**MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT**, effective this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2014 by and between **Kohlex, LLC.,** a California corporation, (“Kohlex”) on behalf of itself and its Affiliates and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Company”). The term Kohlex shall mean Kohlex, LLC. The term “Company” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and all of its Affiliates. For the purposes of this Agreement, “Affiliate” means any corporation or other legal entity that Kohlex or Company now or hereafter Controls; where “Control” means the direct or indirect ownership of more than fifty percent (>50%) of the shares or similar interests entitled to vote for the election of directors or other persons performing similar functions. An entity may be considered an Affiliate only when such Control exists. Each party shall be liable for any failure of its Affiliates to abide by the provisions of this Agreement as if such failure was the act or omission of such party.

Kohlex and the Company desire to explore the feasibility of entering into a negotiated business relationship (referred to herein as the “Project”). Kohlex and the Company may find it necessary or desirable to disclose to each other, in furtherance of the Project, certain business and technical information and data that each considers confidential or proprietary.

In consideration of the foregoing premises and the mutual promises and covenants contained herein, Kohlex and the Company agree as follows:

1. **Definition of Confidential Information**. As used herein, the term “Confidential Information” shall mean any and all nonpublic information that is or has been received by either party (the “Recipient”) from the other party (the “Disclosing Party”) that (i) if disclosed in a tangible writing, is marked “Confidential” or bears a marking of similar import, (ii) if disclosed orally, is identified as Confidential Information at the time of disclosure and is reduced to writing by the Disclosing Party and a copy thereof is delivered to the Recipient with a statement or marking of confidentiality within ten (10) days after oral disclosure of such information or data, or (iii) information which the Recipient, under the circumstances surrounding disclosure knows or reasonably should know is to be treated as confidential. Where the information is disclosed orally, the reduction to writing shall also state, if possible, the place, date and person(s) to whom the oral disclosure was made. Confidential Information includes, without limitation, the types of information listed on Exhibit A (which is attached hereto and incorporated herein by this reference) and all other compilations of information that relate to the business of the Disclosing Party or the Project. Confidential Information also includes information received from others that the Disclosing Party is obligated to treat as confidential. Furthermore, Confidential Information includes any subject matter described in a writing expressly referring to this Agreement and signed by the authorized representatives of both the Recipient and the Disclosing Party.
2. **Excluded Information**. Confidential Information shall not include, and neither party shall have any responsibility hereunder to protect or otherwise hold in confidence any information or data that: (a) Prior to its disclosure by the Disclosing Party is already lawfully and rightfully known by or available to the Recipient as evidenced by written records or other tangible documents in possession of the Recipient prior to the disclosure by the Disclosing Party; (b) through no wrongful act, fault or negligence on the part of the Recipient is or hereafter becomes part of the public domain; (c) is developed by the Recipient independently from disclosure by the Disclosing Party, as evidenced by written records or other tangible documents in the possession of the Recipient prior to the disclosure by the Disclosing Party; (d) is lawfully received by the Recipient from a third party without restriction and without breach of this Agreement or any other agreement; or (e) is approved for public release or use by written authorization of the Disclosing Party.
3. **Protection of Confidential Information.** Each party agrees to protect and treat as confidential the other party’s Confidential Information. The standard of care required of the Recipient in protecting the confidentiality of the Disclosing Party’s Confidential Information shall be the same standard of care that the Recipient uses in protecting its own Confidential Information. At a minimum, the Recipient of Confidential Information hereunder shall restrict the disclosure, dissemination, and availability of any such Confidential Information to its (and its Affiliates’) directors, officers or employees (the “Permitted Personnel”) with a demonstrable need to know such Confidential Information in connection with their activities relating directly to the proposed Project. During the term of this Agreement and the period described in Section 7 neither party shall (a) use any Confidential Information received by it in any way detrimental to the Disclosing Party and for any reason other than in support of the Project, (b) reverse engineer, de-compile or disassemble any Confidential Information, or (c) disclose or make available to any third parties any Confidential Information received by it without the prior written consent of the Disclosing Party (except as provided herein).

The Recipient of Confidential Information hereunder shall not be liable for the inadvertent or accidental disclosure of Confidential Information of the Disclosing Party provided that: (a) The Recipient has used at least the same degree of care in safeguarding such Confidential Information as it uses for its own confidential information of like importance and such degree of care is reasonably calculated to prevent such inadvertent or accidental disclosure; (b) the Recipient has restricted disclosure, dissemination and availability of such Confidential Information to its Permitted Personnel described above; (c) the Recipient informs its Permitted Personnel of the Recipient’s and such Permitted Personnel’s duty not to disclose such Confidential Information; and (d) upon discovery of any such accidental or inadvertent disclosure of Confidential Information, the Recipient notifies the Disclosing Party and undertakes, at its own cost and expense, to prevent any further disclosure of Confidential Information by the Recipient, which was accidentally or inadvertently disclosed in violation of this Agreement.

