Economic Development Agreement Akhan Technologies, Inc.

THIS ECONOMIC DEVELOPME	NT AGREEMENT ("Agreement") is made and		
entered into as of this day of	, 2014 (" <i>Effective Date</i> "), by and		
between the COUNTY OF LAKE, an Illi	nois body politic and corporate ("County"); and		
Akhan Semiconductor, Inc. (" <i>Taxpayer</i> ").			

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Taxpayer and the County hereby agree as follows:

SECTION 1. RECITALS.

- A. In recognition of the importance of a successful business environment to the County's tax base, the County desires to enhance the long-term viability of the County's tax base and strengthen the competitive advantage of conducting business within the County by providing assistance and incentives to owners of local businesses for the improvement of their businesses.
- B. The County desires to implement economic incentive activities for existing businesses within the County to further its goals of enhancing the County's tax base and strengthening the competitive advantage of conducting business within the County.
- D. The Taxpayer will become the owner and operator and will remain the owner and operator of the property on an approximately 5.13 -acre parcel located at 1020 Lakeside Drive, Gurnee, Illinois, and legally described herein ("**Property**").
- E. The County and the Taxpayer desire to enter into this Agreement to enable the use of the Property in a manner that will enhance the business environment of the County.
- **SECTION 2. DEFINITIONS.** Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.
- A. "**Commencement Date**" means the date established pursuant to Section 3 of this Agreement.
- B. "Corporate Authorities" means the Chairman and County Board of the County of Lake, Illinois.
- C. "**County Sales Tax**" means that portion or component of the Sales Taxes generated by the Taxpayer from sales generated from all or any portion of the Property that the County receives from the State of Illinois' Retailers' Occupation Tax pursuant to 35 ILCS 120/1 *et seq*.

- E. "Economic Incentive Payment" means the amount of the payment payable to the Taxpayer by the County pursuant to the Economic Incentive Payments under Section 4 of this Agreement.
- G. "*Gross Receipts*" shall have the meaning ascribed to it in the Retailers' Occupation Tax Act.
- H. "*Property*" means that certain property legally described in **Exhibit A** attached hereto and, by this reference, incorporated herein.
- I. "Retailers' Occupation Tax Act" means the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., as the same has been, and may, from time to time hereafter be, amended.
- J. "Sales Taxes" means any and all taxes imposed and collected by the State of Illinois pursuant to the Retailer's Occupation Tax Act, 35 ILCS 120/1 et seq., the Service Use Tax Act, 35 ILCS 110/1 et seq., the Service Occupation Tax Act, 35 ILCS 115/1 et seq., and the Use Tax Act, 35 ILCS 105/1 et seq.,
- K "Sales Tax Year" means the period of time beginning on the Commencement Date and ending on the date that is one year after the Commencement Date, and each of the four (4) succeeding years thereafter.
 - L. "Tax Year" means from January 1 through December 31 of a given year.
- M. "*Term*" means the term of this Agreement as established pursuant to Section 7 of this Agreement.

SECTION 3. COMMENCEMENT OF ECONOMIC INCENTIVE PAYMENTS.

The "Commencement Date" under this Agreement is hereby declared to be the first day of the month immediately following the Effective Date of this Agreement.

SECTION 4. ECONOMIC INCENTIVE PAYMENTS.

A. <u>Maximum Total Payments</u>. In no event shall the County's total Economic Incentive Payments to the Taxpayer exceed \$500,000 as a result of this Agreement ("*Maximum Payment*").

B. <u>Calculation of Economic Incentive Payments</u>. Beginning on the Commencement Date, for any Sales Tax Year in which the County Sales Tax generated from the Property shall be paid to the Taxpayer according to the following formula:

(1)	\$0 to \$99,999	0% to Taxpayer 100% to County
(2)	\$100,000 to \$300,000	50% of the sales tax above \$100,000 to County and 50% of the sales tax above \$100,000 to Taxpayer
(3)	\$300,001 and greater	0% of the sales tax above \$300,000 to Taxpayer 100% to County

For example, if \$200,000 in sales tax is generated in a given Sales Tax Year, the Incentive Payment to the Taxpayer will be \$50,000.00. In no event shall the Incentive Payment for any Sales Tax Year be greater than \$100,000.00.

