

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): March 8, 2019

Innovate Biopharmaceuticals, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-37797
(Commission
File Number)

27-3948465
(I.R.S. Employer
Identification No.)

8480 Honeycutt Road, Suite 120, Raleigh, NC 27615
(Address of principal executive offices) (Zip Code)

(919) 275-1933
(Registrant's telephone number, include area code)

N/A
(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))

Indicate by check mark whether the registrant is an emerging growth company as defined in 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 1.01. Entry Into a Material Definitive Agreement.

On March 8, 2019, Innovate Biopharmaceuticals, Inc. (the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with Atlas Sciences, LLC, a Utah limited liability company (“Atlas”). Pursuant to the Purchase Agreement, the Company issued to Atlas an unsecured Convertible Promissory Note (the “Note”) in the principal amount of \$5,500,000. Atlas may elect to convert all or a portion of the Note at any time and from time to time into the Company’s common stock at a conversion price of \$3.25 per share, subject to adjustment for stock splits, dividends, combinations and similar events. The Company may prepay all or a portion of the Note at any time for an amount equal to 115% of then outstanding obligations or the portion of the obligations the Company is prepaying. The purchase price of the Note was \$5,000,000, and the Note carries an original issuance discount of \$500,000, which is included in the principal amount of the Note. In addition, the Company agreed to pay \$20,000 of transaction expenses, which expenses were netted out of the purchase price of the Note.

The Note bears interest at the rate of 10% (which will increase to 18% upon and during the continuance of an event of default) per annum, compounding on a daily basis. All principal and accrued interest on the Note is due on the second anniversary of the date of the Note’s issuance.

At any time after the six month anniversary of the issuance of the Note, (i) if the average volume weighted average price over twenty trading dates exceeds \$10.00 per share, the Company may generally require that the Note convert into shares of its common stock at the \$3.25 (as adjusted) conversion price, and (ii) Atlas may elect to require all or a portion of the Note be redeemed by the Company. If Atlas requires a redemption, the Company, at its discretion, may pay the redeemed portion of the Note in cash or in the Company’s common stock at a conversion rate equal to the lesser of (i) the \$3.25 (as adjusted) conversion rate or (ii) 80% of the average of the five lowest volume weighted average price of the Company’s Common Stock over the preceding twenty trading days. Atlas may not redeem more than \$500,000 per calendar month during the period between the six month anniversary of the date of issuance until the first anniversary of the date of issuance and \$750,000 per calendar month thereafter. The obligation or right of the Company to deliver its shares upon the conversion or redemption of the Note is subject to a 19.99% cap and subject to a floor price trading price of \$3.25 (unless waived by the Company). Any amounts redeemed or converted once the cap is reached or if the market price is less than the \$3.25 floor price must be paid in cash.

If there is an Event of Default under the Note, Atlas may accelerate the Company’s obligations or Atlas may elect to increase the outstanding obligations under the Note. The amount of the increase ranges from 15% for certain “Major Defaults,” 10% for failure to obtain Atlas’ approval for certain equity issuances with anti-dilution, price reset or variable pricing features of less than \$5 million, and 5% for certain “Minor Defaults.” In addition, the Note obligations will be increased if there are delays in the Company’s delivery requirements for the shares or cash issuable upon the conversion or redemption of the Note in certain circumstances.

If the Company issues convertible debt in the future with any terms, including conversion terms, that are more favorable to the terms of the Note, Atlas may elect to incorporate the more favorable terms into the Note.

The issuance of the Note was made in reliance on the exemption provided by Section 4(a)(2) of the Securities Act of 1933, as amended, for the offer and sale of securities not involving a public offering and Regulation D promulgated thereunder.

The foregoing is only a brief description of the Purchase Agreement and the Note and does not purport to be a complete description thereof. Such descriptions are qualified in their entirety by reference to the Purchase Agreement and the Note, copies of which are filed as Exhibit 10.1 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Item 2.02. Results of Operations and Financial Condition.

The following are preliminary unaudited estimates of certain financial information of the Company as of December 31, 2018 and for the year ended December 31, 2018. These preliminary unaudited estimates have been prepared solely on the basis of information that is currently available to, and that is the responsibility of, the Company’s management. The Company’s independent registered public accounting firm has not audited or reviewed, and does not express an opinion with respect to, these preliminary unaudited estimates. These preliminary unaudited estimates are not a comprehensive statement of the Company’s financial position, results of operations or cash flows as of and for the year ended December 31, 2018, and they remain subject

to, among other things, the completion of the Company's financial closing procedures, final adjustments, and the audit by the Company's independent registered public accounting firm, which may materially impact these preliminary unaudited estimates. As of December 31, 2018, the Company had estimated unaudited total tangible assets of \$6.5 million, estimated unaudited total liabilities of \$10.1 million, estimated unaudited cash and cash equivalents of \$5.7 million and an estimated unaudited accumulated deficit of \$43.5 million. For the year ended December 31, 2018, the Company's estimated unaudited losses from operations were approximately \$18.2 million and its estimated unaudited net cash used in operating activities was approximately \$15.2 million.

Item 2.03. Creation of a Direct Financial Obligation.

The information set forth in Item 1.01 is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 is incorporated by reference into this Item 3.02.

Item 8.01. Other Events.

The information set forth in Item 2.02 is incorporated by reference into this Item 8.01.

On March 1, 2019, the Company sent to Gustavia Capital Partners LLC and/or its affiliates ("Gustavia") a Notice of Intent to Exercise Option pursuant to the Option to Purchase Senior Convertible Note (the "Option Agreement"), and repurchased the Senior Convertible Note (as defined in the Option Agreement) (the "Senior Convertible Note"), originally issued as a Senior Note with an original issue date of on or about January 26, 2018 and subsequently exchanged on October 4, 2018 for the Senior Convertible Note. On March 11, 2019, the Company paid Gustavia the amount due under the Option Agreement to repurchase the Senior Convertible Note. There are no further amounts outstanding under the Senior Convertible Note, and the Senior Convertible Note has been cancelled.

On March 7, 2019, the Company entered into a StartUp Agreement with ICON Clinical Research Limited to facilitate the Company's completion of startup activities required to initiate a Phase 3 clinical trial for celiac disease.

As previously disclosed, in November 2018, the Company received a letter and draft complaint regarding a former consultant who was compensated in cash and stock for his services, demanding damages of up to approximately \$3.6 million plus punitive damages in connection with a delay in such consultant's ability and timing to exercise options and sell shares of the Company's common stock related to past consulting services. On January 8, 2019, M. Scott Harris and Middleburg Consultants, Inc. (collectively, "Harris") filed the claim in the Superior Court of the State of Delaware (the "Delaware Action"). As previously disclosed, the Company strongly denies any wrongdoing alleged in the threatened litigation and firmly believes the allegations in the complaint are entirely without merit and intends to defend against them vigorously. On February 25, 2019, the Company filed a motion to dismiss the Delaware Action. If the motion is not granted, the Company intends to dispute the factual basis of Harris's claims and also intends to assert affirmative defenses and counterclaims against Harris.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
Exhibit 4.1	Note issued to Atlas Sciences, LLC
Exhibit 10.1	Note Purchase Agreement, dated March 8, 2019, by and between the Company and Atlas Sciences, LLC

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.

Innovate Biopharmaceuticals, Inc.

Date: March 13, 2019

By: /s/ Jay P. Madan

Jay P. Madan

President and Chief Business Officer

CONVERTIBLE PROMISSORY NOTE

Effective Date: March 8, 2019 U.S. \$5,500,000.00

FOR VALUE RECEIVED, INNOVATE BIOPHARMACEUTICALS, INC., a Delaware corporation (“**Borrower**”), promises to pay to ATLAS SCIENCES, LLC, a Utah limited liability company or its successors or assigns (“**Lender**”), \$5,500,000.00 and any interest, fees, charges, and late fees accrued hereunder on the date that is twenty-four (24) months after the Purchase Price Date (the “**Maturity Date**”) in accordance with the terms set forth herein and to pay interest on the Outstanding Balance at the rate of ten percent (10%) per annum from the Purchase Price Date until the same is paid in full. All interest calculations hereunder shall be computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months, shall compound daily and shall be payable in accordance with the terms of this Note. This Convertible Promissory Note (this “**Note**”) is issued and made effective as of March 8, 2019 (the “**Effective Date**”). This Note is issued pursuant to that certain Securities Purchase Agreement dated March 8, 2019, as the same may be amended from time to time, by and between Borrower and Lender (the “**Purchase Agreement**”). Certain capitalized terms used herein are defined in Attachment 1 attached hereto and incorporated herein by this reference.

1. Payment; Prepayment.

1.1. Payment. All payments owing hereunder shall be in lawful money of the United States of America or Conversion Shares (as defined below), as provided for herein, and delivered to Lender at the address or bank account furnished to Borrower for that purpose. All payments shall be applied first to (a) costs of collection, if any, then to (b) fees and charges, if any, then to (c) accrued and unpaid interest, and thereafter, to (d) principal.

1.2. Prepayment. Notwithstanding the foregoing, Borrower shall have the right to prepay all or any portion of the Outstanding Balance (less such portion of the Outstanding Balance for which Borrower has received a Lender Conversion Notice (as defined below) or a Redemption Notice (as defined below) from Lender where the applicable Conversion Shares have not yet been delivered). If Borrower exercises its right to prepay this Note, Borrower shall make payment to Lender of an amount in cash equal to 115% multiplied by the portion of the Outstanding Balance Borrower elects to repay. For avoidance of doubt, if Borrower anticipates entering into a Fundamental Transaction, such prepayment may be made contingent upon, and simultaneously with, the closing of such Fundamental Transaction.

