

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): January 6, 2023

KemPharm, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-36913
(Commission
File Number)

20-5894398
(I.R.S. Employer
Identification No.)

**1180 Celebration Boulevard, Suite 103,
Celebration, FL**
(Address of principal executive offices)

34747
(Zip Code)

(321) 939-3416
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	KMPH	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On January 6, 2023, the Board of Directors (the “Board”) of KemPharm, Inc. (the “Company”) appointed Richard W. Pascoe to serve as the Company’s Chief Executive Officer, effective immediately. Concurrently with his appointment as Chief Executive Officer, Mr. Pascoe stepped down as the Company’s Executive Chairman. Mr. Pascoe will continue to serve as a member of the Board. Mr. Pascoe has been designated as the Company’s principal executive officer, succeeding Travis C. Mickle, Ph.D., the Company’s President and former Chief Executive Officer, in such role. On January 6, 2023, Dr. Mickle resigned his role (i) as Chief Executive Officer, effective immediately, and (ii) as President and as a member of the Board, in each case, effective as of the date of the Company’s 2023 Annual Meeting of Stockholders.

Additionally, the Board has appointed Matthew R. Plooster, a member of the Board, as the Chairman of the Board.

Richard W. Pascoe, age 58, has served as a director of the Company since January 2014 and served as the Company’s Executive Chairman from November 2021 to January 2023. From January 2019 to November 2021, Mr. Pascoe served as the president and chief executive officer and on the board of directors of Histogen Inc., a biologics company. From March 2013 to January 2019, Mr. Pascoe was the chief executive officer and director of Apricus Biosciences. From August 2008 to March 2013, Mr. Pascoe was the president and chief executive officer and a director of Pernix Sleep, Inc. (formerly known as Somaxon Pharmaceuticals, Inc.), a specialty pharmaceutical company. Prior to Pernix, from 2005 to 2008, Mr. Pascoe worked for ARIAD Pharmaceuticals, Inc., a specialty pharmaceutical company, where he was most recently senior vice president and chief operating officer. Mr. Pascoe also serves as a director of Seelos Therapeutics, Inc, a specialty pharmaceutical company. Mr. Pascoe received his B.S. degree from the United States Military Academy at West Point.

CEO Compensation

In connection with Mr. Pascoe’s appointment as the Company’s Chief Executive Officer, the Company and Mr. Pascoe entered into an amendment to the employment agreement, dated November 5, 2021, by and between the Company and Mr. Pascoe (the “Amendment”). Pursuant to the Amendment, (i) Mr. Pascoe’s annual base salary was increased to \$592,000, (ii) his annual performance-based target bonus was increased to 55% of his annual base salary, and (iii) he became entitled to receive an option under the Company’s Amended and Restated 2014 Equity Incentive Plan (the “Plan”) to purchase 700,000 shares of the Company’s common stock at an exercise price equal to the closing price of the Company’s common stock on January 9, 2023. The option will vest in four equal annual installments, with the first such installment occurring on January 6, 2024 (subject to Mr. Pascoe’s continued service to the Company through the applicable vesting date).

In addition, Mr. Pascoe will remain covered by the indemnification agreement that he previously entered into with the Company.

Transition Agreement and Consulting Agreement

In connection with the management transition, the Company entered into (i) a transition agreement with Dr. Mickle (the “Transition Agreement”) and (ii) a consulting agreement with Dr. Mickle (the “Consulting Agreement”). Pursuant to the terms of the Transition Agreement, subject to his timely delivering a release of claims in the Company’s favor, Dr. Mickle will receive severance payments and benefits consisting of (i) continued payment of his base salary for 18 months following the date on which Dr. Mickle’s employment with the Company ends (the “Separation Date”), (ii) up to 18 months of continued medical, dental and vision coverage pursuant to COBRA and (iii) a one-time, lump sum bonus payment equal to a pro rata amount of his annual performance-based target bonus for the year in which the Separation Date occurs. In addition, immediately prior to the Separation Date, all outstanding options to purchase the Company’s common stock held by Dr. Mickle will be vested in full, and such accelerated vested options may be exercised through the later of (i) the 18-month anniversary of the date of the Transition Agreement and (ii) the date of the termination of the Consulting Agreement.

Pursuant to the terms of the Consulting Agreement, Dr. Mickle has agreed to provide consulting services until the first anniversary of the Company’s 2023 Annual Meeting of Stockholders. In exchange for such services, Dr. Mickle will receive consulting fees of \$40,000 per month. In addition, Dr. Mickle was granted, under the Plan, 547,945 performance-based restricted stock units, which will vest in full upon the timely achievement of a clinical and development milestone, subject to forfeiture upon certain disqualifying events.

The foregoing descriptions of each of the Amendment, the Transition Agreement and the Consulting Agreement do not purport to be complete and are qualified in their entirety by reference to the full agreements, copies of which are attached as Exhibit 10.1, Exhibit 10.2 and Exhibit 10.3, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Description

No.

10.1 [Amendment to Employment Agreement, dated as of January 6, 2023, between KemPharm, Inc. and Richard W. Pascoe.](#)

10.2 [Transition Agreement, dated as of January 4, 2023, as amended, between KemPharm, Inc. and Travis C. Mickle, Ph.D.](#)

10.3† [Consulting Agreement, dated as of January 6, 2023, between KemPharm, Inc. and Travis C. Mickle, Ph.D.](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

† Portions of this exhibit (indicated by asterisks) have been omitted pursuant to Regulation S-K, Item 601(b)(10). Such omitted information is not material and the registrant customarily and actually treats such information as private or confidential.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

KemPharm, Inc.

Date: January 9, 2023

By: /s/ R. LaDuane Clifton

R. LaDuane Clifton, CPA

Chief Financial Officer, Secretary and Treasurer

KEMPHARM, INC.
FIRST AMENDMENT TO
EXECUTIVE EMPLOYMENT AGREEMENT

This **FIRST AMENDMENT TO EXECUTIVE EMPLOYMENT AGREEMENT** (this "First Amendment") is entered into this 6th day of January, 2023 (the "Effective Date"), by and between Richard Pascoe (the "Executive") and KemPharm, Inc. (the "Company") (each being a "Party" hereto and together constituting the "Parties").

WHEREAS, the Company and Executive have entered into that certain Employment Agreement dated as of November 5, 2021 (the "Employment Agreement"); and

WHEREAS, Executive and the Company have agreed to amend certain terms of the Employment Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy and sufficiency of which is hereby acknowledged, the Company and Executive agree as follows:

1. Amendment to Section 1(A). Section 1(A) of the Employment Agreement is hereby amended as follows: Executive's position with the Company is changed from Executive Chairman to Chief Executive Officer ("CEO").