C. <u>County Payment</u>. Within 120 days after the end of the twelfth month of each Sales Tax Year, the County shall pay the applicable Economic Incentive Payment for that particular Sales Tax Year to the Taxpayer, based on the records of the Illinois Department of Revenue. If, for any reason, the State of Illinois fails to distribute the County Sales Tax revenue to the County in sufficient time for the County to make its annual payment, the County shall provide notice of that fact to the Taxpayer. In that event, the County shall make the required Economic Incentive Payment within 60 days after the date on which the County actually receives the County Sales Tax revenue due the County for the applicable payment period. To the extent necessary, as determined by the County, the parties agree that the County may require the Taxpayer to submit such specified financial statements and copies of the applicable State of Illinois Sales Tax Reports as are necessary to verify the amount of Sales Tax generated by the Taxpayer from the Property. The Taxpayer shall sign a release authorizing the State of Illinois to issue the reports to the County.

However, for any Sales Tax Year in which no County Sales Tax is generated from the Property, the Real Property Tax abatement for that following Tax Year as set forth and defined in the Economic Development Incentive Agreement entered into by both the Taxpayer and the County, is forfeited.

D. Change in the Law.

1. **Existing Law**. The County and the Taxpayer acknowledge and agree that the County's obligation to pay the Economic Incentive Payments to the Taxpayer is predicated on existing State law governing the distribution of Sales Taxes to the County, including, without limitation, the Retailers' Occupation Tax Act. The County and the Taxpayer further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Sales Taxes to Illinois counties and/or municipalities. The County and the Taxpayer

make express provision for the effect of any change upon the operation of this Agreement in Paragraph 2 of this Subsection.

- 2. Change in Law. In the event that the State of Illinois amends, alters or repeals the Retailers' Occupation Tax Act or makes any other promulgation, enactment, or change in law ("Change in Law") that eliminates or substantially reduces the distribution of Sales Taxes to the County, or otherwise alters the distribution formula in a manner that prevents the County and the Taxpayer from determining with a reasonable degree of certainty the precise amount of the County Sales Tax, the provisions of this Agreement with regard to County Sales Tax generated from the Property on or after the effective date of the Change in Law shall automatically terminate and become null and void and be of no further force or effect, and the County shall have no obligation whatsoever to pay to the Taxpayer any of the County Sales Tax generated on or after the effective date of the Change in Law. However, if a Change in Law results in replacement taxes for the Sales Taxes directly resulting from Gross Receipts of the Taxpayer as contemplated in this Agreement, then, for purposes of this Agreement, the replacement taxes shall be defined as Sales Taxes, subject in all respects to the County's actual receipt of its portion of the replacement taxes as well as the County's authority under state law to provide for the payment of the Economic Incentive Payments on the replacement taxes, as contemplated in this Agreement.
- E. <u>Limited Liability</u>. Notwithstanding any other provision of this Agreement to the contrary, the County's obligation to pay the Economic Incentive Payments shall not be a general debt of the County or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the County Sales Tax received by the County, as specifically defined in Section 2 of this Agreement. The Taxpayer shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the County to pay the Economic Incentive Payments, and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or other property of the County (unless the County refuses to make the payment to the Taxpayer in violation of this Agreement). No recourse shall be had for any payment pursuant to this Agreement against any past, present, or future Board member, other elected or appointed officer, official, agent, representative, employee, or attorney of the County in his or her individual capacity.

F. Closure; Refund.

1. Refund. In the event that, at any time during the Term of this Agreement, the Taxpayer abandons, closes, or terminates the use of the Property ("Closure"), then (a) the provisions of this Agreement with regard to County Sales Tax generated from the Property shall, as of the date Closure is initiated under Illinois law ("Refund Effective Date"), automatically terminate and become null and void and be of no further force or effect, and the County shall have no obligation whatsoever to perform any of the Economic Incentive Payment obligations under this Section of this Agreement; and (b) the Taxpayer shall be required to refund to the County the entire amount of the Economic Incentive Payments received by the Taxpayer prior to the Refund Effective Date. Should the Taxpayer abandon, close or terminate the use of the

Property due to failure of the business, or product line, and not due to a business decision to relocate, Taxpayer shall received no further Economic Incentive Payments but will not be obligated to refund Economic Incentive Payments.

SECTION 5. REAL PROPERTY VALUATION PROTEST.

The Taxpayer recognizes that the County has legitimate interests and concerns regarding the valuation and assessment of the Property for real estate tax purposes. Accordingly, the Taxpayer shall notify the County prior to the commencement or initiation of any protest or appeal by the Taxpayer of the real property valuation of the Property established by the Township Assessor.

SECTION 6. LITIGATION AND DEFENSE OF AGREEMENT.

- A. <u>Litigation</u>. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("*Litigation*"), the party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.
- B. <u>Defense</u>. The County and the Taxpayer do hereby agree to use their respective best efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto. Each party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The County and the Taxpayer do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 7. TERM.

This Agreement shall be in full force and effect from and after the Effective Date and shall continue until the date that is five (5) years after the Commencement Date ("Term"). This Agreement shall, during its Term, inure to the benefit of and be enforceable by the Taxpayer and the County, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

SECTION 8. RELEASE OF INFORMATION.