2. Security. This Note is unsecured.

3. Lender Optional Conversion; Mandatory Conversion.

3.1. Lender Conversions. Lender has the right at any time after the Purchase Price Date until the Outstanding Balance has been paid in full, at its election, to convert (“**Lender Conversion**”) all or any portion of the Outstanding Balance into shares (each instance of conversion is referred to herein as a “**Lender Conversion Shares**”) of fully paid and non-assessable common stock, \$0.0001 par value per share (“**Common Stock**”), of Borrower as per the following conversion formula: the number of Lender Conversion Shares equals the amount being converted (the “**Conversion Amount**”) divided by Lender Conversion Price (as defined below). Conversion notices in the form attached hereto as Exhibit A (each, a “**Lender Conversion Notice**”) may be effectively delivered to Borrower by any method set forth in Section 10.9 of the Purchase Agreement, and all Lender Conversions shall be cashless and not require further payment from Lender. Borrower shall deliver Lender Conversion Shares from any Lender Conversion to Lender in accordance with Section 9 below.

3.2. Lender Conversion Price. Subject to adjustment as set forth in this Note, the price at which Lender has the right to convert all or any portion of the Outstanding Balance into Common Stock is \$3.25 per share of Common Stock (the “**Lender Conversion Price**”).

3.3. Mandatory Conversion. If at any time after the date that is six (6) months from the issuance date of this Note: (a) the daily VWAP of the Common Stock listed exceeds \$10.00 (as adjusted for stock splits, stock dividends, recapitalizations and similar events) (the “**Mandatory Conversion Minimum Price**”) for twenty (20) consecutive Trading Days (each, a “**Mandatory Conversion Measuring Period**”) and (b) no Equity Conditions Failure then exists, Borrower shall have the right to require Lender to convert all, or any part, of the Outstanding Balance, as designated in the Mandatory Conversion Notice (as defined below) into fully paid, validly issued and non-assessable shares of Common Stock at Lender Conversion Price as of the Mandatory Conversion Date (as defined below) (a “**Mandatory Conversion**”). Borrower may exercise its right to require conversion under this Section 3.3 by delivering on the Trading Day immediately following the last Trading Day in such applicable Mandatory Conversion Measuring Period a written notice thereof to Lender and the Company’s transfer agent (the “**Mandatory Conversion Notice**” and the date Lender receives such notice is referred to as the “**Mandatory Conversion Notice Date**”). The Mandatory Conversion Notice shall be irrevocable. The Mandatory Conversion Notice shall state (i) the Trading Day selected for the Mandatory Conversion in accordance with this Section 3.3, which Trading Day shall be no more than five (5) Trading Days following the Mandatory Conversion Notice Date (the “**Mandatory Conversion Date**”), (ii) the aggregate Outstanding Balance of the Note subject to mandatory conversion pursuant to this Section 3.3 (the “**Mandatory Conversion Amount**”), (iii) the number of shares of Common Stock to be issued to Lender on the Mandatory Conversion Date and (iv) that there has been no Equity Conditions Failure. Notwithstanding the foregoing, Borrower may affect only one (1) Mandatory Conversion during any thirty (30) calendar day period. Notwithstanding anything herein to the contrary, (i) if the VWAP of the Common Stock fails to exceed the Mandatory Conversion Minimum Price for each Trading Day commencing on the Mandatory Conversion Notice Date and ending and including the Trading Day immediately prior to the applicable Mandatory Conversion Date (a “**Mandatory Conversion Price Failure**”) or an Equity Conditions Failure occurs at any time prior to the Mandatory Conversion Date, (A) Borrower shall provide Lender a subsequent notice to that effect and (B) unless Lender waives the applicable Equity Conditions Failure and/or Mandatory Conversion Price Failure, as applicable, the Mandatory Conversion shall be cancelled and the applicable Mandatory Conversion Notice shall be null and void and (ii) at any time prior to the date all of the shares of Common Stock to be delivered to Lender in such Mandatory Conversion have been delivered in full in compliance with Section 3.3 above, the Mandatory Conversion Amount may be converted, in whole or in part, by Lender into shares of Common Stock pursuant to Section 3.1. Notwithstanding the foregoing, any Outstanding Balance subject to a Mandatory Conversion may be converted by Lender hereunder prior to the applicable Mandatory Conversion Date and such aggregate Outstanding Balance converted hereunder on or after the Mandatory Conversion Notice Date and prior to such Mandatory Conversion Date shall reduce the Mandatory Conversion Amount to be converted on such Mandatory Conversion Date. For the avoidance of doubt, Borrower shall have no right to effect a Mandatory Conversion if any Event of Default has occurred and has not been cured at least thirty (30) days prior to the Mandatory Conversion Date, but any Event of Default shall have no effect upon Lender’s right to convert this Note in its discretion.

4. Defaults and Remedies.

4.1. Defaults. The following are events of default under this Note (each, an “**Event of Default**”): %3. Borrower fails to pay any principal, interest, fees, charges, or any other amount when due and payable hereunder; %3. Borrower fails to deliver any Lender Conversion Shares in accordance with the terms hereof; %3. Borrower fails to deliver any Redemption Conversion Shares (as defined below) in accordance with the

terms hereof; %3. a receiver, trustee or other similar official shall be appointed over Borrower or a material part of its assets and such appointment shall remain uncontested for twenty (20) days or shall not be dismissed or discharged within sixty (60) days; %3. Borrower becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any; %3. Borrower makes a general assignment for the benefit of creditors; %3. Borrower files a petition for relief under any bankruptcy, insolvency or similar law (domestic or foreign); %3. an involuntary bankruptcy proceeding is commenced or filed against Borrower; %3. Borrower or any pledgor, trustor, or guarantor of this Note defaults or otherwise fails to observe or perform any material covenant, obligation, condition or agreement of Borrower or such pledgor, trustor, or guarantor contained herein or in any other Transaction Document (as defined in the Purchase Agreement), other than those specifically set forth in this Section 4.1 and Section 4 of the Purchase Agreement, and such failure to observe or perform remains uncured for fifteen (15) Trading Days; %3. any representation, warranty or other statement made or furnished by or on behalf of Borrower or any pledgor, trustor, or guarantor of this Note to Lender herein, in any Transaction Document, or otherwise in connection with the issuance of this Note is false, incorrect, incomplete or misleading in any material respect when made or furnished; %3. the occurrence of a Fundamental Transaction without Lender's prior written consent unless Borrower has elected to prepay the Outstanding Balance as of immediately prior to the Fundamental Transaction on or prior to the consummation of the Fundamental Transaction; %3. Borrower fails to maintain the Share Reserve (as defined in the Purchase Agreement); %3. Borrower effectuates a reverse split of its Common Stock without ten (10) Trading Days prior written notice to Lender; %3. any money judgment, writ or similar process is entered or filed against Borrower or any subsidiary of Borrower or any of its property or other assets for more than \$500,000.00, and shall remain unvacated, unbonded or unstayed for a period of twenty (20) calendar days unless otherwise consented to by Lender; %3. Borrower fails to be DWAC Eligible; %3. Borrower fails to observe or perform any covenant set forth in Section 4 of the Purchase Agreement (other than the covenant with respect to Unapproved Restricted Issuances) and such failure to observe or perform remains uncured for a period of twenty (20) calendar days; %3. Borrower makes any Unapproved Restricted Issuance; or %3. Borrower, any affiliate of Borrower, or any pledgor, trustor, or guarantor of this Note breaches any covenant or other term or condition contained in any Other Agreement, the effect of which breach is to accelerate obligations of Borrower in excess of \$500,000, individually or in the aggregate, and such breach remains uncured for a period of twenty (20) calendar days.

4.2. Remedies. At any time and from time to time after Lender becomes aware of the occurrence of any Event of Default, Lender may accelerate this Note by written notice to Borrower, with the Outstanding Balance becoming immediately due and payable in cash at the Mandatory Default Amount. Notwithstanding the foregoing, at any time following the occurrence of any Event of Default, Lender may, at its option, elect to increase the Outstanding Balance by applying the Default Effect (subject to the limitation set forth below) via written notice to Borrower without accelerating the Outstanding Balance, in which event the Outstanding Balance shall be increased as of the date of the occurrence of the applicable Event of Default pursuant to the Default Effect, but the Outstanding Balance shall not be immediately due and payable unless so declared by Lender (for the avoidance of doubt, if Lender elects to apply the Default Effect pursuant to this sentence but does not also elect to declare the Outstanding Balance immediately due and payable, it shall be deemed to be a waiver of Lender's right to declare the Outstanding Balance immediately due and payable as set forth herein with respect to such Event of Default). Notwithstanding the foregoing, upon the occurrence of any Event of Default described in clauses (d), (e), (f), (g) or (h) of Section 4.1, the Outstanding Balance as of the date of acceleration shall become immediately and automatically due and payable in cash at the Mandatory Default Amount, without any written notice required by Lender. At any time following the occurrence of any Event of Default, upon written notice given by Lender to Borrower, interest shall accrue on the Outstanding Balance beginning on the date the applicable Event of Default occurred and during the continuance of the Event of Default at an interest rate equal to the lesser of eighteen percent (18%) per annum

or the maximum rate permitted under applicable law (“**Default Interest**”). For avoidance of doubt, the Default Interest rate shall only accrue during the continuance of an Event of Default. For the avoidance of doubt, Lender may continue making Lender Conversions and Redemption Conversions (as defined below) at any time following an Event of Default until such time as the Outstanding Balance is paid in full. In connection with acceleration described herein, Lender need not provide, and Borrower hereby waives, any presentment, demand, protest or other notice of any kind, and Lender may immediately after expiration of any applicable grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Lender at any time prior to payment hereunder and Lender shall have all rights as a holder of the Note until such time, if any, as Lender receives full payment pursuant to this Section 4.2. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. Nothing herein shall limit Lender’s right to pursue any other remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to Borrower’s failure to timely deliver Conversion Shares upon Conversion of the Note as required pursuant to the terms hereof.

5. Unconditional Obligation; No Offset. Borrower acknowledges that this Note is an unconditional, valid, binding and enforceable obligation of Borrower not subject to offset, deduction or counterclaim of any kind. Borrower hereby waives any rights of offset it now has or may have hereafter against Lender, its successors and assigns, and agrees to make the payments or Conversions called for herein in accordance with the terms of this Note.

6. Waiver. No waiver of any provision of this Note shall be effective unless it is in the form of a writing signed by the party granting the waiver. No waiver of any provision or consent to any prohibited action shall constitute a waiver of any other provision or consent to any other prohibited action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver or consent in the future except to the extent specifically set forth in writing.