2. Amendment to Section 1(C). Section 1(C) of the Employment Agreement is hereby replaced in its entirety as follows:

Duties of Executive. During the Employment Term, all of the following shall apply: Executive shall carry out, perform and comply with such reasonable and lawful orders, directions, and written rules and policies (including those rules and policies memorialized in meeting minutes) as are assigned or set by Company's board of directors (the "Board of Directors") from time to time. Executive shall report to, receive directions from and be reviewed by the Board of Directors. Executive's duties shall include the duties and responsibilities commonly associated with a CEO of a company similar to Company. Subject to the limitations of Section 4(E)(3)(iv), the Board of Directors retains the right to modify Executive's responsibilities pursuant to the legitimate business needs of Company. While serving as CEO, Executive will also be a member of the Board, but will not serve as its Chair unless specifically appointed as such.

3. Amendment to Section 2(A). Section 2(A) of the Employment Agreement is hereby amended as follows: Executive's Base Salary is increased from \$400,000 to \$592,000.

4. Amendment to Section 2(B). Section 2(B) of the Employment Agreement is hereby amended as follows: Executive's Target Annual Bonus is increased from 50% to 55%.

5. Addition of Section 2(E)(3). A new Section 2(E)(3) is hereby added to the Employment Agreement as follows:

Subject to Board approval, the Company will grant to the Executive an incentive stock option to purchase 700,000 shares of common stock, with a vesting commencement date of January 6, 2023. The option will have an exercise price equal to the closing price of the common stock as reported on the NASDAQ Global Market on January 9, 2023. The option will vest in four equal annual installments, beginning on the first anniversary of the vesting commencement date (January 6, 2024), subject to Executive's continuous service through each such vesting date.

6. Amendment to Exhibit B. The first recital of Exhibit B to the Employment Agreement is hereby amended as follows: Executive's position with the Company is changed from Executive Chairman to CEO.

7. No Other Amendments. Except as modified or amended in this First Amendment, no other term or provision of the Employment Agreement is amended or modified in any respect. The Employment Agreement, and this First Amendment, set forth the entire understanding between the parties with regard to the subject matter hereof and supersedes any prior oral discussions or written communications and agreements. This First Amendment cannot be modified or amended except in writing signed by Executive and an authorized officer of the Company.

The parties have executed this First Amendment to Executive Employment Agreement on the day and year first written above.

KEMPHARM, INC.

EXECUTIVE

By: /s/ Matthew R. Plooster

/s/ Richard Pascoe

Name: Matthew R. Plooster

Richard Pascoe

Title: Chairman of the Board of Directors

January 4, 2023
(as modified on January 5, 2023)

Travis Mickle
tmickle@kempharm.com

Re: Transition Agreement

Dear Travis:

This letter sets forth the terms of the mutual agreement (the "**Agreement**") between you and KemPharm, Inc. (the "**Company**") regarding your employment transition.

1. Transition Period and Services. As we discussed, you have resigned and the Company has accepted your resignation and we have mutually agreed to the transition terms and severance benefits as set forth in this Agreement and consistent with the Employment Agreement between you and the Company, effective as of May 30, 2014 (as amended on October 13, 2015) (the "**Employment Agreement**"). If you execute and return this Agreement within seven (7) days of receipt, then your employment with the Company will continue for a Transition Period through the date of the Company's 2023 Annual Meeting of Stockholders (the "**2023 Annual Meeting**," and such transition period the "**Transition Period**") or such earlier date as your employment ends as mutually agreed to between you and the Company. If you do not timely execute this Agreement, your employment will end on the date that is eight (8) days after you receive this Agreement. The date your employment ends for any reason is your "**Separation Date**." By your signature to this Agreement, you resign from the Board of Directors of the Company (the "**Board**") and from each officer position you hold with the Company, effective as of the Separation Date. During the Transition Period, you will be expected to continue to work from the Company's Celebration, Florida office, be available to support development and approval of arimoclomol and for transition matters that come up during regular business hours and provide such transition activities as may be assigned to you by the Company's Chief Executive Officer (the "**CEO**") or the CEO's designee. Of course, we anticipate that you may want to spend reasonable time during business hours to conduct job search activities. The Company asks that you schedule such activities during the Transition Period in such a way as to not unreasonably interfere with your requested duties to the Company during this time. You agree through the Transition Period to continue to abide by all of your obligations to the Company and the Company's policies and procedures. During the Transition Period, your job title will be President, your base salary will remain the same, subject to standard deductions and withholdings, and you will retain your current eligibility to participate in benefits plans. The Company will work with you in good faith on the messaging around your departure.

2. Severance Benefits. The Company is offering you severance benefits pursuant to Section 4 of the Employment Agreement, and the Company is offering you enhanced transition and severance benefits above the benefits contained in Section 4(E)(1) of your Employment Agreement. If you (i) execute and return this Agreement within seven (7) days of receipt, (ii) complete the Transition Period under this Agreement and fully comply with the terms herein, and (iii) execute the Updated Release of Claims attached to this Agreement as **Exhibit A** and made a part of this Agreement (the "**Updated Release**") on the Separation Date and allow it to become effective, and provided your termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a "**Separation from Service**"), then the Company will provide you with the following "**Severance Benefits**", including all benefits that fully satisfy the Company's obligations under the Employment Agreement:

(a) Severance Payments. The Company will make severance payments to you in the form of continuation of your base salary in effect on the Separation Date for eighteen (18) months following the Separation Date. These payments will be subject to standard payroll deductions and withholdings and will be made on the Company's ordinary payroll dates, beginning with the first such date which occurs at least eight (8) business days following the "Effective Date" (as defined in the Updated Release), provided the Company has received the executed Updated Release from you on or before that date.

(b) COBRA Premiums. If you are participating in the Company's group health insurance plans and you timely elect continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 or any applicable state equivalent ("**COBRA**"), and timely execute and return this Agreement and allow it to become effective, the Company will pay the COBRA premium payments sufficient to continue your group coverage at its current level (including coverage for your eligible dependents, if applicable) until the earlier of: (A) eighteen (18) months following the Separation Date, (B) the expiration of your eligibility for the continuation coverage under COBRA, or (C) such time as you become eligible for health insurance at another employer or self-employment (such period from the Separation Date through the earliest of (A) through (C), the "**COBRA Payment Period**"). If you elect COBRA coverage and are not eligible for Company payments as described above, you will be responsible to pay the premiums. Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that the payment of the COBRA medical premiums would result in a violation of the nondiscrimination rules of Section 105(h) (2) of the Internal Revenue Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then provided you remain eligible in accordance with this Section 2(b), in lieu of providing the COBRA medical premiums, the Company will instead pay you on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA medical premiums for that month, subject to applicable tax withholdings for the remainder of the COBRA Payment Period, plus an additional payment such that the net amount retained by you after deduction for all payments required to be made to any federal, state or local authorities equals the amount of the monthly COBRA premium. In the event you become covered under another employer's group health plan or otherwise cease to be eligible for COBRA coverage, you must immediately notify the Company within five (5) days of obtaining such coverage, and the Company's obligation to pay COBRA premiums shall cease.

