distribute, disclose, disseminate, or duplicate Confidential Information to anyone except its employees and agents with a need to know ("Authorized Personnel") and who, in each case, have been informed of the confidential nature of Confidential Information and have signed an agreement with Receiving Party containing confidentiality provisions substantially similar to those set forth herein. Receiving Party shall ensure compliance by Authorized Personnel with the terms and conditions of this Agreement, and shall be responsible for any breach of such terms and conditions by any Authorized Personnel. Receiving Party shall not reverse engineer, decompile, disassemble any prototypes, software, hardware or other tangible objects which embody Disclosing Party's Confidential Information and which are provided to the Party hereunder; (iv) it shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, dissemination or publication of the Confidential information as Receiving Party uses to protect its own confidential information; (v) it shall not use the Confidential Information to prepare any patent application or to provoke any interference with any patent application that has been or may be filed on behalf of Disclosing Party; and it shall not use the Confidential Information to amend any claims in a pending patent application to expand such claims to read on, cover or denominate any invention, whether patentable or not, disclosed in the Confidential Information.
- II. Receiving Party will promptly notify Disclosing Party in writing of any loss or destruction of originals of any writings or other tangible items, or any copies thereof, which contain Confidential Information of Disclosing Party. Receiving Party shall make all reasonable efforts to locate and return any such lost originals or copies.
- III. Receiving Party, upon Disclosing Party's request, will promptly return all Confidential Information received from Disclosing Party, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed.



**3. Exceptions to Confidential Information:**

This Agreement shall not apply to Confidential Information that:

- a. is in or enters the public domain, through no fault of Receiving Party; or
- b. is or has been disclosed by Disclosing Party to a third party without restriction; or
- c. is already in the possession of Receiving Party, without restriction, prior to disclosure of the Confidential Information hereunder; or
- d. is lawfully disclosed by a third party to Receiving Party without an obligation of confidentiality; or
- e. is developed by Receiving Party independently without breach of this Agreement as demonstrated by written records; or is required to be disclosed pursuant to court order or required by any governmental authority or agency, provided prompt written notice of such order or requirement is given to Disclosing Party and Disclosing Party is given an opportunity to respond to such order or requirement, or seek an appropriate protection order.

**4. Term and Termination:**

This Agreement shall remain in effect for a period of 3 year(s) from the Effective date, unless earlier terminated by either Party upon a thirty (30) day written notice to the other. Notwithstanding the termination or expiration of this Agreement, the obligations of Receiving Party hereunder shall remain in effect for a period of three (3) years from the date of disclosure of Confidential Information.

**5. No Grant of Rights:**

Confidential Information of Disclosing Party shall remain the property of Disclosing Party. Except as expressly provided herein, no license or right is granted by Disclosing Party to Receiving Party under any patent, patent application, trademark, copyright, software, trade secret or any other right now and thereafter owned or controlled by Disclosing Party. Any such grant shall be made in a separate written agreement.

**6. No Warranty:**

All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy, completeness or performance. If Receiving Party takes or does not take action relying, in whole or in part, on Disclosing Party's Confidential Information or future availability of a product described by or based upon the Confidential Information, it does so at its own risk and expense. Disclosing Party will not be liable for any defects or deficiencies in any product, process or design created by or for Receiving Party using or relying on Disclosing Party's Confidential Information, whether or not caused by defects or deficiencies in the Confidential Information.

**7. Remedy:**

Receiving Party acknowledges that Confidential Information has unusual and extraordinary value, and that the prospective breach of any provision of this Agreement by Receiving Party will cause Disclosing Party great and irreparable harm, for which remedies available at law are inadequate. Therefore, without the necessity of proving actual damages, Disclosing Party shall be entitled to seek injunctive and other appropriate relief.

**8. Assignment:**

No Party to this Agreement shall assign any of its rights or obligations hereunder, without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld.

**9. Governing Law and Jurisdiction:**

This Agreement shall be governed by and construed and enforced in accordance with the laws of Republic of Korea, without regard to laws concerning conflicts of laws. In the event of disagreements and disputes between both Parties in relation to this Agreement, both Parties agree that the Seoul District Court in Republic of Korea shall become the court of first instance.

**10. Relationships:**

This Agreement is neither intended to nor will it be construed as creating a joint venture, partnership or other form of business association between the Parties, nor an obligation to buy or sell products using or incorporating the Confidential Information.



**11. Entire Agreement:**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements. All additions or modifications to this Agreement must be made in writing and must be signed by all Parties. No failure or delay in exercising any right under this Agreement shall operate as a waiver thereof.

**12. Counterparts:**

This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**Gintech Energy Corporation**

Authorized Signature

Printed Name

Title

Date



Wang  
Vice President

2009. 7.30

**IPS Ltd.**

Authorized Signature

Printed Name

Title

Date

Kim Kwang Ho

Vice President

2008. 9.12

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