7. Adjustment of Lender Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision hereof, if Borrower at any time on or after the Effective Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, Lender Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision hereof, if Borrower at any time on or after the Effective Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, Lender Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 7 shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7 occurs during the period that a Lender Conversion Price is calculated hereunder, then the calculation of such Lender Conversion Price shall be adjusted appropriately to reflect such event.

8. Borrower Redemptions.

8.1. Redemption Conversion Price. Subject to the adjustments set forth herein, the conversion price for each Redemption Conversion (the “**Redemption Conversion Price**”) shall be the lesser of (a) Lender Conversion Price, and (b) the Market Price.

8.2. Redemption Conversions. Beginning on the date that is six (6) months from the Purchase Price Date, Lender shall have the right, exercisable at any time in its sole and absolute discretion, to redeem all or any portion of the Note up to the Maximum Monthly Redemption Amount (such amount to be redeemed,

the “**Redemption Amount**”) by providing Borrower with a notice substantially in the form attached hereto as Exhibit B (each, a “**Redemption Notice**”, and each date on which Lender delivers a Redemption Notice, a “**Redemption Date**”). For the avoidance of doubt, Lender may submit to Borrower one (1) or more Redemption Notices in any given calendar month, subject to the Maximum Monthly Redemption Amount. Payments of each Redemption Amount may be made, at the sole election of Borrower, (a) in cash, or (b) by converting such Redemption Amount into shares of Common Stock (“**Redemption Conversion Shares**”, and together with Lender Conversion Shares, the “**Conversion Shares**”) in accordance with this Section 8.2 (each, a “**Redemption Conversion**”) per the following formula: the number of Redemption Conversion Shares equals the portion of the applicable Redemption Amount being converted divided by the Redemption Conversion Price, or (c) by any combination of the foregoing, so long as the cash is delivered to Lender on or before the fifth (5th) Trading Day immediately following the applicable Redemption Date and the Redemption Conversion Shares are delivered to Lender on or before the applicable Delivery Date (as defined below). Notwithstanding the foregoing, Borrower will not be entitled to elect a Redemption Conversion with respect to any portion of any applicable Redemption Amount and shall be required to pay the Redemption Amount in cash, if on the applicable Redemption Date there is an Equity Conditions Failure and such failure is not waived in writing by Lender. Notwithstanding the foregoing, Lender will not be entitled to elect a Redemption Conversion if on any applicable Redemption Date the Redemption Conversion Price is below the Floor Price, unless Borrower agrees to waive the Floor Price. Notwithstanding that failure to repay this Note in full by the Maturity Date is an Event of Default, the Redemption Dates shall continue after the Maturity Date pursuant to this Section 8.2 until the Outstanding Balance is repaid in full.

8.3. Allocation of Redemption Amounts. Following its receipt of a Redemption Notice, Borrower may either ratify Lender’s proposed allocation in the applicable Redemption Notice or elect to change the allocation by written notice to Lender by email or fax within forty-eight (48) hours of its receipt of such Redemption Notice, so long as the sum of the cash payments and the amount of Redemption Conversions equal the applicable Redemption Amount. If Borrower fails to notify Lender of its election to change the allocation prior to the deadline set forth in the previous sentence, it shall be deemed to have ratified and accepted the allocation set forth in the applicable Redemption Notice prepared by Lender. Borrower and Lender each acknowledges and agrees that the amounts and calculations set forth thereon are subject to correction or adjustment because of error, mistake, or any adjustment resulting from an Event of Default or other adjustment permitted under the Transaction Documents (an “**Adjustment**”). Furthermore, no error or mistake in the preparation of such notices, or failure to apply any Adjustment that could have been applied prior to the preparation of a Redemption Notice may be deemed a waiver of Lender’s right to enforce the terms of any Note, even if such error, mistake, or failure to include an Adjustment arises from Lender’s own calculation. Borrower shall deliver the Redemption Conversion Shares from any Redemption Conversion to Lender in accordance with Section 9 below on or before each applicable Delivery Date.

9. Method of Conversion Share Delivery. On or before the close of business on the fifth (5th) Trading Day following each Redemption Date or the fifth (5th) Trading Day following the date of delivery of a Lender Conversion Notice, as applicable (the “**Delivery Date**”), Borrower shall, provided it is DWAC Eligible at such time and such Conversion Shares are eligible for delivery via DWAC, deliver or cause its transfer agent to deliver the applicable Conversion Shares electronically via DWAC to the account designated by Lender in the applicable Lender Conversion Notice or Redemption Notice. If Borrower is not DWAC Eligible or such Conversion Shares are not eligible for delivery via DWAC, it shall deliver to Lender or its broker (as designated in Lender Conversion Notice or Redemption Notice), via reputable overnight courier, a certificate representing the number of shares of Common Stock equal to the number of Conversion Shares to which Lender shall be entitled, registered in the name of Lender or its designee. For the avoidance of doubt, Borrower has not met its obligation to deliver Conversion Shares by the Delivery Date unless Lender or its broker, as applicable, has actually received the certificate representing the applicable Conversion Shares

no later than the close of business on the relevant Delivery Date pursuant to the terms set forth above. Moreover, and notwithstanding anything to the contrary herein or in any other Transaction Document, in the event Borrower or its transfer agent refuses to deliver any Conversion Shares without a restrictive securities legend to Lender on grounds that such issuance is in violation of Rule 144 under the Securities Act of 1933, as amended (“**Rule 144**”), Borrower shall deliver or cause its transfer agent to deliver the applicable Conversion Shares to Lender with a restricted securities legend, but otherwise in accordance with the provisions of this Section 9. In conjunction therewith, Borrower will also deliver to Lender a written explanation from its counsel or its transfer agent’s counsel opining as to why the issuance of the applicable Conversion Shares violates Rule 144.

10. Conversion Delays. If Borrower fails to deliver Conversion Shares in accordance with the timeframe stated in Section 9, Lender may at any time prior to receiving the applicable Conversion Shares rescind in whole or in part such Conversion, with a corresponding increase to the Outstanding Balance (any returned amount will tack back to the Purchase Price Date for purposes of determining the holding period under Rule 144). In addition, for each Lender Conversion, in the event that Lender Conversion Shares are not delivered by the fifth (5th) Trading Day (inclusive of the day of the Conversion), a late fee equal to 2% of the applicable Conversion Share Value rounded to the nearest multiple of \$100.00 but with a floor of \$500.00 per day (but in any event the cumulative amount of such late fees for each Conversion shall not exceed 200% of the applicable Conversion Share Value) will be assessed for each day after the fifth (5th) Trading Day (inclusive of the day of the Conversion) until Lender Conversion Share delivery is made; and such late fee will be added to the Outstanding Balance (such fees, the “**Conversion Delay Late Fees**”).

11. Approved Variable Security Issuance. The Outstanding Balance will automatically be increased by two and one-half percent (2.5%) for each Approved Restricted Issuance made by Borrower (without the need for Lender to provide any notice to Borrower of such increase), which increase will be effective as of the date of each applicable Approved Restricted Issuance, provided, however, that if an Approved Restricted Issuance consists of the issuance of Options or Convertible Securities, the Outstanding Balance will be increased pursuant to this Section 11 only upon the issuance of such Options or Convertible Securities and not upon the subsequent exercise, conversion or exchange of such Options or Convertible Securities irrespective of whether such subsequent exercise, conversion or exchange is a Restricted Issuance.

12. Restriction on Equity Sales. If at any time after the date that is six (6) months from the Purchase Price Date, Borrower is unable to issue Common Stock to Lender as result of any lock-up or other agreement or restriction prohibiting the issuance of Common Stock to Lender for a certain period of time, then the Outstanding Balance will, at Lender’s election, be increased by three percent (3%) for each thirty (30) day period that Borrower is prohibited from issuing Common Stock (which increase shall be pro-rated for any partial period). For the avoidance of doubt, such increase to the Outstanding Balance shall be in addition to all other rights and remedies available to Lender under this Note and the other Transaction Documents and shall not be in lieu of, nor deemed to be a waiver of any other rights or remedies available to Lender under this Note or any of the other Transaction Documents, including without limitation calling an Event of Default if Borrower fails to deliver Conversion Shares in accordance with the terms of this Note; provided, further, however, that the Default Effect shall not be applied with respect to Borrower’s failure to deliver Conversion Shares in accordance with the terms of this Note if Borrower is unable to issue Common Stock to Lender as result of any lock-up or other agreement or restriction prohibiting the issuance of Common Stock to Lender and Lender elects to increase the Outstanding Balance as provided in this Section 12.

13. Ownership Limitation. Notwithstanding anything to the contrary contained in this Note or the other Transaction Documents, Borrower shall not effect any conversion of this Note to the extent that after giving effect to such conversion would cause Lender (together with its affiliates) to beneficially own

a number of shares exceeding 4.99% of the number of shares of Common Stock outstanding on such date (including for such purpose the shares of Common Stock issuable upon such issuance) (the “**Maximum Percentage**”). For purposes of this section, beneficial ownership of Common Stock will be determined pursuant to Section 13(d) of the 1934 Act. Notwithstanding the forgoing, the term “4.99%” above shall be replaced with “9.99%” at such time as the Market Capitalization is less than \$10,000,000.00. Notwithstanding any other provision contained herein, if the term “4.99%” is replaced with “9.99%” pursuant to the preceding sentence, such increase to “9.99%” shall remain at 9.99% until increased, decreased or waived by Lender as set forth below. By written notice to Borrower, Lender may increase, decrease or waive the Maximum Percentage as to itself (together with its affiliates) up to a maximum of 19.99%, but any such waiver will not be effective until the 61st day after delivery thereof. The foregoing 61-day notice requirement is enforceable, unconditional and non-waivable and shall apply to all affiliates and assigns of Lender.

14. Issuance Cap. Notwithstanding anything to the contrary contained in this Note or the other Transaction Documents, Borrower and Lender agree that the total cumulative number of shares of Common Stock issued to Lender hereunder together with all other Transaction Documents may not exceed the requirements of Nasdaq Listing Rule 5635(d) (“**Nasdaq 19.99% Cap**”). Once the Nasdaq 19.99% Cap is reached, any remaining Outstanding Balance must be repaid in cash.