(c) Pro-Rated Bonus Payment. The Company will make a one-time, lump sum payment to you, subject to applicable deductions and withholdings, that is equivalent to the amount of your pro rata Target Annual Bonus for the year in which the Separation Date occurs (determined as the Target Annual Bonus in effect for the year in which the Separation Date occurs, multiplied by a fraction, the numerator of which is the number of days in which you were employed by Company during the year in which the Separation Date occurs, including the Separation Date, and the denominator of which is 365). This payment will be paid in a lump sum in the next payroll cycle following the Effective Date as defined below, provided the Company has received the executed Updated Release from you on or before that date.

(d) Accelerated Vesting and Extension of Exercise Period. The Company will also provide you with accelerated vesting of each outstanding equity award granted to you as of the Separation Date and extend the exercise period, as described in Section 6.

(e) Consulting Opportunity. The Company will, effective immediately upon the Separation Date, retain you as a non-employee consultant to perform such services as set forth in a separate Consulting Agreement between you and the Company, pursuant to the terms and conditions set forth therein. You must sign and return the Consulting Agreement no later than the date you execute and return this Agreement to the Company.

The Company is offering the Severance Benefits to you in reliance on Treasury Regulation Section 1.409A-1(b)(9) and the short-term deferral exemption in Treasury Regulation Section 1.409A-1(b)(4). Any payments made in reliance on Treasury Regulation Section 1.409A-1(b)(4) will be made not later than March 15, 2024. For purposes of Code Section 409A, your right to receive any installment payments under this letter (whether severance payments, reimbursements or otherwise) shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment.

3. Accrued Salary and 2022 Bonus. On or before the Company's next regular payroll date following the Separation Date, the Company will pay you all accrued salary earned through the Separation Date and your annual bonus payment for calendar year 2022, subject to standard payroll deductions and withholdings. You will receive these payments regardless of whether or not you sign this Agreement. You acknowledge that the Company maintains a non-accrual paid time off ("**PTO**") policy and as a result, you have no accrued but unused PTO that the Company is obligated to pay you upon your separation from employment.

4. Effect of Early Termination. If this Agreement ends before the 2023 Annual Meeting by mutual agreement, you will be eligible for the same severance benefits and on the same terms as described in Section 2 above. If you resign without the Company's Agreement prior to the 2023 Annual Meeting, you will be eligible for the severance benefits described in subsections (a) through (d) of Section 2 and on the same terms as described therein, but you will not be eligible for the Consulting Opportunity described in Section 2(e).

5. Benefit Plans.

If you are currently participating in the Company's group health insurance plans, your participation as an employee will end on the last day of the month in which the Separation Date occurs. Thereafter, to the extent provided by the federal COBRA law or, if applicable, state insurance laws, and by the Company's current group health insurance policies, you will be eligible to continue your group health insurance benefits at your own expense (but if you execute this Agreement, with the potential for certain payments to be made by the Company in accordance with Section 2(b) above).

Your participation in Employer-Sponsored Group Life Insurance and Short and Long Term Disability Insurance, or other applicable insurance, will cease as of the Separation Date; however, you may elect to convert any eligible Employer-Sponsored Group Life Insurance, Short and Long-Term Disability Insurance or Individual Life Insurance policies by contacting LaDuane Clifton, CFO, within thirty (30) days following the Separation Date

If you are participating in the Company's 401(k) Plan, deductions for the 401(k) Plan will end with your last regular paycheck. You will receive information by mail concerning 401(k) plan rollover procedures should you be a participant in this program. If you are participating in the Company's Employee Stock Purchase Plan ("**ESPP**"), deductions for the ESPP will end with your last regular paycheck. If the Separation Date occurs prior to the next ESPP purchase date, deductions held on your behalf during the then current purchase period shall be returned to you in accordance with the requirements and provisions of the ESPP plan documents.

You have the right to continue your current Health Care Spending Account if you are participating in this program. Enclosed is the information concerning how to continue this benefit. Dependent Care Spending Accounts cannot be continued. Your last full Dependent Care Spending Account expense reimbursements will be processed within the calendar month following the Separation Date.

6. Stock Options. You were granted an option to purchase 638,564 shares of the Company's common stock (the "**Option**") pursuant to the Company's Amended and Restated 2014 Equity Incentive Plan (the "**Plan**"). Under the terms of the Plan and your stock option grant notices and stock option agreements governing the Option (the "**Option Documents**"), vesting of the shares subject to your Option will cease upon the termination of your Continuous Service (as defined in the Plan). Notwithstanding anything to the contrary in the Option Documents and any other documents between you and the Company setting forth the terms of the Option, if you timely execute this Agreement and timely execute and do not revoke the Updated Release, the Board will modify and accelerate in full the vesting of all outstanding equity awards held by you immediately prior to the Separation Date. Your right to exercise the accelerated vested shares will be as provided in the Option Documents.

In addition, notwithstanding anything to the contrary in the Plan or the Option Documents, if you timely execute this Agreement and timely execute and do not revoke the Updated Release, then the Board is expected to extend the exercise period for any vested shares granted as an incentive stock option so that such vested Option may be exercised through the later of: (i) the eighteen (18) month anniversary of the date hereof and (ii) the date of termination of the Consulting Agreement (the "**Option Exercise Extension**"). Except as provided in this Agreement, all terms, conditions and limitations applicable to the Option will remain in full force and effect pursuant to the Plan and Option Documents. The Company makes no representations or guarantees regarding the status of your Option as incentive stock options ("**ISOs**"). You understand and agree that a modification of any option that is an ISO (including the Option Exercise Extension) may result in the option becoming a non-qualified stock option ("**NSO**") for federal tax purposes, which may be less favorable to you from a tax standpoint. Likewise, to the extent any option granted as an ISO (and which has retained its ISO status) is exercised with respect to any vested shares later than the date that is three (3) months following the Separation Date, your Option will be treated as NSOs for federal tax purposes, and you will be obligated to satisfy your tax obligations that arise when you exercise the Option. No shares of the Company's common stock will be issued to you in respect of your exercise of any option granted as an ISO after the date that is three (3) months following the Separation Date and any options granted as NSOs unless and until you satisfy such tax obligations. You acknowledge that the Company is not providing tax advice to you and that you have been advised by the Company to seek independent tax advice with respect to the exercise of the Option. By signing this Agreement, you accept the Option Exercise Extension in respect of your ISOs and acknowledge that such options may no longer qualify as ISOs and will instead be treated as NSOs for tax purposes.

7. Other Compensation or Benefits. You acknowledge that, except as expressly provided in this Agreement, you will not receive any additional compensation, severance, commissions or benefits after the Separation Date.

8. Expense Reimbursements. You agree that, within ten (10) days of the Separation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for reasonable business expenses pursuant to its regular business practice.

