**SPONSORED RESEARCH AGREEMENT**

This Sponsored Research Agreement (herein “**Agreement**”) made and effective as of the date of last signature below (the “**Effective Date**”) by and between **KENT STATE UNIVERSITY**, a State of Ohio institution of higher education (“**KENT**”) located at 800 E. Summit Street, 207 Schwartz Center, Kent, Ohio 44242, U.S.A., and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**SPONSOR**”) a corporation having its principal office at . KENT and SPONSOR may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

**Background**

The Project (defined below) contemplated by this Agreement is of mutual interest and benefit to KENT and to the SPONSOR, and will further the instructional, research, and service objectives of KENT in a manner consistent with its status as a state institution of higher education,

**NOW, THEREFORE,** in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. **STATEMENT OF WORK.** KENT agrees to use its reasonable efforts to perform the

 research project as set forth in Exhibit “A” (the “**Project**”).

2. **PRINCIPAL INVESTIGATOR.** The Project will be supervised at KENT by Dr. (“**Principal Investigator**”). If, for any reason, the Principal Investigator is unable to continue to serve as Principal Investigator, SPONSOR and KENT shall attempt to find a successor acceptable to both Parties. If such a successor is not available, this Agreement shall be terminated as provided in Article 7.

3. **PERIOD OF PERFORMANCE**. The term of this Agreement shall begin on the Effective Date and terminate on (the “**Termination Date**”). The Project shall be performed during the period beginning after the Effective Date on and shall end on the Termination Date unless otherwise agreed by the Parties. The Agreement will be subject to renewal only by written mutual agreement of the Parties.

4. **PAYMENT.** This is a fixed price agreement. Payment in the amount of ($) shall be made to KENT by the SPONSOR in U.S. dollars, due and payable in equal quarterly increments annually with the first quarterly payment due on the beginning date of the Project and with payments continuing every ninety (90) days thereafter with the final payment of all funds unpaid due on the ending date of the Project after Sponsor receives acceptable reasearch achievement and related report.

5. **REBUDGETING.** KENT shall be allowed to rebudget funds without prior written approval from SPONSOR so long as such rebudgeting does not result in a modification of the Project and/or an increase in the Payment authorized by this Agreement.

6. **TERMINATION.**

1. In the event that either party commits a material breach of its obligations under this Agreement and fails to cure that breach within thirty (30) days after receiving written notice thereof, the other party may terminate the Project immediately upon written notice to the party in breach.

B. In the event of termination of the Project by SPONSOR, SPONSOR shall pay KENT within thirty (30) days after receipt of an invoice from KENT, for the portion of the Project performed as of the date of termination plus all reasonable costs incurred by KENT as a result of such termination including, but not limited to: (i) costs to cancel contracts entered into prior to receipt of notice of termination from SPONSOR, and (ii) costs of non-cancelable contracts, such as fellowships or postdoctoral associate appointments, entered into prior to receipt of notice of termination from SPONSOR. Notwithstanding the foregoing, in no event shall the total amount due KENT under this Agreement, including the amounts due pursuant to the provisions of this Section 6, exceed the sum set forth in Section 4 for the performance of the Project.

7. **REPORTS AND CONFIDENTIAL INFORMATION.**

A. KENT will comply with the reporting requirements specified in Exhibit “A”. If none are specified, a report will be submitted by KENT’s Principal Investigator annually or at the conclusion of the performance period if the performance period is less than one year.

B. For the purposes of this Agreement, “**Confidential Information**” means all information which is disclosed or provided to one Party to this Agreement (Receiving Party) by the other Party (Disclosing Party), whether in written form and marked “confidential,”, or in oral or electronic form which is reduced to written format and is designated in writing as confidential.

C. During the term including any extensions of this Agreement, and for a period of three (3) years thereafter, the Parties shall not use or disclose to any third Party without prior written consent of the other Party, any Confidential Information of the other Party.

D. The Receiving Party shall have no obligations with respect to any portion of such Confidential Information which:

(1) is or later becomes generally available to the public by use, publication, or the like, through no fault of the Receiving Party; or

(2) is obtained without an obligation of confidentiality from a third Party who had the legal right to disclose the same to the Receiving Party; or

(3) the Receiving Party already possesses, as evidenced by its written records, pre-dating receipt thereof from the Disclosing Party; or

(4) the Receiving Party independently develops without reference to Confidential Information of the Disclosing Party; or

(5) is required to be disclosed by law. If a valid Ohio Open Records Act request is made, KENT shall notify SPONSOR three (3) business days in advance of releasing any Confidential Information.

(6) The Receiving Party discloses in litigation as necessary to enforce its rights under this Agreement.