15. Opinion of Counsel. In the event that an opinion of counsel is needed by Lender for any matter related to this Note, Lender has the right to have any such opinion provided by its counsel.

16. Governing Law; Venue. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of Utah, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. The provisions set forth in the Purchase Agreement to determine the proper venue for any disputes are incorporated herein by this reference.

17. Arbitration of Disputes. By its issuance or acceptance of this Note, each party agrees to be bound by the Arbitration Provisions (as defined in the Purchase Agreement) set forth as an exhibit to the Purchase Agreement.

18. Cancellation. After repayment or conversion of the entire Outstanding Balance, this Note shall be deemed paid in full, shall automatically be deemed canceled, and shall not be reissued.

19. Amendments. The prior written consent of both parties hereto shall be required for any change or amendment to this Note.

20. Assignments. Borrower may not assign this Note without the prior written consent of Lender. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by Lender without the consent of Borrower, subject to compliance with applicable federal and state securities laws.

21. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with the subsection of the Purchase Agreement titled “Notices.”

22. Liquidated Damages. Lender and Borrower agree that in the event Borrower fails to comply with any of the terms or provisions of this Note, Lender’s damages would be uncertain and difficult (if not impossible) to accurately estimate because of the parties’ inability to predict future interest rates, future share

prices, future trading volumes and other relevant factors. Accordingly, Lender and Borrower agree that any fees, balance adjustments, Default Interest or other charges assessed under this Note are not penalties but instead are intended by the parties to be, and shall be deemed, liquidated damages (under Lender's and Borrower's expectations that any such liquidated damages will tack back to the Purchase Price Date for purposes of determining the holding period under Rule 144).

23. Severability. If any part of this Note is construed to be in violation of any law, such part shall be modified to achieve the objective of Borrower and Lender to the fullest extent permitted by law and the balance of this Note shall remain in full force and effect.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed as of the Effective Date.

BORROWER:

INNOVATE BIOPHARMACEUTICALS, INC.

By: /s/ Sandeep Laumas

Name: Sandeep Laumas

Title: Chief Executive Officer

ACKNOWLEDGED, ACCEPTED AND AGREED:

LENDER:

ATLAS SCIENCES, LLC

By: /s/ Alex Sullivan

Alex Sullivan, CEO

[Signature Page to Convertible Promissory Note]

ATTACHMENT 1 DEFINITIONS

For purposes of this Note, the following terms shall have the following meanings:

A1. “**Approved Restricted Issuance**” means a Restricted Issuance (as defined in the Purchase Agreement) which requires the prior written approval of Lender pursuant to Section 4 of the Purchase Agreement for which Borrower received Lender’s written consent prior to the applicable issuance.

A2. “**Closing Bid Price**” and “**Closing Trade Price**” means the last closing bid price and last closing trade price, respectively, for the Common Stock on its principal market, as reported by Bloomberg, or, if its principal market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of the Common Stock prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if its principal market is not the principal securities exchange or trading market for the Common Stock, the last closing bid price or last trade price, respectively, of the Common Stock on the principal securities exchange or trading market where the Common Stock is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of the Common Stock in the over-the-counter market on the electronic bulletin board for the Common Stock as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for the Common Stock by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for the Common Stock as reported by OTC Markets Group, Inc., and any successor thereto. If the Closing Bid Price or the Closing Trade Price cannot be calculated for the Common Stock on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Trade Price (as the case may be) of the Common Stock on such date shall be the fair market value as mutually determined by Lender and Borrower. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

A3. “**Conversion**” means a Lender Conversion under Section 3 or a Redemption Conversion under Section 8.

A4. “**Conversion Factor**” means 80%.

A5. “**Conversion Share Value**” means the product of the number of Lender Conversion Shares deliverable pursuant to any Lender Conversion Notice multiplied by the Closing Trade Price of the Common Stock on the Delivery Date for such Lender Conversion.

A6. “**Convertible Securities**” means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

A7. “**Default Effect**” means multiplying the Outstanding Balance as of the date the applicable Event of Default occurred by (a) fifteen percent (15%) for each occurrence of any Major Default, (b) ten percent (10%) for each occurrence of an Unapproved Restricted Issuance Default, or (c) five percent (5%) for each occurrence of any Minor Default, and then adding the resulting product to the Outstanding Balance as of the date the applicable Event of Default occurred, with the sum of the foregoing then becoming the Outstanding Balance under this Note as of the date the applicable Event of Default occurred; provided that the Default Effect may only be applied three (3) times hereunder with respect to Major Defaults and three (3) times hereunder with respect to Minor Defaults; and provided further that the Default Effect shall not apply to any Event of Default pursuant to Section 4.1(b) hereof. There shall be no limit on the number of times the Default Effect may be applied with respect to Unapproved Restricted Issuance Defaults, and provided further that if a Unapproved Restricted Issuance consists of the issuance of Options or Convertible

Securities, the Default Effect will be applied only upon the issuance of such Options or Convertible Securities and not upon the subsequent exercise of such Options or Convertible Securities irrespective of whether such subsequent exercise or conversion is a Restricted Issuance.

A8. “**DTC**” means the Depository Trust Company or any successor thereto.

A9. “**DTC/FAST Program**” means the DTC’s Fast Automated Securities Transfer program.

A10. “**DWAC**” means the DTC’s Deposit/Withdrawal at Custodian system.

A11. “**DWAC Eligible**” means that (a) Borrower’s Common Stock is eligible at DTC for full services pursuant to DTC’s operational arrangements, including without limitation transfer through DTC’s DWAC system; (b) Borrower has been approved (without revocation) by DTC’s underwriting department; (c) Borrower’s transfer agent is approved as an agent in the DTC/FAST Program; (d) the Conversion Shares are otherwise eligible for delivery via DWAC; and (e) Borrower’s transfer agent does not have a policy prohibiting or limiting delivery of the Conversion Shares via DWAC.

A12. “**Equity Conditions Failure**” means that any of the following conditions has not been satisfied on any given Redemption Date: (a) with respect to the applicable date of determination all of the Conversion Shares would be freely tradable under Rule 144 or without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of this Note); (b) no Event of Default shall have occurred and be continuing hereunder; (c) the average and median daily dollar volume of the Common Stock on its principal market for the previous twenty (20) and two hundred (200) Trading Days shall be greater than \$250,000.00; (d) the five (5) day VWAP of the Common Stock is greater than or equal to \$1.00; and (e) the Market Capitalization is greater than or equal to \$15,000,000.00.

A13. “**Excluded Securities**” means (i) shares of Common Stock or standard options to purchase Common Stock issued to directors, officers or employees of Borrower for services rendered to Borrower in their capacity as such pursuant to an employee benefit plan which has been approved by the board of directors of Borrower pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer, director or service provider for services provided to Borrower (or its subsidiaries) in their capacity as such, provided that (A) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the Effective Date pursuant to this clause (i) do not, in the aggregate, exceed more than 20% of the Common Stock issued and outstanding immediately prior to the Effective Date and (B) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects the Investors; (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Effective Date, provided that the conversion price of any such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an employee benefit plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects Lender; and (iii) the shares of Common Stock issuable upon conversion of the Note, as such may be amended, modified, restated or supplemented from time to time and upon conversion of the Gustavia Note (as defined in the Purchase Agreement).

A14. “**Floor Price**” means \$3.25 per share of Common Stock.

A15. “**Fundamental Transaction**” means that (a) (i) Borrower or any of its subsidiaries shall, directly or indirectly, in one or more related transactions, consolidate or merge with or into (whether or not Borrower or any of its subsidiaries is the surviving corporation) any other person or entity, or (ii) Borrower or any of its subsidiaries shall, directly or indirectly, in one or more related transactions, sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other person or entity, or (iii) Borrower or any of its subsidiaries shall, directly or indirectly, in one or more related transactions, allow any other person or entity to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of voting stock of Borrower (not including any shares of voting stock of Borrower held by the person or persons making or party to, or associated or affiliated with the persons or entities making or party to, such purchase, tender or exchange offer), or (iv) Borrower or any of its subsidiaries shall, directly or indirectly, in one or more related transactions, consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other person or entity whereby such other person or entity acquires more than 50% of the outstanding shares of voting stock of Borrower (not including any shares of voting stock of Borrower held by the other persons or entities making or party to, or associated or affiliated with the other persons or entities making or party to, such stock or share purchase agreement or other business combination), or (v) Borrower or any of its subsidiaries shall, directly or indirectly, in one or more related transactions, reorganize, recapitalize or reclassify the Common Stock, other than an increase in the number of authorized shares of Borrower’s Common Stock, or (b) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding voting stock of Borrower.

A16. “**Major Default**” means any Event of Default occurring under Sections 4.1(a), 4.1(c), 4.1(l), or 4.1(p).

A17. “**Mandatory Default Amount**” means the Outstanding Balance following the application of the Default Effect.

A18. “**Market Capitalization**” means a number equal to (a) the average VWAP of the Common Stock for the immediately preceding fifteen (15) Trading Days, multiplied by (b) the aggregate number of outstanding shares of Common Stock as reported on Borrower’s most recently filed Form 10-Q or Form 10-K, in each case, subject to appropriate adjustments for stock splits, dividends, combinations and like events occurring prior to the date of measurement.

A19. “**Market Price**” means the Conversion Factor multiplied by the average of five (5) lowest daily VWAPs during the twenty (20) Trading Days immediately preceding the applicable measurement date.

A20. “**Maximum Monthly Redemption Amount**” means (i) \$500,000 per calendar month if the redemption is exercised by Lender at any time from the date that is six (6) months from the Purchase Price Date and on or prior to the date that is twelve (12) months from the Purchase Price Date and (ii) \$750,000.00 per calendar month after the date that is twelve (12) months from the Purchase Price Date.

A21. “**Minor Default**” means any Event of Default that is not a Major Default or an Unapproved Restricted Issuance Default.

A22. “**OID**” means an original issue discount.

A23. “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

A24. “**Other Agreements**” means, collectively, (a) all existing and future agreements and instruments between, among or by Borrower (or an affiliate), on the one hand, and Lender (or an affiliate),

on the other hand, and (b) any material financing agreement or a material agreement that affects Borrower's ongoing business operations.