9. Return of Company Property. By the Separation Date, you agree to return to the Company all Company documents (and all copies thereof) and other Company property that you have had in your possession at any time, including, but not limited to, Company files, notes, drawings, records, business plans and forecasts, financial information, specifications, computer-recorded information, tangible property (including, but not limited to, computers), credit cards, entry cards, identification badges and keys; and, any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof). Please coordinate retention of any property needed for consulting services and return of all other property with LaDuane Clifton, CFO. **Receipt of the Severance Benefits described in Section 2 of this Agreement is expressly conditioned upon return of all Company Property.** Notwithstanding the foregoing, this duty to timely return Company property by the Separation Date does not apply to any property that the Company specifically authorizes you to retain in connection with the Consulting Agreement (which is property you must return to the Company, without retaining any reproductions, upon termination of the Consulting Agreement or earlier if requested by the Company).

10. Proprietary Information and Post-Termination Obligations. Both during and after your employment you acknowledge your continuing obligations under Sections 6 through 9 of the Employment Agreement (attached as **Exhibit B**) not to use or disclose any confidential or proprietary information of the Company and to refrain from certain solicitation and competitive activities. If you have any doubts as to the scope of the restrictions in your agreement, you should contact LaDuane Clifton, CFO, immediately to assess your compliance. As you know, the Company will enforce its contract rights. Please familiarize yourself with the enclosed agreement which you signed. Confidential information that is also a “trade secret,” as defined by law, may be disclosed (A) if it is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, in the event that you file a lawsuit for retaliation by the Company for reporting a suspected violation of law, you may disclose the trade secret to your attorney and use the trade secret information in the court proceeding, if you: (A) file any document containing the trade secret under seal; and (B) do not disclose the trade secret, except pursuant to court order.

11. Confidentiality. The provisions of this Agreement will be held in strictest confidence by you and the Company and will not be publicized or disclosed in any manner whatsoever; provided, however, that: (a) you may disclose this Agreement to your immediate family; (b) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (c) the Company may disclose this Agreement as necessary to fulfill standard or legally required corporate reporting or disclosure requirements; and (d) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law. In particular, and without limitation, you agree not to disclose the terms of this Agreement to any current or former Company employee. Notwithstanding the foregoing, nothing in this Agreement shall limit your right to voluntarily communicate with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, other federal government agency or similar state or local agency or to discuss the terms and conditions of your employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act.

12. Non-Disparagement. Both you and the Company agree not to disparage the other party, and the other party's officers, directors, employees, shareholders and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation; provided that both you and the Company will respond accurately and fully to any question, inquiry or request for information when required by legal process. The Company's obligations under this Section are limited to Company representatives with knowledge of this provision. Notwithstanding the foregoing, nothing in this Agreement shall limit your right to voluntarily communicate with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, other federal government agency or similar state or local agency or to discuss the terms and conditions of your employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act.

13. Cooperation after Termination. In accordance with Section 4(F) of the Employment Agreement, you agree to reasonably cooperate with Company in all matters relating to the winding up of your pending work on behalf of Company and the orderly transfer of any such pending work to other employees of Company as may be reasonably designated by Company. For each day that you perform services under this Section 12 after the Separation Date and termination of the Consulting Agreement, the Company will reimburse you for your reasonable out-of-pocket expenses and, if any cooperation is required under this Section 12 after the final payment by Company of the Severance Benefits, you will be paid at the rate of \$285 per hour for your time.

14. Release. In exchange for the payments and other consideration under this Agreement, to which you would not otherwise be entitled, and except as otherwise set forth in this Agreement, you, on behalf of yourself and, to the extent permitted by law, on behalf of your spouse, heirs, executors, administrators, assigns, insurers, attorneys and other persons or entities, acting or purporting to act on your behalf (collectively, the “*Employee Parties*”), hereby generally and completely release, acquit and forever discharge the Company, and its respective current and former parent companies, subsidiaries and other affiliated companies as well as any of their respective current and former insurers, directors, officers, managers, partners, agents, representatives, employees, attorneys, shareholders, predecessors, successors, assigns, insurers and affiliates (the “*Company Parties*”) of and from any and all claims, liabilities, demands, contentions, actions, causes of action, suits, costs, expenses, attorneys’ fees, damages, indemnities, debts, judgments, levies, executions and obligations of every kind and nature, in law, equity, or otherwise, both known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, acts or conduct at any time prior to and including the execution date of this Agreement, including but not limited to: all such claims and demands directly or indirectly arising out of or in any way connected with your employment with the Company or the termination of that employment; claims or demands related to salary, bonuses, commissions, stock, stock options, or any other ownership interests in the Company, vacation pay, fringe benefits, expense reimbursements, severance pay, or any other form of compensation; claims pursuant to any federal, state or local law, statute, or cause of action; tort law; or contract law (individually a “*Claim*” and collectively “*Claims*”). The Claims you are releasing and waiving in this Agreement include, but are not limited to, any and all Claims that any of the Company Parties:

- has violated its personnel policies, handbooks, contracts of employment, or covenants of good faith and fair dealing;
 - has discriminated against you on the basis of age, race, color, sex (including sexual harassment), national origin, ancestry, disability, religion, sexual orientation, marital status, parental status, source of income, entitlement to benefits, any union activities or other protected category in violation of any local, state or federal law, constitution, ordinance, or regulation, including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; 42 U.S.C. § 1981, as amended; the Equal Pay Act; the Americans With Disabilities Act; the Genetic Information Nondiscrimination Act; the Family and Medical Leave Act; the Iowa Civil Rights Act of 1965; the Iowa Wage Payment Collection Law; the Iowa Law on Discrimination Through Genetic Testing; the Civil Rights Commission: Unfair Employment Practices, Iowa Code § 216.6 et seq.; the Civil Rights Commission: Aiding, abetting, or retaliation, Iowa Code § 216.11; the Florida Civil Rights Act; the Florida Whistleblower Protection Act; the Florida Minimum Wage Act; the Florida Constitution, Article X, Section 24; the Employee Retirement Income Security Act; the Employee Polygraph Protection Act; the Worker Adjustment and Retraining Notification Act; the Older Workers Benefit Protection Act; the anti-retaliation provisions of the Sarbanes-Oxley Act, or any other federal or state law regarding whistleblower retaliation; the Lilly Ledbetter Fair Pay Act; the Uniformed Services Employment and Reemployment Rights Act; the Fair Credit Reporting Act; and the National Labor Relations Act;
 - has violated any statute, public policy or common law (including but not limited to Claims for retaliatory discharge; negligent hiring, retention or supervision; defamation; intentional or negligent infliction of emotional distress and/or mental anguish; intentional interference with contract; negligence; detrimental reliance; loss of consortium to you or any member of your family and/or promissory estoppel).
-