The Taxpayer agrees to execute and provide all documentation necessary to cause the Illinois Department of Revenue to release to the County the Sales Tax generated by the Taxpayer from the Property, including copies of State of Illinois Sales Tax Reports, during each of the Sales Tax Years pursuant to applicable State law.

SECTION 9. PAYMENT OF COUNTY FEES AND COSTS.

In addition to any other costs, payments, fees, charges, contributions, or dedications specifically required by this Agreement, the Taxpayer shall pay to the County, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions required by applicable County codes, ordinances, resolutions, rules, or regulations. If any money due from the Taxpayer to the County pursuant to this Agreement is not paid to the County by the Taxpayer within 30 days after a demand for the payment, then that money, together with interest and costs of collection, including legal fees and administrative expenses, shall be a debt of, and an obligation owed by, the Taxpayer to the County and the County shall have the right to collect that amount, with interest and costs, including legal fees and administrative expenses, from the Taxpayer.

SECTION 10. LIABILITY AND INDEMNITY OF COUNTY.

- A. <u>No Liability for County Review</u>. The Taxpayer acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any violations of restrictive covenants applicable to the Property that may occur, or for any damages or injuries that may be sustained, as the result of the County's review and approval of any plans for the Property, or as a result of the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; and (2) that the County's review and approval of any of the plans and the issuance of any of the approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Taxpayer, or any of its heirs, successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.
- B. <u>County Procedures</u>. The Taxpayer acknowledges that notices, meetings, and hearings have been properly given and held by the County with respect

to the approval of this Agreement and agrees not to challenge any of those actions on the grounds of any procedural infirmity or of any denial of any procedural right.

- C. <u>Indemnity</u>. The Taxpayer agrees to, and does hereby, hold harmless and indemnify the County, the Corporate Authorities, all County elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of those parties, including but not limited to (i) the development, construction, and maintenance of the Property; (ii) the violation of any restrictive covenant applicable to the Property; and (iii) the performance by the Taxpayer of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.
- D. <u>Defense Expenses</u>. The Taxpayer shall, and does hereby agree to, pay, without protest, all expenses incurred by the County in defending itself with regard to any and all of the claims identified in Subsection C of this Section. These expenses shall include all out-of-pocket expenses, including attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the County, not to exceed their actual salaries.
- E. **Exceptions.** With regards to any claims against the County, the Corporate Authorities, all County elected and appointed officials, officers, employees, agents, representatives, and attorneys, arising out of (i) the County's review and approval of any plans, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property, unless such claim arises as a result of information or representations provided by the Taxpayer to the County or (ii) any actions taken by the County pursuant to Subsection B of this Section, the Taxpayer shall have the option to void this agreement and immediately return all monies paid under this agreement, and then not be obligated to indemnify nor be obligated to pay Defense Expenses pursuant to Section D above.

SECTION 11. ENFORCEMENT.

- A. <u>Enforcement</u>. The parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Taxpayer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County, or any past, present, or future director, member, elected or appointed officer, official, agent, representative, employee, or attorney, of the County on account of the negotiation, execution, or breach of this Agreement. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the County shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings and structures within the Property at any time when the Taxpayer has failed or refused to meet fully any of its obligations under this Agreement.
- B. <u>Notice and Cure</u>. Neither party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section

without first providing written notice to the other party of the breach or alleged breach and allowing 30 days to cure the breach or alleged breach. If the breach cannot be cured within the 30-day period ("*Time for Cure*"), then the Time for Cure shall be extended accordingly, provided that the notified party has promptly commenced to cure the breach and continued to prosecute the cure of the breach with diligence.

SECTION 12. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

- **A.** <u>Obligations</u>. The parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute both the personal obligation of the party liable for its payment, and the successors of that party.
- **B.** <u>Binding Effect</u>. The Taxpayer acknowledges and agrees that this Agreement shall be binding upon the Taxpayer and any and all of its heirs, successors, and assigns and the successor owners of record of all or any portion of the Property.
- **C.** <u>Prohibited Assignments</u>. It is the express intent of the parties that, except as expressly provided or allowed in this Subsection, this Agreement, and all of the rights and privileges granted herein, are for the sole and exclusive benefit of the Taxpayer. Accordingly, notwithstanding any provision of this Agreement, in the event that the Taxpayer does, or attempts to, voluntarily or involuntarily transfer its interests in the Property, in whole or in part, without the prior consent of the Corporate Authorities, this Agreement, and all of the rights and privileges granted herein, shall, at the option of the County, become null and void and be of no force or effect. If the Taxpayer changes corporate form, enters a joint venture with another entity, or there is a like change in legal structure, but the employment and operations at the Property are not substantially altered, the consent of the Corporate Authorities shall not be unreasonably withheld.