A25. "**Outstanding Balance**" means as of any date of determination, the Purchase Price, as reduced or increased, as the case may be, pursuant to the terms hereof for payment, Conversion, offset, or otherwise, plus the OID, accrued but unpaid interest, collection and enforcements costs (including attorneys' fees) incurred by Lender, transfer, stamp, issuance and similar taxes and fees related to Conversions, and any other fees or charges (including without limitation Conversion Delay Late Fees) incurred under this Note.

A26. "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof

A27. "**Purchase Price Date**" means the date the Purchase Price (as defined in the Purchase Agreement) is delivered by Lender to Borrower.

A28. "**Trading Day**" means any day on which the New York Stock Exchange (or such other principal market for the Common Stock) is open for trading.

A29. "**Unapproved Restricted Issuance**" means a Restricted Issuance for which Borrower did not receive Lender's written consent prior to the applicable issuance.

A30. "**Unapproved Restricted Issuance Default**" means an Event of Default occurring under Section 4.1(q) of this Note.

A31. "**VWAP**" means the volume weighted average price of the Common Stock on the principal market for a particular Trading Day or set of Trading Days, as the case may be, as reported by Bloomberg.

[Remainder of page intentionally left blank]

EXHIBIT A

Atlas Sciences, LLC
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

Innovate Biopharmaceuticals, Inc.
Attn: Sandeep Laumas, M.D.
8480 Honeycutt Road, Suite 120
Raleigh, North Carolina 27615

Date: _____

(with copies by email to:
kwoodard@innovatebiopharma.com
jmadan@innovatebiopharma.com)

LENDER CONVERSION NOTICE

The above-captioned Lender hereby gives notice to Innovate Biopharmaceuticals, Inc., a Delaware corporation (the "**Borrower**"), pursuant to that certain Convertible Promissory Note made by Borrower in favor of Lender on March 8, 2019 (the "**Note**"), that Lender elects to convert the portion of the Note balance set forth below into fully paid and non-assessable shares of Common Stock of Borrower as of the date of conversion specified below. Said conversion shall be based on the Lender Conversion Price set forth below. In the event of a conflict between this Lender Conversion Notice and the Note, the Note shall govern, or, in the alternative, at the election of Lender in its sole discretion, Lender may provide a new form of Lender Conversion Notice to conform to the Note. Capitalized terms used in this notice without definition shall have the meanings given to them in the Note.

- A. Date of Conversion: _____
- B. Lender Conversion #: _____
- C. Conversion Amount: _____
- D. Lender Conversion Price: _____
- E. Lender Conversion Shares: _____ (C divided by D)
- F. Remaining Outstanding Balance of Note: _____*

* Subject to adjustments for corrections, defaults, interest and other adjustments permitted by the Transaction Documents (as defined in the Purchase Agreement), the terms of which shall control in the event of any dispute between the terms of this Lender Conversion Notice and such Transaction Documents.

Please transfer the Lender Conversion Shares electronically (via DWAC) to the following account:

Broker: _____ Address: _____
DTC#: _____
Account #: _____
Account Name: _____

To the extent the Lender Conversion Shares are not able to be delivered to Lender electronically via the DWAC system, deliver all such certificated shares to Lender via reputable overnight courier after receipt of this Lender Conversion Notice (by facsimile transmission or otherwise) to:

[Signature Page Follows]

Sincerely,

Lender:

ATLAS SCIENCES, LLC

By: _____
Alex Sullivan, CEO

EXHIBIT B

Atlas Sciences, LLC
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

Innovate Biopharmaceuticals, Inc.
Attn: Sandeep Laumas, M.D.
8480 Honeycutt Road, Suite 120
Raleigh, North Carolina 27615

Date: _____

(with copies by email to:
kwoodard@innovatebiopharma.com
jmadan@innovatebiopharma.com)

REDEMPTION NOTICE

The above-captioned Lender hereby gives notice to Innovate Biopharmaceuticals, Inc., a Delaware corporation (the “**Borrower**”), pursuant to that certain Convertible Promissory Note made by Borrower in favor of Lender on March 8, 2019 (the “**Note**”), that Lender elects to redeem a portion of the Note in Redemption Conversion Shares or in cash as set forth below (subject to Borrower’s option to reallocate the redemption amount in Redemption Conversion Shares or cash as set forth in the Note). In the event of a conflict between this Redemption Notice and the Note, the Note shall govern, or, in the alternative, at the election of Lender in its sole discretion, Lender may provide a new form of Redemption Notice to conform to the Note. Capitalized terms used in this notice without definition shall have the meanings given to them in the Note.

REDEMPTION INFORMATION

- A. Redemption Date: _____, 201_
- B. Redemption Amount: _____
- C. Portion of Redemption Amount to be Paid in Cash: _____
- D. Portion of Redemption Amount to be Converted into Common Stock: _____ (B minus C)
- E. Redemption Conversion Price: _____ (lower of (i) Lender Conversion Price in effect and (ii) Market Price as of Redemption Date)
- F. Redemption Conversion Shares: _____ (D divided by E)
- G. Remaining Outstanding Balance of Note: _____ *

* Subject to adjustments for corrections, defaults, interest and other adjustments permitted by the Transaction Documents (as defined in the Purchase Agreement), the terms of which shall control in the event of any dispute between the terms of this Redemption Notice and such Transaction Documents.

Please transfer the Redemption Conversion Shares, if applicable, electronically (via DWAC) to the following account:

Broker: _____ Address: _____

DTC#: _____

Account #: _____

Account Name: _____

To the extent the Redemption Conversion Shares are not able to be delivered to Lender electronically via the DWAC system, deliver all such certificated shares to Lender via reputable overnight courier after receipt of this Redemption Notice (by facsimile transmission or otherwise) to:

Sincerely,

Lender:

ATLAS SCIENCES, LLC

By: _____
Alex Sullivan, CEO

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this “**Agreement**”), dated as of March 8, 2019, is entered into by and between INNOVATE BIOPHARMACEUTICALS, INC., a Delaware corporation (“**Company**”), and ATLAS SCIENCES, LLC, a Utah limited liability company, its successors and/or assigns (“**Investor**”).

A. Company and Investor are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the Securities Act of 1933, as amended (the “**1933 Act**”), and the rules and regulations promulgated thereunder by the United States Securities and Exchange Commission (the “**SEC**”).

B. Investor desires to purchase and Company desires to issue and sell, upon the terms and conditions set forth in this Agreement a Convertible Promissory Note, in the form attached hereto as Exhibit A, in the original principal amount of \$5,500,000.00 (the “**Note**”), convertible into shares of common stock, \$0.0001 par value per share, of Company (the “**Common Stock**”), upon the terms and subject to the limitations and conditions set forth in such Note.

C. This Agreement, the Note, and all other agreements delivered to any party under or in connection with this Agreement, as the same may be amended from time to time, are collectively referred to herein as the “**Transaction Documents**”.

D. For purposes of this Agreement: “**Conversion Shares**” means all shares of Common Stock issuable upon conversion of all or any portion of the Note; and “**Securities**” means the Note and the Conversion Shares.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Investor hereby agree as follows:

1. Purchase and Sale of Securities.

1.1. Purchase of Securities. Company shall issue and sell to Investor and Investor shall purchase from Company the Note. In consideration thereof, Investor shall pay the Purchase Price (as defined below) to Company.

1.2. Form of Payment. On the Closing Date (as defined below), Investor shall pay the Purchase Price to Company via wire transfer of immediately available funds to the account set forth in Exhibit B against delivery of the Note.

1.3. Closing Date. Subject to the satisfaction (or written waiver) of the conditions set forth in Section 5 and Section 6 below, the date of the issuance and sale of the Note pursuant to this Agreement (the “**Closing Date**”) shall be March 8, 2019, or another mutually agreed upon date. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall occur on the Closing Date by means of the exchange by email of signed .pdf documents, but shall be deemed for all purposes to have occurred at the offices of Hansen Black Anderson Ashcraft PLLC in Lehi, Utah.

1.4. Collateral for the Note. The Note shall be unsecured.

1.5. Original Issue Discount; Transaction Expense Amount. The Note carries an original issue discount of \$500,000.00 (the “**OID**”). In addition, Company agrees to pay \$20,000.00 to Investor to cover Investor’s legal fees, accounting costs, due diligence, monitoring and other transaction costs incurred in connection with the purchase and sale of the Securities (the “**Transaction Expense Amount**”), which Transaction Expense Amount shall be paid by the Company at Closing (or the Investor may elect to withhold the Transaction Expense Amount from the Purchase Price wired to the Company). The “**Purchase Price**”, therefore, shall be \$5,000,000.00, computed as follows: \$5,500,000.00 initial principal balance, less the OID.

2. Investor’s Representations, Warranties and Covenants.

2.1. Investor represents and warrants to Company that as of the Closing Date:

(a) Investor is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder.

(b) Investor is acquiring the Note, and upon conversion of the Note, will be acquiring the Conversion Shares, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the 1933 Act. Investor does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities in violation of applicable securities laws. For purposes of this Agreement, “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.

(c) Investor is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D of the 1933 Act.

(d) Investor understands that the Note is being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that Company is relying in part upon the truth and accuracy of, and such Investor’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Investor set forth herein in order to determine the availability of such exemptions and the eligibility of Investor to acquire the Note.

(e) Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of Company and materials relating to the offer and sale of the Note that have been requested by Investor. Investor and its advisors, if any, have been afforded the opportunity to ask questions of Company. Neither such inquiries nor any other due diligence investigations conducted by Investor or its advisors, if any, or its representatives shall modify, amend or affect such Investor’s right to rely on Company’s representations and warranties contained herein. Investor understands that its investment in the Securities involves a high degree of risk. Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Note.

(f) Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Note.

(g) Investor understands that, except as may be contemplated in connection with the registration of the Common Stock: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) Investor shall have delivered to Company (if requested by Company) an opinion of counsel, in a form reasonably acceptable to Company, to the effect that the Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) Investor provides Company with reasonable assurance that the Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, “**Rule 144**”); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of the Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and Investor effecting a pledge of the Securities shall not be required to provide Company with any notice thereof or otherwise make any delivery to Company pursuant to this Agreement or any other Transaction Document, including, without limitation, this Section 2.1(g).