Notwithstanding the foregoing, other than events expressly contemplated by this Agreement, you do not waive or release rights or Claims that may arise from events that occur after the date this waiver is executed, enforcement by you of your rights under this Agreement, or any rights you may have as a stockholder in the Company or any of its affiliates. In addition, you are not releasing any right of indemnification you may have for any liabilities arising from your actions within the course and scope of your employment with the Company or within the course and scope of your role as a member of the Board. Also excluded from this Agreement are any Claims which cannot be waived by law, including, without limitation, any rights you may have under applicable workers' compensation laws and your right, if applicable, to file or participate in an investigative proceeding of any federal, state or local governmental agency. Nothing in this Agreement shall prevent you from filing, cooperating with, or participating in any proceeding or investigation before the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal government agency, or similar state or local agency ("**Government Agencies**"), or exercising any rights pursuant to Section 7 of the National Labor Relations Act. You further understand this Agreement does not limit your ability to voluntarily communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. While this Agreement does not limit your right to receive an award for information provided to the Securities and Exchange Commission, you understand and agree that, you are otherwise waiving, to the fullest extent permitted by law, any and all rights you may have to individual relief based on any Claims that you have released and any rights you have waived by signing this Agreement. If any Claim is not subject to release, to the extent permitted by law, you waive any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a Claim in which any of the Company Parties is a party. This Agreement does not abrogate your existing rights under any Company benefit plan or any plan or agreement related to equity ownership in the Company; however, it does waive, release and forever discharge Claims existing as of the date you execute this Agreement pursuant to any such plan or agreement.

15. Your Acknowledgments and Affirmations. You acknowledge and agree that (i) the consideration given to you in exchange for the waiver and release in this Agreement is in addition to anything of value to which you were already entitled; (ii) that you have been paid for all time worked, have received all the leave, leaves of absence and leave benefits and protections for which you are eligible, and have not suffered any on-the-job injury for which you have not already filed a Claim; (iii) you have been given sufficient time to consider this Agreement and to consult an attorney or advisor of your choosing; and (iv) you are knowingly and voluntarily executing this Agreement waiving and releasing any Claims you may have as of the date you execute it. You affirm that all of the decisions of the Company Parties regarding your pay and benefits through the date of your execution of this Agreement were not discriminatory based on age, disability, race, color, sex, religion, national origin or any other classification protected by law. You affirm that you have not filed or caused to be filed, and are not presently a party to, a Claim against any of the Company Parties. You further affirm that you have no known workplace injuries or occupational diseases. You acknowledge and affirm that you have not been retaliated against for reporting any allegation of corporate fraud or other wrongdoing by any of the Company Parties, or for exercising any rights protected by law, including any rights protected by the Fair Labor Standards Act, the Family Medical Leave Act, or any related statute or local leave or disability accommodation laws, or any applicable state workers' compensation law.

16. No Admission. This Agreement does not constitute an admission by the Company of any wrongful action or violation of any federal, state, or local statute, or common law rights, including those relating to the provisions of any law or statute concerning employment actions, or of any other possible or claimed violation of law or rights.

17. Breach. The parties agree that upon any material breach of this Agreement, the breaching party will forfeit all of the benefits of this Agreement. The parties further acknowledge that it may be impossible to assess the damages caused by violation of the terms of Sections 9, 10, 11 and 12 of this Agreement and further agree that any threatened or actual violation or breach of those Sections of this Agreement will constitute immediate and irreparable injury to the non-breaching party. The parties therefore agree that, in addition to any and all other damages and remedies available to the non-breaching party upon a material breach of this Agreement, the non-breaching party shall be entitled to an injunction to prevent violation or breach of this Agreement. If either party is successful in whole or part in any legal or equitable action to enforce this Agreement, then the enforcing party is entitled to recover from the other party all of the costs, including reasonable attorneys' fees, incurred in enforcing the terms of this Agreement.

18. Miscellaneous. This Agreement, including its Exhibits, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified by the court so as to be rendered enforceable. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of Florida as applied to contracts made and to be performed entirely within Florida.

If this Agreement is acceptable to you, please sign below and return the original to me, along with the executed Consulting Agreement, on or before January 11, 2023. The Company's offer contained herein will automatically expire if you do not sign and return it within that timeframe.

I thank you for your efforts to date on behalf of the Company and thank you in advance for your cooperation in successfully completing the Transition Period. I also wish you good luck in your future endeavors.

Sincerely,

KEMPHARM, INC.

By: /s/ R. LaDuane Clifton
R. LaDuane Clifton
Chief Financial Officer

AGREED TO AND ACCEPTED:

/s/ Travis Mickle
Travis Mickle

January 6, 2023
Date

Exhibit A – Updated Release
Exhibit B – Employment Agreement

EXHIBIT A

Updated Release of Claims

(To be signed and returned to the Company on or within three (3) days of the Separation Date, and in no event before the Separation Date)

KemPharm, Inc. (the “**Company**”) and Travis Mickle (the “**Employee**”) entered into a Transition Agreement dated January 4, 2023 (as modified on January 5, 2023) (the “**Agreement**”). The parties to that Agreement hereby further agree as follows:

1. A blank copy of this Updated Release of Claims (“**Updated Release**”) was attached to the Agreement as Exhibit A and the parties agree that it is part of the Agreement.

2. In consideration of the Severance Benefits (as defined in the Agreement), Employee hereby extends the release of claims in Section 14 of the Agreement to any claims that arose through the date he signs this Updated Release and extends the representations he has made in Section 15 of the Agreement through the date he signs this Updated Release.

3. Employee also hereby extends the release of claims in Section 14 of the Agreement to any and all Claims under the federal Age Discrimination in Employment Act, as amended (“**ADEA**”). Employee acknowledges that he is knowingly and voluntarily waiving and releasing any rights he may have under the ADEA and that the consideration given for this Updated Release is in addition to anything of value to which he was already entitled. Employee further acknowledges that he has been advised by this writing, as required by the ADEA, that: (1) this Updated Release does not apply to any rights or claims that arise after the date he signs this Updated Release; (2) Employee should consult with an attorney prior to signing this Updated Release; (3) Employee has been given up to twenty-one (21) calendar days to consider this Updated Release (although he may choose to voluntarily execute this Updated Release earlier, though not earlier than the Separation Date (as defined in the Agreement), and if Employee does, he will sign the Consideration Period waiver below); (4) Employee has seven (7) calendar days following the date he signs this Updated Release to revoke it; and (5) this Updated Release will not be effective until the date upon which the revocation period has expired unexercised (the “**Effective Date**”), which will be the eighth (8th) calendar day after Employee signs it. For the avoidance of doubt, Employee understands and agrees that the Effective Date of this Updated Release cannot be on or before Employee’s Separation Date.

4. The parties agree that this Updated Release is a part of the Agreement.

[The remainder of this page left blank. Signature page follows]

UNDERSTOOD, ACCEPTED AND AGREED:

KemPharm, Inc.