Moreover, it shall not be a breach of this Agreement if the Confidential Information is disclosed pursuant to the requirement or request of a governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order, and provided that sufficient notice is given by the Recipient to the Disclosing Party of any such requirement or request to permit the Disclosing Party to seek an appropriate protective order or exemption from such requirement or request.

Furthermore, either party may disclose to any and all persons, without limitation, the tax treatment and tax structure of any resulting transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure.

1. **Non-Disclosure by Permitted Personnel.** A Recipient of Confidential Information hereunder shall use every reasonable and prudent precaution to ensure that any Permitted Personnel to whom Confidential Information is or has been disclosed do not disclose to any third parties or otherwise use Confidential Information except pursuant to the terms of this Agreement during, and subsequent to the termination of the employment or other relationship between the Recipient and such Permitted Personnel. At a minimum, a Recipient shall cause its Permitted Personnel to sign non-disclosure agreements to the extent not previously signed, which are sufficient to enable the Recipient and the Permitted Personnel to comply with all of the terms of this Agreement. Notwithstanding the foregoing, the Recipient shall be held liable for any disclosure of Confidential Information by any of the Recipient’s Permitted Personnel which is in violation of the terms of this Agreement.
2. **Additional Precautions**. A Recipient of Confidential Information pursuant to this Agreement shall not, except in pursuit of the limited purposes of the Project: (a) Copy or otherwise duplicate any Confidential Information of the Disclosing Party, in whole or in part, including derivations, without the prior approval of the Disclosing Party, or (b) disclose any Confidential Information or any knowledge, product, process or procedure derived or developed therefrom by the Recipient to any third party not directly involved in the Project. Any copy of Confidential Information authorized by the Disclosing Party to be made by a Recipient or others pursuant to Paragraph 5(a) above, shall conspicuously display a marking or statement indicating the Disclosing Party’s proprietary interest therein.
3. **Custodian of Confidential Information.** The parties appoint the persons listed below as their custodians (“Custodians”) to receive and control, on their respective behalf, all Confidential Information of the respective parties pursuant to this Agreement. Either party may change its Custodian by giving written notice to the other party of the name and address of its newly appointed Custodian.

|  |  |  |
| --- | --- | --- |
| **Kohlex Custodian:**Kohlex, LLC.65 EnterpriseAliso Viejo, California 92656Attention: President |  | **Company Custodian:** |
|  |  |
|  |  |
|  |  |
|  | Attn:  |