(h) This Agreement, the Note, and the other Transaction Documents have been duly executed and delivered by Investor and constitute the valid and binding obligations of Investor enforceable in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(i) The execution, delivery and performance by Investor of this Agreement and the other Transaction Documents and the consummation by Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of Investor, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Investor to perform its obligations hereunder.

2.2. Investor covenants and agrees that if Investor is a “Covered Person” with respect to Company as determined in good faith by Company with the advice of its counsel and, any of the “bad actor” disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the 1933 Act (each, a “**Disqualification Event**”), is applicable to Investor such that Company is prohibited from offering or selling its securities pursuant to Rule 506 of Regulation D promulgated under the 1933 Act, Investor shall use its best efforts to

transfer all or a portion of the Securities to a Person that, to Company's knowledge, a Disqualification Event is not applicable, such that Company is no longer prohibited from offering or selling its securities under Rule 506 as a result of the Disqualification Event applicable to Investor.

3. Company's Representations and Warranties. Company represents and warrants to Investor that as of the Closing Date: (%4) Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has the requisite corporate power to own its properties and to carry on its business as now being conducted; (%4) Company is duly qualified as a foreign corporation to do business and is in good standing in each jurisdiction where the nature of the business conducted or property owned by it makes such qualification necessary and in which the failure to so qualify would have a material adverse effect on the business, assets (including intangible assets), liabilities, financial condition, property, or results of operations of Company (a "**Material Adverse Effect**"); (%4) Company has registered its Common Stock under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), and is obligated to file reports pursuant to Section 13 or Section 15(d) of the 1934 Act; (%4) each of the Transaction Documents and the transactions contemplated hereby and thereby, have been duly and validly authorized by Company and all necessary corporate actions have been taken; (%4) this Agreement, the Note, and the other Transaction Documents have been duly executed and delivered by Company and constitute the valid and binding obligations of Company enforceable in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies; (%4) the execution, delivery and performance by Company of the Transaction Documents and the consummation by Company of the transactions contemplated hereby and thereby will not (x) result in a violation of the organizational documents of Company, or (y) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which Company is a party, or (z) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to Company, except in the case of clauses (y) and (z) above, for such conflicts, defaults, rights or violations which could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Company to perform its obligations hereunder; (%4) no further authorization, approval or consent of any court, governmental body, regulatory agency, self-regulatory organization, or stock exchange or market or the stockholders or any lender of Company is required to be obtained by Company for the issuance of the Securities to Investor or the entering into of the Transaction Documents; (%4) since January 29, 2018, when Company completed its reverse merger transaction with Innovate Biopharmaceutical Inc., none of Company's filings with the SEC contained, at the time they were filed, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; (%4) since January 29, 2018, Company has filed all reports, schedules, forms, statements and other documents required to be filed by Company with the SEC under the 1934 Act on a timely basis or has received a waiver of such requirement or a valid extension of such time of filing and has filed any such report, schedule, form, statement or other document prior to the expiration of any such extension; (%4) except as disclosed in Company's periodic and current reports with the SEC, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or, to the knowledge of Company, threatened against or affecting Company before or by any governmental authority or non-governmental department, commission, board, bureau, agency or instrumentality or any other person, that would reasonably be likely to have a Material Adverse Effect on Company or which would be reasonably likely to adversely affect the validity or enforceability of, or the authority or ability of Company to perform its obligations under, any of the Transaction Documents; (%4) since January 28, 2018, Company has not consummated any financing transaction that has not been disclosed in a periodic filing or current report with the SEC under the 1934

Act; (%) Company is not, nor has it been at any time in the previous twelve (12) months, a “Shell Company,” as such type of “issuer” is described in Rule 144(i)(1) under the 1933 Act; (%) when issued, the Conversion Shares will be duly authorized, validly issued, fully paid for and non-assessable, free and clear of all liens, claims, charges and encumbrances; (%) in making its decision to enter into the transactions contemplated by the Transaction Documents, Company is not relying on any representation, warranty, covenant or promise of Investor or its officers, directors, members, managers, employees, agents or representatives other than as set forth in the Transaction Documents; and (%) Company acknowledges that the State of Utah has a reasonable relationship and sufficient contacts to the transactions contemplated by the Transaction Documents and any dispute that may arise related thereto such that the laws and venue of the State of Utah, as set forth more specifically in Section 10.2 below, shall be applicable to the Transaction Documents and the transactions contemplated therein.

4. Company Covenants. Until all of Company’s obligations under all of the Transaction Documents are paid and performed in full, or within the timeframes otherwise specifically set forth below, Company will at all times comply with the following covenants: (%) so long as Investor beneficially owns any of the Securities and for at least twenty (20) Trading Days (as defined in the Note) thereafter, Company will timely file on the applicable deadline all reports required to be filed with the SEC pursuant to Sections 13 or 15(d) of the 1934 Act, and will take all reasonable action under its control to ensure that adequate current public information with respect to Company, as required in accordance with Rule 144 of the 1933 Act, is publicly available, and will not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would permit such termination; (%) when issued, the Conversion Shares will be duly authorized, validly issued, fully paid for and non-assessable, free and clear of all liens, claims, charges and encumbrances; (%) the Common Stock shall be listed or quoted for trading on any of (a) NYSE, (b) Nasdaq, (c) OTCQX, or (d) OTCQB; (%) trading in Company’s Common Stock will not be suspended, halted, chilled, frozen, reach zero bid or otherwise cease trading on Company’s principal trading market for a period of five (5) consecutive Trading Days (as defined in the Note) or more; and (%) so long as there are any outstanding obligations under the Note, Company will not make any Restricted Issuances (as defined below) where Borrower receives net proceeds in an amount less than \$5,000,000.00 after the Closing Date without Investor’s prior written consent, which consent may be granted or withheld in Investor’s sole and absolute discretion. For purposes hereof, the term “**Restricted Issuance**” means any issuance of (1) any debt instrument or incurrence of any debt other than trade payables in the ordinary course of business and other than the Convertible Promissory Note in the original principal amount of \$5,106,666.67 held by Gustavia Capital Partners LLC or its registered assigns (the “**Gustavia Note**”); (2) any securities or agreements to sell Common Stock with anti-dilution or price reset/reduction features other than the Gustavia Note; or (3) except as noted below, any securities that are or may become convertible or exercisable into Common Stock (including Convertible Debt (as defined below), warrants or convertible preferred stock) other than the Gustavia Note, with a price that varies with the market price of the Common Stock, even if such security only becomes convertible or exercisable following an event of default, the passage of time, or another trigger event or condition, excluding securities which contain cashless or net exercise provisions, where the exercise price or conversion price does not vary with the market price of the Common Stock. For the avoidance of doubt, (i) the issuance of Common Stock, including any contemporaneous warrant issuances sold to the same purchasers and including any issuance of Common Stock in an at-the-market offering, in each case, in exchange for cash consideration, will not be deemed a Restricted Issuance hereunder and (ii) the issuance of shares of Common Stock under, pursuant to, in exchange for or in connection with any other contract or instrument, whether convertible or not, other than the Gustavia Note, is deemed a Restricted Issuance for purposes hereof if the number of shares of Common Stock to be issued is based upon or related in any way to the then market price of the Common Stock, including, but not limited to, Common Stock issued in connection with a Section 3(a)(9) exchange, a Section 3(a)(10) settlement, or any other similar settlement or exchange, but excluding the issuance of Common Stock upon conversion

or exercise of warrants, options or other convertible or exercisable securities pursuant to cashless or net exercise provisions, where the exercise price or conversion price is not otherwise based upon or related to the then market price of the Common Stock.

5. Conditions to Company's Obligation to Sell. The obligation of Company hereunder to issue and sell the Securities to Investor at the Closing is subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

5.1. Investor shall have executed this Agreement and the Note and delivered the same to Company.

5.2. Investor shall have delivered the Purchase Price to Company in accordance with Section 1.2 above.

6. Conditions to Investor's Obligation to Purchase. The obligation of Investor hereunder to purchase the Securities at the Closing is subject to the satisfaction, on or before the Closing Date, of each of the following conditions, provided that these conditions are for Investor's sole benefit and may be waived by Investor at any time in its sole discretion:

6.1. Company shall have executed this Agreement and the Note and delivered the same to Investor.

6.2. Company shall have delivered to Investor a fully executed Irrevocable Letter of Instructions to Transfer Agent (the "**TA Letter**") substantially in the form attached hereto as Exhibit C acknowledged and agreed to in writing by Company's transfer agent (the "**Transfer Agent**").

6.3. Company shall have delivered to Investor a fully executed Secretary's Certificate substantially in the form attached hereto as Exhibit D evidencing Company's approval of the Transaction Documents.

6.4. Company shall have delivered to Investor a fully executed Share Issuance Resolution substantially in the form attached hereto as Exhibit E to be delivered to the Transfer Agent.

6.5. Company shall have delivered to Investor fully executed copies of all other Transaction Documents required to be executed by Company herein or therein.

7. Reservation of Shares. On the date hereof, Company will reserve 8,000,000 shares of Common Stock from its authorized and unissued Common Stock to provide for all issuances of Common Stock under the Note (the "**Share Reserve**"). Company further agrees to add additional shares of Common Stock to the Share Reserve in increments of 500,000 shares as and when requested by Investor if as of the date of any such request the number of shares being held in the Share Reserve is less than two (2) times the number of shares of Common Stock obtained by dividing the Outstanding Balance (as defined in the Note) as of the date of the request by the Redemption Conversion Price (as defined in the Note). Until such time as there are no outstanding obligations under the Note, Company shall require the Transfer Agent to hold the shares of Common Stock reserved pursuant to the Share Reserve exclusively for the benefit of Investor and to issue such shares to Investor promptly upon Investor's delivery of a conversion notice under the Note.

8. No Finder's or Brokers Fees. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with the transactions contemplated by the Transaction Documents. Investor agrees to indemnify and to hold harmless Company from any liability for any

commission or compensation in the nature of a finder's or broker's fee arising out of these transactions (and the costs and expenses of defending against such liability or asserted liability) for which Investor or any of its officers, employees or representatives is responsible. Company agrees to indemnify and hold harmless Investor from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of these transactions (and the costs and expenses of defending against such liability or asserted liability) for which Company or any of its officers, employees or representatives is responsible.