Employee

By: _____

Name: R. LaDuane Clifton
Title: Chief Financial

Travis Mickle

Dated: _____

Dated: _____

EXHIBIT B

Employment Agreement

CERTAIN INFORMATION IN THIS DOCUMENT, MARKED BY [***], HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(b)(10). SUCH EXCLUDED INFORMATION IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

Consulting Agreement

THIS CONSULTING AGREEMENT (THE “*AGREEMENT*”) BY AND BETWEEN KEMPHARM, INC. (“*CLIENT*”) AND TRAVIS MICKLE (“*CONSULTANT*”) AND IS EFFECTIVE AS OF THE DATE OF THE CLIENT’S 2023 ANNUAL MEETING OF STOCKHOLDERS (THE “*EFFECTIVE DATE*”).

1. Engagement of Services. Consultant agrees to provide consulting services, including among other things, assisting in the development and approval process for arimoclomol, and other services upon request of the Chief Executive Officer (the “*Executive*”) of the Client (the “*Services*”). Consultant shall exercise the highest degree of professionalism and utilize his expertise and creative talents in performing the Services. The parties reasonably anticipate that the Services to be performed by Consultant pursuant to this Agreement will amount to no more than twenty percent (20%) of the average level of services performed by Consultant in connection with his previous employment relationship with Client over the thirty-six (36) month period immediately preceding the Effective Date.

2. Compensation. In consideration for the services rendered pursuant to this Agreement and for the assignment of certain of Consultant’s right, title and interest pursuant hereto, Client will pay Consultant a monthly retainer of \$40,000 (the “*Retainer*”), to be paid within the first ten (10) days of each month, starting with the first month following the Effective Date of this Agreement.

In addition, subject to the approval of the Client’s Board of Directors, Consultant shall be granted 547,945 performance-based restricted stock units (the “*PSUs*”) which shall vest in full if [***] (the “*Qualifying Event*”). If (X) this Agreement is terminated due to Consultant’s Material Breach (as defined below) prior to the occurrence of the Qualifying Event, (Y) Consultant terminates this Agreement for convenience before [***], or (Z) [***], then zero PSUs shall vest. For the avoidance of doubt, if (A) this Agreement is terminated by the Client for any reason other than Consultant’s Material Breach prior to the occurrence of the Qualifying Event, or (B) Consultant terminates this Agreement for convenience after [***], then in either event the 547,945 PSUs shall remain eligible to vest in full upon the occurrence of the Qualifying Event. Any PSUs granted pursuant to this Section 2 shall be subject to the terms of the Client’s Amended and Restated 2014 Equity Incentive Plan and form of restricted stock unit agreement thereunder.

3. Ownership of Work Product. Consultant hereby irrevocably assigns, grants and conveys to Client all right, title and interest now existing or that may exist in the future in and to any document, development, work product, know-how, design, processes, invention, technique, trade secret, or idea, and all intellectual property rights related to Client (collectively, “*Work Product*”), that during the term of this Agreement and only if arising from Consultant’s services provided to Client pursuant to this Agreement: (i) is created by Consultant, or, (ii) to which Consultant contributes (the “*Client Work Product*”), including all copyrights, trademarks and other intellectual property rights (including but not limited to patent rights) relating thereto. Consultant agrees that any and all Client Work Product shall be and remain the property of Client. Consultant will immediately disclose to the Client all Client Work Product. Consultant agrees to execute, at Client’s request and expense, all documents and other instruments necessary or desirable to confirm such assignment. In the event that Consultant does not, for any reason, execute such documents within a reasonable time of Client’s request, Consultant hereby irrevocably appoints Client as Consultant’s attorney-in-fact for the purpose of executing such documents on Consultant’s behalf, which appointment is coupled with an interest. Consultant shall not attempt to register any works created by Consultant pursuant to this Agreement at the U.S. Copyright Office, the U.S. Patent & Trademark Office, or any foreign copyright, patent, or trademark registry. Consultant retains no rights in the Client Work Product and agrees not to challenge Client’s ownership of the rights embodied in the Client Work Product. Consultant further agrees to assist Client in every proper way to enforce Client’s rights relating to the Client Work Product in any and all countries, including, but not limited to, executing, verifying and delivering such documents and performing such other acts (including appearing as a witness) as Client may reasonably request for use in obtaining, perfecting, evidencing, sustaining and enforcing Client’s rights relating to the Client Work Product.

4. Artist's, Moral, and Other Rights. If Consultant has any rights, including without limitation "artist's rights" or "moral rights," in the Client Work Product which cannot be assigned (the "**Non-Assignable Rights**"), Consultant agrees to waive enforcement worldwide of such rights against Client. In the event that Consultant has any such rights that cannot be assigned or waived Consultant hereby grants to Client a royalty-free, paid-up, exclusive, worldwide, irrevocable, perpetual license under the Non-Assignable Rights to (i) use, make, sell, offer to sell, have made, and further sublicense the Client Work Product, and (ii) reproduce, distribute, create derivative works of, publicly perform and publicly display the Client Work Product in any medium or format, whether now known or later developed.

5. Representations and Warranties. Consultant represents and warrants that: (a) Consultant has the full right and authority to enter into this Agreement and perform his obligations hereunder; (b) Consultant has the right and unrestricted ability to assign the Client Work Product to Client as set forth in Sections 3 and 4; and (c) the Client Work Product has not heretofore been published in its entirety. Client represents and warrants that: (a) Client has the full right and authority to enter into this Agreement and perform his obligations hereunder; and (b) Client will not assign to or permit Consultant to undertake any work in connection with the duties performed under this Agreement that Client knows or should know may infringe upon any copyright, patent, trademark, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law. Consultant agrees to indemnify Client from any and all damages, costs, claims, expenses or other liability (including reasonable attorneys' fees) arising from or relating to the breach or alleged breach by Consultant of the representations and warranties set forth in this Section 5.

6. Independent Contractor Relationship. Consultant is an independent contractor and not an employee of the Client. Nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. The manner and means by which Consultant chooses to complete the consulting services are in Consultant's sole discretion and control. In completing the consulting services, Consultant agrees to provide his own equipment, tools and other materials at his own expense. Consultant is not authorized to represent that he is an agent, employee, or legal representative of the Client. Consultant is not authorized to make any representation, contract, or commitment on behalf of Client or incur any liabilities or obligations of any kind in the name of or on behalf of the Client. Consultant shall be free at all times to arrange the time and manner of performance of the consulting services. Consultant is not required to maintain any schedule of duties or assignments. Consultant will keep Client fully informed of the progress in performing the Services, and will from time to time, as reasonably requested by Client, provide status reports summarizing progress and outcomes to date. Consultant will furnish to Client a comprehensive report in hardcopy and electronic form (or in such other form as mutually agreed by the parties) at the conclusion of the Services or upon expiry or earlier termination of this Agreement. Company acknowledges and agrees that any individuals that perform the Services on Consultant's behalf hereunder shall: (i) be compensated directly by Consultant; and (ii) receive from Consultant all benefits made available as required by applicable law and regulations.