1. **Term and Termination**. This Agreement shall become effective as of the date first written above and shall, unless the parties hereto agree in writing to an earlier termination date, continue for a period of five (5) years. Unless otherwise agreed to in writing by the parties hereto, the obligations set forth herein to protect Confidential Information received prior to the termination of this Agreement shall survive any termination of this Agreement for a period of five (5) years from the date of any such termination.
2. **Rights to Confidential Information.** All Confidential Information received by a Recipient hereunder shall remain the sole and exclusive property of the Disclosing Party. Upon completion of the Project, termination of this Agreement or the written request by the Disclosing Party, whichever comes first, the Recipient shall return to the Disclosing Party, or shall destroy in a manner satisfactory to the Disclosing Party, all tangible forms of Confidential Information, including any and all copies thereof.
3. **Restrictions: No License.** Nothing contained in this Agreement shall be construed as (a) requiring either party to disclose or accept any information, (b) requiring either party to purchase or use any products, goods or manufacturing facilities of the other party, or (c) granting to a Recipient of Confidential Information any rights by license or otherwise, either express or implied, under any patents, patent applications, trademarks, copyrights, mask works, trade secrets, know-how, or other intellectual property right now or hereafter owned, obtained or licensable by a Disclosing Party.
4. **No Further Commitment.** The furnishing by the parties of Confidential Information hereunder shall not obligate the parties to enter into any further agreement or negotiation with respect to the Project. Further, although the Disclosing Party warrants that it has the right to disclose the Confidential Information provided to Recipient, no other warranties are made whether express, implied or statutory, and all Confidential Information is provided “as-is” and “with all faults”. No responsibility or liability is accepted or shall be imposed upon the Disclosing Party regarding the accuracy or completeness or suitability of its Confidential Information.
5. **Non-Disclosure of Project.** Neither party hereto shall publicly announce or disclose its participation in the Project or any discussions relating to this Agreement or the Project without the prior written consent of the other party or except as may be required by law, in which case the party required to make such disclosure shall give the other party the maximum feasible prior notice of such required disclosure.
6. **Export Regulations.** The Parties shall comply with all applicable export control laws, including U.S. export laws and regulations, and each party agrees that, without obtaining the necessary license or approval from the United States government it will not (i) export or re-export, directly or indirectly, any technical data or any direct product of that technical data (including Confidential Information) to any country for which the United States Government at the time requires an export license or other governmental approval, or (ii) disclose any technical data (including Confidential Information) acquired from the other party to any national of any country for which the United States government requires an export license or other governmental approval. Each party will obtain the other party’s prior written consent for any re-export or re-transfer of the other party’s technical data, as well as for any disclosure of such technical data to a national of any country for which the United States government or any agency thereof requires an export license or other governmental approval. Under no circumstances may any party export or re-export any technical data or any direct product of that technical data (including Confidential Information) to countries, persons, or entities that are subject to U.S. economic sanctions or that are subject to restrictions under the U.S. Export Administration Regulations. Countries subject to broad economic sanctions currently include Cuba, Iran, North Korea, Sudan and Syria.
7. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California in the United States. The Parties hereto agree that suit may be brought for breach of this Agreement only in the State or Federal Courts in the State of California, County of Orange.
8. **Remedies for Breach.** Both parties agree that should this Agreement be breached, money damages would be inadequate to remedy any such breach. As a result, a non-breaching party shall be entitled to seek, and a court of competent jurisdiction may grant, specific performance and injunctive or other equitable relief as a remedy for any breach of this Agreement. Such remedy shall be in addition to all other remedies, including money damages, available to a non-breaching party at law or in equity. The prevailing party in such action shall be entitled to reasonable attorney fees in addition to any other amounts awarded as damages.
9. **Entire Agreement: Amendments.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes and replaces any prior or contemporaneous undertakings, commitments or agreements, oral or written, as to its subject matter. This Agreement may be modified or amended only by an instrument in writing signed by authorized representatives of the parties on or after the date hereof.
10. **Successors and Assigns.** This Agreement is intended to benefit and shall be binding on the successors and assigns of Kohlex and the Company.
11. **Separate Enforcement of Provisions.** If, for any reason, any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be enforced to the extent possible.
12. **No Conflicting Contracts.** Each party represents that they are not parties to any contracts with any other entity or individual that would interfere with or prevent their respective compliance with the terms and provisions of this Agreement.
13. **Waiver.** No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege.
14. **Notices.** All notices or other communications required or permitted to be made or given hereunder by one party to the other party shall be deemed so made or given when hand-delivered or sent in writing by certified mail, postage prepaid, and properly addressed to such other party as set forth below at such other address as may be specified by either party hereto by written notice similarly sent or delivered.

|  |  |  |
| --- | --- | --- |
| **Kohlex, LLC.**65 EnterpriseAliso Viejo, California 92656Telephone: 949.371.3700Attention: President |  | **[Company]**   Fax: Attention:  |

1. **Authority.** Both parties hereto represent that the individuals executing this Agreement for and on behalf of the parties hereto are fully authorized and empowered to do so for and on behalf of their respective principals.
2. **Signatures & Counterpart Delivery.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement may be executed or delivered by facsimile or e-mail (pdf). Any such facsimile or e-mail (pdf) transmission shall constitute the final agreement of the parties and conclusive proof of such agreement.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or agents as of the date and year first above written.

|  |  |  |
| --- | --- | --- |
| **KOHLEX, LLC.** |  | [COMPANY] |
|  |  |  |  |  |
| By: |  |  | By: |  |
| Name: | Christian Mackin |  | Name: |  |
| Title: | CEO |  | Title: |  |
| Date: |  |  | Date: |  |

**EXHIBIT A**

Laboratory and Engineering Notebooks, Narratives, Summaries, Commentaries, Drafts, and Data, regardless of the recording medium.

1. Manufacturing Specifications, Manuals, Practices and Plans, Processes, Process Parameters and Methods.
2. Engineering and Research Reports, Fabrication Techniques, Technical Plans, Product Roadmaps, and present and future product and integration plans.
3. Blueprints and Engineering Drawings, Schematics, and Layouts, regardless of format, Microfilm, Microfiche and Photomasks.
4. Analytical Results and Test Data.
5. Algorithms, Computer Programs, Firmware, and Microcode, Designs, Logic, Hardware and Software, Development Platforms, and Related Documentation.
6. Data Storage, Display Media, Computer Listings and Printouts.
7. Business Practices Policies, Models, and Plans.
8. Strategic Partnerships, Alliances, and Customer Relationships.
9. All works, inventions, patent applications, discoveries, know-how, techniques, processes, methods, systems, ideas and other elements thereof.
10. Financial Information (including budgets, forecasts and financial results).
11. Marketing Practices, Strategies and Plans.
12. Customer Lists and Supplier Lists (including telephone numbers and addresses) and Price Lists.
13. Business Correspondence.
14. Development Methods.
15. Technical and Business Information relating to any of Kohlex’s products or business operations, including any of the Confidential Information recited above.