9. Terms of Future Financings. So long as the Note is outstanding, upon any issuance by Company of any promissory note which is convertible into Common Stock ("**Convertible Debt**") after the six (6) month anniversary of the Closing Date with any term or condition regarding conversion terms or mechanics more favorable to the holder of such Convertible Debt or with a material term in favor of the holder of such Convertible Debt that was not similarly provided to Investor in the Transaction Documents, then Company shall notify Investor of such additional or more favorable term and such term, at Investor's option, shall become a part of the Transaction Documents for the benefit of Investor. Additionally, if Company fails to notify Investor of any such additional or more favorable term, but Investor becomes aware that Company has granted such a term to any third party, Investor may notify Company of such additional or more favorable term and such term shall become a part of the Transaction Documents retroactive to the date on which such term was granted to the applicable third party pursuant to the issuance of Convertible Debt. The types of conversion terms contained in another Convertible Debt that may be more favorable to the holder of such security include, but are not limited to, terms addressing conversion discounts, conversion lookback periods, and conversion prices.

10. Miscellaneous. The provisions set forth in this Section 10 shall apply to this Agreement, as well as all other Transaction Documents as if these terms were fully set forth therein; provided, however, that in the event there is a conflict between any provision set forth in this Section 10 and any provision in any other Transaction Document, the provision in such other Transaction Document shall govern.

10.1. Arbitration of Claims. The parties shall submit all Claims (as defined in Exhibit F) arising under this Agreement or any other Transaction Document or any other agreement between the parties and their affiliates or any Claim relating to the relationship of the parties to binding arbitration pursuant to the arbitration provisions set forth in Exhibit F attached hereto (the "**Arbitration Provisions**"). For the avoidance of doubt, the parties agree that the injunction described in Section 10.3 below may be pursued in an arbitration that is separate and apart from any other arbitration regarding all other Claims arising under the Transaction Documents. The parties hereby acknowledge and agree that the Arbitration Provisions are unconditionally binding on the parties hereto and are severable from all other provisions of this Agreement. By executing this Agreement, Company represents, warrants and covenants that Company has reviewed the Arbitration Provisions carefully, consulted with legal counsel about such provisions (or waived its right to do so), understands that the Arbitration Provisions are intended to allow for the expeditious and efficient resolution of any dispute hereunder, agrees to the terms and limitations set forth in the Arbitration Provisions, and that Company will not take a position contrary to the foregoing representations. Company acknowledges and agrees that Investor may rely upon the foregoing representations and covenants of Company regarding the Arbitration Provisions.

10.2. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by, the internal laws of the State of Utah, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Each party consents to and expressly agrees that the exclusive venue for arbitration of any dispute arising out of or relating to any Transaction

Document or the relationship of the parties or their affiliates shall be in Salt Lake County, Utah. Without modifying the parties' obligations to resolve disputes hereunder pursuant to the Arbitration Provisions, for any litigation arising in connection with any of the Transaction Documents (and notwithstanding the terms (specifically including any governing law and venue terms) of any transfer agent services agreement or other agreement between the Transfer Agent and Company, such litigation specifically includes, without limitation any action between or involving Company and the Transfer Agent under the TA Letter or otherwise related to Investor in any way (specifically including, without limitation, any action where Company seeks to obtain an injunction, temporary restraining order, or otherwise prohibit the Transfer Agent from issuing shares of Common Stock to Investor for any reason)), each party hereto hereby (i) consents to and expressly submits to the exclusive personal jurisdiction of any state or federal court sitting in Salt Lake County, Utah, (ii) expressly submits to the exclusive venue of any such court for the purposes hereof, (iii) agrees to not bring any such action (specifically including, without limitation, any action where Company seeks to obtain an injunction, temporary restraining order, or otherwise prohibit the Transfer Agent from issuing shares of Common Stock to Investor for any reason) outside of any state or federal court sitting in Salt Lake County, Utah, and (iv) waives any claim of improper venue and any claim or objection that such courts are an inconvenient forum or any other claim, defense or objection to the bringing of any such proceeding in such jurisdiction or to any claim that such venue of the suit, action or proceeding is improper. Finally, Company covenants and agrees to name Investor as a party in interest in, and provide written notice to Investor in accordance with Section 10.9 below prior to bringing or filing, any action (including without limitation any filing or action against any person or entity that is not a party to this Agreement, including without limitation the Transfer Agent) that is related in any way to the Transaction Documents or any transaction contemplated herein or therein, including without limitation any action brought by Company to enjoin or prevent the issuance of any shares of Common Stock to Investor by the Transfer Agent, and further agrees to timely name Investor as a party to any such action. Company acknowledges that the governing law and venue provisions set forth in this Section 10.2 are material terms to induce Investor to enter into the Transaction Documents and that but for Company's agreements set forth in this Section 10.2 Investor would not have entered into the Transaction Documents.

10.3. Specific Performance. Company acknowledges and agrees that Investor may suffer irreparable harm in the event that Company fails to perform any material provision of this Agreement or any of the other Transaction Documents in accordance with its specific terms. It is accordingly agreed that Investor shall be entitled to one or more injunctions to prevent or cure breaches of the provisions of this Agreement or such other Transaction Document and to enforce specifically the terms and provisions hereof or thereof, this being in addition to any other remedy to which Investor may be entitled under the Transaction Documents, at law or in equity. Company specifically agrees that following an Event of Default (as defined in the Note) pursuant to which Lender fails to deliver any Lender Conversion Shares or Redemption Conversion Shares in accordance with the terms of the Note, Investor shall have the right to seek and receive injunctive relief from a court or an arbitrator prohibiting Company from issuing any of its common or preferred stock to any party unless the Note is being paid in full simultaneously with such issuance. Company specifically agrees that following an Event of Default (as defined in the Note) under the Note pursuant to which the obligations under the Note are accelerated, if the Company issues any of its common or preferred stock to any party, the Company shall use the proceeds from such issuance to repay its obligations under the Note as follows: (i) if the issuance results in net proceeds to the Company of less than \$5 million, 20% of the net proceeds (or, if the outstanding obligations of the Company under the Note are less than 20% of such net proceeds, the proceeds necessary to repay the Note in whole) shall be applied to the repayment of the Company's obligations under the Note, (ii) if the issuance results in net proceeds to the Company of at least \$5 million but less than \$10 million, 33% of the net proceeds (or, if the outstanding obligations of the Company under the Note are less than 33% of such net proceeds, the proceeds necessary to repay the Note in whole) shall be applied to the repayment of the Company's obligations under the Note, (iii) if the issuance results in net proceeds to

the Company of at least \$10 million but less than \$15 million, 66% of the net proceeds (or, if the outstanding obligations of the Company under the Note are less than 66% of such net proceeds, the proceeds necessary to repay the Note in whole) shall be applied to the repayment of the Company's obligations under the Note, and (iv) if the issuance results in net proceeds to the Company of \$15 million or more, the Company shall repay its obligations under the Note in full. For the avoidance of doubt, in the event Investor seeks to obtain an injunction from a court or an arbitrator against Company or specific performance of any provision of any Transaction Document, such action shall not be a waiver of any right of Investor under any Transaction Document, at law, or in equity, including without limitation its rights to arbitrate any Claim pursuant to the terms of the Transaction Documents, nor shall Investor's pursuit of an injunction prevent Investor, under the doctrines of claim preclusion, issues preclusion, res judicata or other similar legal doctrines, from pursuing other Claims in the future in a separate arbitration.

10.4. Counterparts. Each Transaction Document may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. The parties hereto confirm that any electronic copy of another party's executed counterpart of a Transaction Document (or such party's signature page thereof) will be deemed to be an executed original thereof.

10.5. Headings. The headings of this Agreement are for convenience of reference only and shall not form part of, or affect the interpretation of, this Agreement.

10.6. Severability. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

10.7. Entire Agreement. This Agreement, together with the other Transaction Documents, contains the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither Company nor Investor makes any representation, warranty, covenant or undertaking with respect to such matters. For the avoidance of doubt, all prior term sheets or other documents between Company and Investor, or any affiliate thereof, related to the transactions contemplated by the Transaction Documents (collectively, "**Prior Agreements**"), that may have been entered into between Company and Investor, or any affiliate thereof, are hereby null and void and deemed to be replaced in their entirety by the Transaction Documents. To the extent there is a conflict between any term set forth in any Prior Agreement and the term(s) of the Transaction Documents, the Transaction Documents shall govern.

10.8. Amendments. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by both parties hereto.

10.9. Notices. Any notice required or permitted hereunder or under the Note shall be given in writing (unless otherwise specified herein) and shall be deemed effectively given on the earliest of: (i) the date delivered, if delivered by personal delivery as against written receipt therefor, (ii) the date delivered, if delivered during normal business hours by email to an executive officer named below or such officer's successor, or by facsimile (with successful transmission confirmation which is kept by sending party), or the next succeeding business day if delivered by email or facsimile transmission outside of normal business hours, (iii) the earlier of the date delivered (or the next business day thereafter if not delivered on a business day) or the third Trading Day after deposit, postage prepaid, in the United States Postal Service by certified mail, or (iv) the earlier of the date delivered (or the next business day thereafter if not delivered on a business

day) or the third Trading Day after mailing by express courier, with delivery costs and fees prepaid, in each case, addressed to each of the other parties thereunto entitled at the following addresses (or at such other addresses as such party may designate by five (5) calendar days' advance written notice similarly given to each of the other parties hereto):

If to Company:

Innovate Biopharmaceuticals, Inc.
Attn: Kendyle Woodard, EVP-Corporate Affairs
8480 Honeycutt Road, Suite 120
Raleigh, North Carolina 27615

With a copy to (which copy shall not constitute notice):

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
Attn.: Christopher B. Capel, Esq.
150 Fayetteville Street, Suite 2300
Raleigh, North Carolina 27601

If to Investor:

Atlas Sciences, LLC
Attn: Alex Sullivan
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

With a copy to (which copy shall not constitute notice):

Hansen Black Anderson Ashcraft PLLC
Attn: Jonathan Hansen
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

10.10. Successors and Assigns. This Agreement or any of the severable rights and obligations inuring to the benefit of or to be performed by Investor hereunder may be assigned by Investor to a third party, including its affiliates, in whole or in part, without the need to obtain Company's consent thereto. Company may not assign its rights or obligations under this Agreement or delegate its duties hereunder without the prior written consent of Investor.