7. Performance and Time Commitment. Consultant shall use Consultant's best efforts, and shall devote the time necessary on an ongoing basis, to perform the Services such that the results are satisfactory to the Client. Consultant shall use best efforts to complete the Services in a timely manner and in accordance with timelines mutually agreed by Client and Consultant. Consultant's services, and the results thereof, will be performed with, and be the product of, the highest degree of professional skill and expertise.

8. Consultant's Responsibilities. As an independent contractor, the mode, manner, method and means used by Consultant in the performance of services shall be of Consultant's selection and under the sole control and direction of Consultant. Consultant shall be responsible for all risks incurred in the operation of Consultant's business and shall enjoy all the benefits thereof. Any persons employed by or subcontracting with Consultant to perform any part of Consultant's obligations hereunder shall be under the sole control and direction of Consultant and Consultant shall be solely responsible for all liabilities and expenses thereof. The Client shall have no right or authority with respect to the selection, control, direction, or compensation of such persons.

9. Tax Treatment. Consultant and the Client agree that the Client will treat Consultant as an independent contractor for purposes of all tax laws (local, state and federal) and file forms consistent with that status. Consultant agrees, as an independent contractor, that neither he nor his employees are entitled to unemployment benefits in the event this Agreement terminates, or workers' compensation benefits in the event that Consultant, or any employee of Consultant, is injured in any manner while performing obligations under this Agreement. Consultant will be solely responsible to pay any and all local, state, and/or federal income, social security and unemployment taxes for Consultant and his employees. Client will not withhold any taxes or prepare W-2 Forms for Consultant, but will provide Consultant with a Form 1099, if required by law. Consultant is solely responsible for, and will timely file all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement. Consultant is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Agreement, except as provided herein. No part of Consultant's compensation will be subject to withholding by Client for the payment of any social security, federal, state or any other employee payroll taxes. Client will regularly report amounts paid to Consultant with the appropriate taxing authorities, as required by law.

10. No Employee Benefits. Consultant acknowledges and agrees that neither he nor anyone acting on his behalf shall receive any employee benefits of any kind from the Client. Consultant (and Consultant's agents, employees, and subcontractors) is excluded from participating in any fringe benefit plans or programs as a result of the performance of services under this Agreement, without regard to Consultant's independent contractor status. In addition, Consultant and Consultant's agents, employees, and contractors waive any and all rights, if any, to participation in any of the Client's fringe benefit plans or programs including, but not limited to, health, sickness, accident or dental coverage, life insurance, disability benefits, severance, accidental death and dismemberment coverage, unemployment insurance coverage, workers' compensation coverage, and pension or 401(k) benefit(s) provided by the Client to his employees. Notwithstanding the above, this Agreement does not amend or abrogate in any manner any benefit continuation or conversion rights provided by the provision of a benefit plan or by law arising out of Consultant's previous employment relationship with Client.

11. Expenses and Liabilities. Consultant agrees that as an independent contractor, he is solely responsible for all expenses (and profits/losses) he incurs in connection with the performance of services except to the extent pre-approved in writing by the Client. Consultant understands that he will not be reimbursed for any supplies, equipment, or operating costs, nor will these costs of doing business be defrayed in any way by the Client except to the extent pre-approved in writing by the Client. In addition, the Client does not guarantee to Consultant that fees derived from Consultant's business will exceed Consultant's costs.

12. Non-Exclusivity. The Client reserves the right to engage other consultants to perform services, without giving Consultant a right of first refusal or any other exclusive rights. Consultant reserves the right to perform services for other persons, provided that the performance of such services do not conflict or interfere with services provided pursuant to or obligations under this Agreement.

13. No Conflict of Interest. During the term of this Agreement, unless written permission is given by the Executive, Consultant will not accept work, enter into a contract, or provide services to any third party that provides products or services which compete with the products or services provided by the Client nor may Consultant enter into any agreement or perform any services which would conflict or interfere with the services provided pursuant to or the obligations under this Agreement. Consultant warrants that there is no other contract or duty on his part that prevents or impedes Consultant's performance under this Agreement. Consultant agrees to indemnify Client from any and all loss or liability incurred by reason of the alleged breach by Consultant of any services agreement with any third party. The parties acknowledge that Consultant currently provides consulting services to Shire Pharmaceuticals LLC pursuant to that certain consulting agreement between Shire Pharmaceuticals LLC and Consultant dated December 17, 2012, and that Consultant may continue to engage in these current activities, provided that such activities do not interfere or conflict with Consultant's responsibilities and duties to the Client under this Agreement.

14. Confidential Information. Consultant agrees that during the term of this Agreement and thereafter he will not use or permit the use of Client's Confidential Information in any manner or for any purpose not expressly set forth in this Agreement, will hold such Confidential Information in confidence and protect it from unauthorized use and disclosure, and will not disclose such Confidential Information to any third parties other than as needed in performing the Services hereunder. "**Confidential Information**" as used in this Agreement shall mean all information disclosed by Client to Consultant, whether during or before the term of this Agreement, that is not generally known in the Client's trade or industry and shall include, without limitation: (a) concepts and ideas relating to the development and distribution of content in any medium or to the current, future and proposed products or services of Client or its subsidiaries or affiliates; (b) trade secrets, drawings, inventions, know-how, software programs, and software source documents; (c) information regarding plans for research, development, new service offerings or products, marketing and selling, business plans, business forecasts, budgets and unpublished financial statements, licenses and distribution arrangements, prices and costs, suppliers and customers; (d) existence of any business discussions, negotiations or agreements between the parties; and (e) any information regarding the skills and compensation of employees, contractors or other agents of Client or its subsidiaries or affiliates. Confidential Information also includes proprietary or confidential information of any third party who may disclose such information to Client or Consultant in the course of Client's business. Confidential Information does not include information that (x) is or becomes a part of the public domain through no act or omission of Consultant, (y) is disclosed to Consultant by a third party without restrictions on disclosure, or (z) was in Consultant's lawful possession prior to the disclosure and was not obtained by Consultant either directly or indirectly from Client. In addition, this Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; *provided, however*, that Consultant shall first have given notice to Client and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. All Confidential Information furnished to Consultant by Client is the sole and exclusive property of Client or its suppliers or customers. Upon request by Client, Consultant agrees that he will promptly deliver to Client the original and any copies of the Confidential Information. Notwithstanding the foregoing or anything to the contrary in this Agreement or any other agreement between Client and Consultant, nothing in this Agreement shall limit Consultant's right to discuss Consultant's engagement with the Company or report possible violations of law or regulation with the Equal Employment Opportunity Commission, United States Department of Labor, the National Labor Relations Board, the Securities and Exchange Commission, or other federal government agency or similar state or local agency or to discuss the terms and conditions of Consultant's engagement with others to the extent expressly permitted by applicable provisions of law or regulation, including but not limited to "whistleblower" statutes or other similar provisions that protect such disclosure. Further, notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), Consultant shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

15. Term and Termination.

15.1 Term. The term of this Agreement and the “*Consulting Period*” is for twelve (12) months from the Effective Date set forth above, unless earlier terminated as provided in this Agreement. The initial period of this Agreement may be extended by agreement of the parties in writing.