 E. During the term of the Agreement, the Parties will not disclose to each other any

information which is confidential or proprietary to the Disclosing Party or any third Party, except as necessary for the Disclosing Party to fulfill its obligations under this Agreement or unless the Receiving Party has agreed in writing to accept such disclosure. All other communications between the Parties shall be on a non-confidential basis.

8. **PUBLICATIONS.**

A. SPONSOR recognizes that the results of the Project may be publishable and agrees that KENT’s Principal Investigator and other persons performing the Project for KENT shall be permitted to present at symposia and professional meetings and to publish in journals, theses or dissertations, or otherwise of their own choosing, the methods and results of the Project.

B. In order that SPONSOR and KENT may (i) assess the patentability of any invention described in the material and (ii) review the material for Confidential Information provided by the SPONSOR, Principal Investigator agrees to furnish SPONSOR and KENT’s Office of Technology Commercialization with a copy of any proposed publication or presentation at least thirty (30) days prior to submission of such proposed publication or presentation to a journal, editor, or other third Party. If the SPONSOR or KENT decides that a patent application should be filed, the publication or presentation shall be delayed until a patent application is filed. At written request of SPONSOR, Confidential Information provided by SPONSOR shall be deleted.

9. **RIGHTS IN INTELLECTUAL PROPERTY.**

 A. Definitions.

## “Intellectual Property” means and includes all technical information, inventions, trade secrets, patents, copyrights, trademarks, research, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes, specimens, biological materials, software, designs, drawings, sketches and other proprietary ideas, whether or not patentable or copyrightable, developed during the Project.

1. “**Kent Intellectual Property**” shall mean individually and collectively all

Intellectual Property that is conceived and/or made solely by one or more employees of KENT in performance of the Project. It is understood and agreed by the parties that any person who is a KENT employee, faculty member or student as defined in Ohio R.C. 3345.14 shall be considered to be a KENT employee herein.

1. “**Sponsor Intellectual Property**” shall mean individually and collectively all Intellectual Property conceived of and/or made solely by the employees of SPONSOR without the use of University facilities or equipment, in performance of the Project.

1. “**Joint Intellectual Property**” shall mean individually and collectively all Intellectual Property which is conceived and/or made jointly by one or more employees of Kent and by one or more employees of SPONSOR in performance of the Project.
2. Ownership of Intellectual Property; Disclosure.

(1) Pursuant to Ohio R.C. 3345.14, all rights and title to Kent Intellectual Property shall belong to Kent. Sponsor Intellectual Property shall belong to SPONSOR. Joint Intellectual Property shall belong jointly to KENT and SPONSOR. KENT Intellectual Property and Joint Intellectual Property shall be subject to the terms and conditions of this Agreement.

(2) Disclosure.

1. KENT will provide SPONSOR with a written, confidential disclosure of any Kent Intellectual Property or Joint Intellectual Property conceived and/or made during the term of the Project after an invention disclosure is received by KENT’s Office of Technology Commercialization.
2. SPONSOR will provide KENT with a written, confidential disclosure of any Joint Intellectual Property conceived and/or made during the term of the Project.
3. The Party receiving such disclosure agrees to hold any disclosed Intellectual Property in confidence and will not further disclose or use such Intellectual Property other than as agreed under this Agreement.

 C. License Rights to Kent and Joint Intellectual Property.

(1) In consideration of SPONSOR’s participation as a sponsor of the Project, KENT shall grant to SPONSOR a first option to negotiate a royalty-bearing exclusive license to practice Kent Intellectual Property and/or Joint Intellectual Property and to make, have made, use and sell products using or incorporating Kent Intellectual Property and/or Joint Intellectual Property in exchange for SPONSOR’s agreement to diligently commercialize such Intellectual Property. Under such exclusive license, KENT will retain the right to make and use the Kent Intellectual Property and/or Joint Intellectual Property for academic and research purposes.

 (2) If SPONSOR desires to exercise its option, KENT and SPONSOR will negotiate in good faith to determine the terms of a license agreement. If KENT and SPONSOR fail to execute a license agreement within three (3) months following the first disclosure of the Kent Intellectual Property and/or Joint Intellectual Property to SPONSOR, then:

(a) KENT shall be free to license the Kent Intellectual Property to any third party upon such terms as KENT deems appropriate and without further obligation to SPONSOR; or

(b) SPONSOR or KENT can freely practice any Joint Intellectual Property for any purpose, and SPONSOR or KENT will inform and advise the other party when Joint Intellectual Property is licensed to third parties. The parties agree to share all license fee and royalties (“**Earnings**”) derived from such license and license fee and royalties shall be distributed in accordance with the following allocation: After the deduction of any reasonable KENT or SPONSOR Expenses from Earnings, Earnings will be distributed between KENT and SPONSOR on a 50/50 basis.