SECTION 13. REPRESENTATIONS AND WARRANTIES.

In order to induce the County to enter into this agreement and to grant the rights herein provided, the Taxpayer hereby warrants and represents to the County as follows:

- A. The Taxpayer is a duly organized, validly existing corporation in good standing under the laws of the State of Illinois.
- B. The Taxpayer has the authority and the legal right to make, deliver, execute, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.
- C. All necessary consents of any Board of Directors, shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.

- D. The consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the County, and the State of Illinois with respect to distribution of Sales Taxes) has been obtained in connection with the execution, delivery, performance, validity, and enforceability of this Agreement.
- E. The individuals executing this Agreement on behalf of the Taxpayer have the power and authority to execute and deliver this Agreement on behalf of the Taxpayer.
- F. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of the Taxpayer; (ii) will not result in a breach or default under any agreement to which the Taxpayer is a party or to which the Taxpayer, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which the Taxpayer or/and the Property, in whole or in part, is or are subject.

SECTION 14. GENERAL PROVISIONS.

- A. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between the parties.
- B. <u>Amendments and Modifications</u>. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.
- C. <u>Notices</u>. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the County shall be addressed to, and delivered at, the following address:

County of Lake 9th Floor 18 North County Street Waukegan, Illinois 60085 Attention: County Administrator

With a copy to:

Chief Deputy, Civil Trial Division Lake County State's Attorney's Office 18 North County Street, 5th Floor Waukegan, IL 60085

Notices and communications to the Taxpayer shall be addressed to, and delivered at, the following address:

Akhan Semiconductor, Inc. c/o Adam Khan 1020 Lakeside Drive Gurnee, Illinois

With a copy to:

Mark Becker, Esq. 2300 Barrington Road, Suite 400 Hoffman Estates, IL 60195

- D. <u>Governing Law</u>. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflict of laws rules, of the State of Illinois.
- E. <u>Interpretation</u>. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- F. <u>Change in Laws</u>. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include the laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

- G. <u>Headings</u>. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
- H. <u>Time of Essence</u>. Time is of the essence in the performance of this Agreement.
- I. <u>No Third Party Beneficiaries</u>. Except as expressly provided in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or valid against the County.
- J. <u>Non-severability</u>. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the entire remainder of this Agreement shall, thereupon, be null and void and of no further force and effect, it being the intent of the parties that all of the provisions of this Agreement shall be treated as an individual whole.
- K. <u>Calendar Days and Time</u>. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.
- L. <u>Exhibit</u>. Exhibit A is attached to this Agreement, and by this reference incorporated in and made a part of, this Agreement. In the event of a conflict between Exhibit A and the text of this Agreement, the text of this Agreement shall control.
- M. <u>Counterparts</u>. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- N. <u>Waiver</u>. Neither the County nor the Taxpayer shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the County or the Taxpayer to exercise at any time any of those rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the County's or the Taxpayer's right to enforce those rights or any other rights.
- O. <u>Rights Cumulative</u>. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.
- P. <u>Consents</u>. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee,

agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

Q. <u>Grammatical Usage and Construction</u>. In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:	COUNTY OF LAKE
Carla N. Wyckoff County Clerk	Aaron Lawlor County Board Chairman
ATTEST:	AKHAN SEMICONDUCTOR, INC.
Ву:	By:
Its:	Its:

STATE OF ILLINOIS)			
COUNTY OF LAKE	, 55			
	instrument was acknowledged before me or			
of the COUNTY OF	, 2014, by Aaron Lawlor, the COUNTY BOARD CHAIRMA F LAKE , an Illinois body politic and corporate, and by Willar y Clerk of said body politic and corporate.			
Notary Public				
My Commission Expir	es:			
(SEAL)				
STATE OF ILLINOIS)			
COUNTY OF LAKE) SS)			
This	instrument was acknowledged before me or . 2014, by . the			
AKHAN TECHNOLO	, 2014, by, the of said company, and by of said company.			
Notary Public				
My Commission Expir	es:			

ACKNOWLEDGEMENTS

(SEAL)

EXHIBIT A

Legal Description of the Property

Lot 84 (except the south 40 feet thereof) and Lots 85 through 92, both inclusive, in Grant Tri-State Business Park – Unit 1, being a subdivision of parts of Sections 15 and 16, Township 45 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded August 12, 1987 as Document 2600878 in Lake County, Illinois.

PIN, 07-16-402-052 1020 Lakeside Drive, Gurnee, Illinois