15.2 Automatic Termination. If the Updated Release to the Transition Agreement between Client and Consultant, dated January 4, 2023 (as modified on January 5, 2023), is not timely executed and allowed to become effective, then this Agreement will automatically terminate effective at the end of the day in which the Updated Release is required to be signed according to its terms. If the Updated Release is executed but timely revoked, then this Agreement will automatically terminate on the day of such revocation.

15.3 Termination by Mutual Agreement and upon Notice. The parties may terminate this Agreement at any time by mutual agreement. Beginning on the date that is six (6) months after the Effective Date of this Agreement either party may terminate this Agreement for any reason, or no reason, upon thirty (30) days’ advance written notice.

15.4 Termination upon Breach. Either party may terminate this Agreement before its expiration immediately if the other party materially breaches the Agreement. The parties agree that a “*Material Breach*” by Consultant shall occur if it: (i) fails to abide by any recognized professional standard, including any ethical standard; (ii) fails to provide services as reasonably requested by the Executive; (iii) secures other full-time employment that prohibits his ability to provide services to the Client; (iv) breaches any other material obligations of this Agreement; or (v) violates local, state, or federal laws. The parties agree upon material breach by the Client within the six (6) months following the Effective Date, if the Consultant then terminates this Agreement, the Consultant shall be paid the fees that would have been paid during the remainder of the six-month period as liquidated damages. If either party is successful in whole or part in any legal or equitable action to enforce this Agreement, then the enforcing party is entitled to recover from the other party all of the costs, including reasonable attorneys’ fees, incurred in enforcing the terms of this Agreement.

15.5 Effect of Termination. Upon any termination or expiration of this Agreement, Consultant (i) shall immediately discontinue all use of Client’s Confidential Information delivered under this Agreement; (ii) shall delete any such Client Confidential Information from Consultant’s computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) shall return to Client, or, at Client’s option, destroy, all copies of such Confidential Information then in Consultant’s possession. In the event the Client terminates this Agreement, or if Consultant terminates this Agreement, Consultant will not receive any additional consulting fees or other compensation as of the date of termination except as otherwise expressly set forth herein.

15.6 Survival. The rights and obligations contained in Sections 3-6, 8-9, 14, 15.3, 15.5, and 16-24 will survive any termination or expiration of this Agreement.

16. Indemnification. Client agrees to release, defend, indemnify and hold Consultant harmless from any and all potential liabilities, losses or damages (including penalties, costs, attorney fees and liability to third parties) resulting from, related to or arising out of any claim, action, suit or proceeding against Consultant arising out of the wrongful or negligent conduct of Client to comply with or perform its obligations and duties under this Agreement, including violations of any federal, state, or local statutes, laws, or regulations. Client's duty to hold Consultant harmless will extend beyond the term of this Agreement for events occurring within the term of this Agreement. Excepting events for which Client has specifically assumed sole responsibility under this Agreement, Consultant agrees to indemnify and hold harmless the Client, its officers, directors, owners, employees, sublicensees, customers, and agents (collectively the "***Client Parties***") for any and all claims, losses, liabilities, damages, expenses and costs, including but not limited to attorneys' fees, witnesses' fees, and court costs, which result from: execution and performance of this agreement including but not limited to: any intentional misconduct, gross negligence, or negligence by the Consultant or any of its subcontractors, officers, directors, employees, customers, or agents, by Client, its officers, directors, employees, sublicensees, customers, and agents, or by any third party. Consultant shall also indemnify and hold harmless the Client Parties for any and all claims, losses, liabilities, damages, expenses and costs, including but not limited to attorneys' fees, witnesses' fees, and court costs, imposed against the Client by Consultant or any of his employees or by any other party (including private parties, governmental bodies and courts), including claims related to worker's compensation, wage and hour laws, employment taxes, and benefits, and whether relating to Consultant's status as an independent contractor, the status of Consultant's personnel, or any other matters involving the acts or omissions of Consultant and Consultant's personnel. Consultant's duty to hold Client harmless will extend beyond the term of this Agreement for events occurring within the term of this Agreement. Notwithstanding anything to the contrary in this Agreement, Consultant's indemnification obligations under this Agreement shall be limited to the consulting fees paid to Consultant hereunder.

17. Insurance. Consultant will obtain for himself and his personnel before providing services, at his own expense, General Liability (GL) insurance coverage for consulting services performed under this Agreement and (if available under state law) worker's compensation coverage.

18. Successors and Assigns. Consultant may not subcontract or otherwise delegate his obligations under this Agreement, except as specifically stated herein, without Client's prior written consent. Client may assign this Agreement. Subject to the foregoing, this Agreement will be for the benefit of Client's successors and assigns and will be binding on Consultant's subcontractors or delegates.

19. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by overnight courier upon written verification of receipt; or (ii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission. Notice shall be sent to the addresses set forth below or such other address as either party may specify in writing.

20. Governing Law. This Agreement shall be governed in all respects by the laws of the State of Florida, as such laws are applied to agreements entered into and to be performed entirely within Florida between Florida residents. Any suit involving this Agreement shall be brought in a court sitting in Florida. The parties agree that venue shall be proper in such courts, and that such courts will have personal jurisdiction over them.

21. Severability. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

22. Waiver. The waiver by Client of a breach of any provision of this Agreement by Consultant shall not operate or be construed as a waiver of any other or subsequent breach by Consultant.

23. Injunctive Relief for Breach. Consultant's obligations under this Agreement are of a unique character that gives them particular value; breach of any of such obligations will result in irreparable and continuing damage to Client for which there will be no adequate remedy at law; and, in the event of such breach, Client will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate and attorney's fees).

24. Entire Agreement. This Agreement constitutes the entire understanding of the parties relating to the subject matter and supersedes any previous oral or written communications, representations, understanding, or agreement between the parties concerning such subject matter. This Agreement shall not be changed, modified, supplemented or amended except by express written agreement signed by Consultant and the Client. Client and Consultant have entered into separate agreements related to Consultant's previous employment relationship with Client. These separate agreements govern the previous employment relationship between Consultant and Client, have or may have provisions that survive termination of this Agreement, may be amended or superseded without regard to this Agreement, and are enforceable according to their terms without regard to the enforcement provision of this Agreement. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above

"CLIENT"

"CONSULTANT"

KEMPHARM, INC.

TRAVIS MICKLE

By: /s/ R. LaDuane Clifton

/s/ Travis Mickle

Name (print): R. LaDuane Clifton

Name (print): Travis Mickle

Title: _____

Address: _____

Telephone: _____

Tel: _____

Fax: _____

Fax: _____