Notwithstanding the preceding in this Section C(2), neither SPONSOR nor KENT shall assign, transfer, or grant an exclusive license to Joint Intellectual Property to any third party without prior written consent of the other Party. Any such assignment, transfer, grant or exclusive license without prior written consent of the other Party shall be null and void.

(3) Either SPONSOR or KENT can freely practice any Joint Intellectual Property for its own internal research or academic purposes, regardless of any subsequently issued license agreement pursuant to this Section 9(C).

 D. Statutory Protection for Intellectual Property.

1. If Sponsor directs that a patent application or application for other

Intellectual Property protection be filed, KENT shall promptly prepare, file and prosecute such U.S. and foreign applications in KENT’s name if for Kent Intellectual Property, and in both KENT’s and SPONSOR’s names if for Joint Intellectual Property. SPONSOR shall bear all costs incurred in connection with such preparation, filing, prosecution, and maintenance of U.S. and foreign application(s). SPONSOR shall cooperate with KENT to assure that such application(s) will cover, to the best of SPONSOR’s knowledge, all items of commercial interest and importance. While KENT shall be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, SPONSOR shall be given an opportunity to review and provide input thereto. At SPONSOR’s request, KENT shall keep Sponsor advised as to developments with respect to such application(s) and shall use best efforts to supply to SPONSOR copies of papers received and filed in connection with the prosecution thereof in sufficient time for SPONSOR to comment thereon.

1. If SPONSOR elects not to seek protection pursuant to 9(D)(1), or decides to discontinue the financial support of the prosecution or maintenance of the protection, or elects not to exercise its option pursuant to Section 9(C), and thereby forego its rights thereto, KENT shall be free to file or continue prosecution or maintain any such application(s), and to maintain any protection issuing thereon in the U.S. and in any foreign country at KENT’s sole expense and for its own purposes.

E. Government Rights and Background IP.

The Parties acknowledge that KENT has informed SPONSOR of KENT background intellectual property related to this Project referred to by KENT as **KSU\_\_\_\_\_.**which includes US Patent No. , entitled “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” invented by and assigned to KENT (“**Background IP**”). KENT has informed SPONSOR that practice of any Kent or Joint Intellectual Property may require a license to SPONSOR from KENT to Background IP; and KENT has offered to negotiate a license to SPONSOR of this Background IP in mutual good faith and under reasonable commercial terms and rates and in accordance with US Government requirements.

10. **DISCLAIMER**. Nothing in this Agreement shall be construed as:

A. A warranty or representation by KENT as to the validity or scope of any patent.

B. An obligation to bring or prosecute actions or suits against third parties for infringement;

C. Conferring rights to use in advertising, publicity or otherwise any trademark or the name of KENT; or

D. Granting by implication, estoppel or otherwise any licenses under patents of KENT other than patent(s) identified herein or licensed to SPONSOR, regardless whether such other patents are dominant or subordinate to any such patent(s).

11. **KENT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF A SPONSORED PROJECT, OR THE CONDITION OF ANY INTELLECTUAL PROPERTY, INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT OR ANY SUCH INVENTION OR PRODUCT, OR ANY ACTIVITY PERFORMED OR DELIVERABLE PROVIDED HEREUNDER SHALL BE FREE OF INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS. KENT SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY SPONSOR OR ANY OTHER PERSON RESULTING FROM THE PROJECT OR THE USE OF ANY SUCH INTELLECTUAL PROPERTY, INVENTION OR PRODUCT.**

**12. REPRESENTATIONS; INDEMNIFICATION.**

A.KENT hereby represents to Sponsor as follows:

1. KENT has made adequate arrangements to provide the personnel and facilities necessary to perform the Research Project;
2. KENT has full and unrestricted right and power to grant to Sponsor the rights granted hereunder;
3. KENT and the Principal Investigator will use commonly accepted methods and procedures in conducting the Research Project and maintain standards for the Research Project that are commensurate with similar standards for research conducted by KENT for itself or for others.
4. Sponsor will indemnify, defend, and hold harmless KENT, its respective trustees, directors, faculty, employees, agents, contractors, subcontractors, fellows and students (the “**Indemnitees**”) from any liability, damage, loss, or expense (including attorneys’ fees and expenses of litigation) incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with this Agreement or the research done under this Agreement (“**Claims**”), except to the extent that the liability is due to the gross negligence or willful misconduct of KENT. KENT will notify Sponsor of any Claims and will cooperate with Sponsor in the defense of the Claims. Sponsor will, at its own expense, provide attorneys acceptable to the Ohio Attorney General to defend against any Claim with respect to which Sponsor has agreed to indemnify KENT. Sponsor will not make any settlement regarding KENT without the consent of KENT and the Ohio Attorney General, approval of which will not be unreasonably withheld. This indemnity will not be deemed excess coverage to any insurance or self-insurance KENT may have covering a Claim. Sponsor’s indemnity will not be limited by the amount of Sponsor’s insurance.

To the extent permitted by Ohio law, including but not limited to the Ohio Constitution, Ohio Revised Code Chapter 2743 et seq. and Ohio Revised Code Section 3345.40, KENT agrees to be responsible for those damages or losses, which arise directly from the negligent acts or omissions of KENT employees in performance of the Agreement, as may be determined by a court of competent jurisdiction.

Notwithstanding anything herein to the contrary, under no circumstances shall either Party be liable to the other Party for special, incidental, or consequential damages, including but not limited to loss of production or interruption of operations, lost profits or other indirect damages.

13. **PUBLICITY**. Neither Party shall make reference to the other in a press release or any other written statement in connection with work performed under this Agreement, if it is intended for use in the public media, without the approval of the other, except as required by law. KENT, however, shall have the right to acknowledge SPONSOR’s support of the investigations under this Agreement in scientific or academic publications without SPONSOR’s prior approval. In any such statements, the Parties shall describe the scope and nature of their participation accurately and appropriately.

14. **NOTICES**. All notices and other communications shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail, postage prepared, return receipt requested, or by electronic means, and addressed to the Party to receive such notice or other communication at the address given below, or such other address as may hereafter be designated by notice in writing. Such notices or other communications shall be effective upon receipt by the employee, agent or representative of the receiving Party authorized to receive notices or other communications sent or delivered in the manner set forth above.

 **KENT**  **SPONSOR**

 KENT STATE UNIVERSITY

 Administrative Contact: Administrative Contact:

 Name: Lori Burchard Name:

 Title: Director, Sponsored Programs Title:

 Address: 207 Schwartz Center Address:

800 E. Summit Street

Kent, OH 44242

 Telephone: 330-672-2070 Telephone:

 FAX: 330-672-7991 FAX:

Email: lburchar@kent.edu Email:

15. **ASSIGNMENT**. This Agreement shall be binding upon and shall inure to the benefits of the Parties hereto and the successors to substantially the entire business and assets of the respective Parties hereto. This Agreement shall not be assignable by either Party without the prior written consent of the other Party.

16. **GOVERNING LAW**. The validity and interpretation of this Agreement and the legal relation of the Parties to it shall be governed by the laws of the State of Ohio and the United States.

17. **GOVERNING LANGUAGE**. In the event that a translation of this agreement is prepared and signed by the Parties for the convenience of the SPONSOR, this English language version shall be the official version and shall govern if there is a conflict between the two.

18. **EXPORT CONTROL**.

A. It is understood that KENT is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the SPONSOR that the SPONSOR will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While KENT agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, KENT cannot guarantee that such licenses will be granted.

B. Each Party specifically agrees not to export, re-export, or import any information and/or technical data and/or products in violation of any applicable U.S. law and/or federal, state, or local regulations.

19. **FORCE MAJEURE**.

A. KENT shall not be responsible to the SPONSOR for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part of machinery or equipment or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage, or any cause beyond the reasonable control of KENT.

B. KENT shall notify SPONSOR within three (3) days after the occurrence of the Force Majeure Event and shall take all necessary actions to minimize and mitigate the losses and damages and resume its performance of this Agreement as soon as practicable.

20. **ENTIRE AGREEMENT**. Unless otherwise specified, this Agreement embodies the entire understanding between KENT and the SPONSOR for this project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total cost, and period of performance, shall be effective unless made in writing and signed by authorized representatives of the Parties.

21. **CONSTRUCTION.** This Agreement shall not be construed against the Party preparing it but shall be construed as if both parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one Party.

By signature below of duplicate originals, SPONSOR and KENT hereby agree to this Sponsored

Research Agreement as of the Effective Date.

**KENT STATE UNIVERSITY [SPONSOR]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Lori Burchard Printed Name:

 Director, Sponsored Programs Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PRINCIPAL INVESTIGATOR FOR**

**KENT STATE UNIVERSITY:**

I have read and understand the terms of the Agreement, and I agree to all terms and conditions

herein. Furthermore and in advance of their involvement, I will inform all Kent State University

personnel engaged in this sponsored research of all terms and conditions of this Agreement

and of their obligations to comply.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Principal Investigator

**EXHIBIT A**

**KENT STATE UNIVERSITY AUTHORIZED RESEARCH PROGRAM PROPOSAL**

(Confidential and Proprietary to Kent State University under Non-Disclosure Agreement)