10.11. Survival. The representations and warranties of parties hereto and the agreements and covenants set forth in this Agreement shall survive the Closing hereunder notwithstanding any due diligence investigation conducted by or on behalf of any of the parties hereto.

10.12. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

10.13. Investor's Rights and Remedies Cumulative. All rights, remedies, and powers conferred in this Agreement and the Transaction Documents are cumulative and not exclusive of any other rights or remedies, and shall be in addition to every other right, power, and remedy that Investor may have, whether specifically granted in this Agreement or any other Transaction Document, or existing at law, in equity, or by statute, and any and all such rights and remedies may be exercised from time to time and as often and in such order as Investor may deem expedient.

10.14. Attorneys' Fees and Cost of Collection. In the event of any arbitration or action at law or in equity to enforce or interpret the terms of this Agreement or any of the other Transaction Documents, the parties agree that the party who is awarded the most money (which, for the avoidance of doubt, shall be determined without regard to any statutory fines, penalties, fees, or other charges awarded to any party) shall be deemed the prevailing party for all purposes and shall therefore be entitled to an additional award of the full amount of the attorneys' fees, deposition costs, and expenses paid by such prevailing party in connection with arbitration or litigation without reduction or apportionment based upon the individual claims or defenses giving rise to the fees and expenses. Nothing herein shall restrict or impair an arbitrator's or a court's power to award fees and expenses for frivolous or bad faith pleading. If (i) the Note is placed in the hands of an attorney for collection or enforcement prior to commencing arbitration or legal proceedings, or is collected or enforced through any arbitration or legal proceeding, or Investor otherwise takes action to collect amounts due under the Note or to enforce the provisions of the Note, or (ii) there occurs any bankruptcy, reorganization, receivership of Company or other proceedings affecting Company's creditors' rights and involving a claim under the Note; then Company shall pay the costs incurred by Investor for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees, expenses, deposition costs, and disbursements.

10.15. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in the form of a writing signed by the party granting the waiver. No waiver of any provision or consent to any prohibited action shall constitute a waiver of any other provision or consent to any other prohibited action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver or consent in the future except to the extent specifically set forth in writing.

10.16. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHTS SUCH PARTY MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT, OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT SUCH PARTY IS KNOWINGLY AND VOLUNTARILY WAIVING SUCH PARTY'S RIGHT TO DEMAND TRIAL BY JURY.

10.17. Time is of the Essence. Time is expressly made of the essence with respect to each and every provision of this Agreement and the other Transaction Documents.

10.18. Voluntary Agreement. Company has carefully read this Agreement and each of the other Transaction Documents and has asked any questions needed for Company to understand the terms, consequences and binding effect of this Agreement and each of the other Transaction Documents and fully understand them. Company has had the opportunity to seek the advice of an attorney of Company's choosing, or has waived the right to do so, and is executing this Agreement and each of the other Transaction Documents voluntarily and without any duress or undue influence by Investor or anyone else.

IN WITNESS WHEREOF, the undersigned Investor and Company have caused this Agreement to be duly executed as of the date first above written.

SUBSCRIPTION AMOUNT:

Principal Amount of Note: \$5,500,000.00

Purchase Price: \$5,000,000.00

INVESTOR:

ATLAS SCIENCES, LLC

By: /s/ Alex Sullivan
Alex Sullivan, CEO

COMPANY:

INNOVATE BIOPHARMACEUTICALS, INC.

By: /s/ Sandeep Laumas
Printed Name: Sandeep Laumas
Title: Chief Executive Officer

[Signature Page to Securities Purchase Agreement]

ATTACHED EXHIBITS:

Exhibit ANote
Exhibit BWire Transfer Instructions
Exhibit CIrrevocable Transfer Agent Instructions
Exhibit DSecretary's Certificate
Exhibit EShare Issuance Resolution
Exhibit FARbitration Provisions

EXHIBIT F**ARBITRATION PROVISIONS**

1. **Dispute Resolution.** For purposes of this Exhibit F, the term “**Claims**” means any disputes, claims, demands, causes of action, requests for injunctive relief, requests for specific performance, liabilities, damages, losses, or controversies whatsoever arising from, related to, or connected with the transactions contemplated in the Transaction Documents and any communications between the parties related thereto, including without limitation any claims of mutual mistake, mistake, fraud, misrepresentation, failure of formation, failure of consideration, promissory estoppel, unconscionability, failure of condition precedent, rescission, and any statutory claims, tort claims, contract claims, or claims to void, invalidate or terminate the Agreement (or these Arbitration Provisions (defined below)) or any of the other Transaction Documents. For the avoidance of doubt, a party’s pursuit of an injunction or other Claim pursuant to these Arbitration Provisions or with a court will not later prevent that party under the doctrines of claim preclusion, issue preclusion, res judicata or other similar legal doctrines from pursuing other Claims in a separate arbitration in the future. The parties to this Agreement (the “**parties**”) hereby agree that the Claims may be arbitrated in one or more Arbitrations pursuant to these Arbitration Provisions (one for an injunction or injunctions and a separate one for all other Claims). The term “Claims” specifically excludes a dispute over Calculations. The parties to the Agreement hereby agree that the arbitration provisions set forth in this Exhibit F (“**Arbitration Provisions**”) are binding on each of them. As a result, any attempt to rescind the Agreement (or these Arbitration Provisions) or declare the Agreement (or these Arbitration Provisions) or any other Transaction Document invalid or unenforceable for any reason is subject to these Arbitration Provisions. These Arbitration Provisions shall also survive any termination or expiration of the Agreement. Any capitalized term not defined in these Arbitration Provisions shall have the meaning set forth in the Agreement.

2. **Arbitration.** Except as otherwise provided herein, all Claims must be submitted to arbitration (“**Arbitration**”) to be conducted exclusively in Salt Lake County, Utah and pursuant to the terms set forth in these Arbitration Provisions. Subject to the arbitration appeal right provided for in Paragraph 5 below (the “**Appeal Right**”), the parties agree that the award of the arbitrator rendered pursuant to Paragraph 4 below (the “**Arbitration Award**”) shall be (a) final and binding upon the parties, (b) the sole and exclusive remedy between them regarding any Claims, counterclaims, issues, or accountings presented or pleaded to the arbitrator, and (c) promptly payable in United States dollars free of any tax, deduction or offset (with respect to monetary awards). Subject to the Appeal Right, any costs or fees, including without limitation attorneys’ fees, reasonably and necessarily incurred in connection with or incident to enforcing the Arbitration Award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. The Arbitration Award shall include default interest (as defined or otherwise provided for in the Note, “**Default Interest**”) (with respect to monetary awards) at the rate specified in the Note for Default Interest both before and after the Arbitration Award. Judgment upon the Arbitration Award will be entered and enforced by any state or federal court sitting in Salt Lake County, Utah.

3. **The Arbitration Act.** The parties hereby incorporate herein the provisions and procedures set forth in the Utah Uniform Arbitration Act, U.C.A. § 78B-11-101 *et seq.* (as amended or superseded from time to time, the “**Arbitration Act**”). Notwithstanding the foregoing, pursuant to, and to the maximum extent permitted by, Section 105 of the Arbitration Act, in the event of conflict or variation between the terms of these Arbitration Provisions and the provisions of the Arbitration Act, the terms of these Arbitration Provisions shall control and the parties hereby waive or otherwise agree to vary the effect of all requirements of the Arbitration Act that may conflict with or vary from these Arbitration Provisions.

4. **Arbitration Proceedings.** Arbitration between the parties will be subject to the following:

4.1 **Initiation of Arbitration.** Pursuant to Section 110 of the Arbitration Act, the parties agree that a party may initiate Arbitration by giving written notice to the other party (“**Arbitration Notice**”) in the same manner that notice is permitted under Section 10.9 of the Agreement; *provided, however*, that the Arbitration Notice may not be given by email or fax. Arbitration will be deemed initiated as of the date that the Arbitration Notice is deemed delivered to such other party under Section 10.9 of the Agreement (the “**Service Date**”). After the Service Date, information may be delivered, and notices may be given, by email or fax pursuant to Section 10.9 of the Agreement or any other method permitted thereunder. The Arbitration Notice must describe the nature of the controversy, the remedies sought, and the election to commence Arbitration proceedings. All Claims in the Arbitration Notice must be pleaded consistent with the Utah Rules of Civil Procedure.

4.2 *Selection and Payment of Arbitrator.*

(a) Within ten (10) calendar days after the Service Date, Investor shall select and submit to Company the names of three (3) arbitrators that are designated as “neutrals” or qualified arbitrators by Utah ADR Services (<http://www.utahadrservices.com>) (such three (3) designated persons hereunder are referred to herein as the “**Proposed Arbitrators**”). For the avoidance of doubt, each Proposed Arbitrator must be qualified as a “neutral” with Utah ADR Services. Within five (5) calendar days after Investor has submitted to Company the names of the Proposed Arbitrators, Company must select, by written notice to Investor, one (1) of the Proposed Arbitrators to act as the arbitrator for the parties under these Arbitration Provisions. If Company fails to select one of the Proposed Arbitrators in writing within such 5-day period, then Investor may select the arbitrator from the Proposed Arbitrators by providing written notice of such selection to Company.

(b) If Investor fails to submit to Company the Proposed Arbitrators within ten (10) calendar days after the Service Date pursuant to subparagraph (a) above, then Company may at any time prior to Investor so designating the Proposed Arbitrators, identify the names of three (3) arbitrators that are designated as “neutrals” or qualified arbitrators by Utah ADR Service by written notice to Investor. Investor may then, within five (5) calendar days after Company has submitted notice of its Proposed Arbitrators to Investor, select, by written notice to Company, one (1) of the Proposed Arbitrators to act as the arbitrator for the parties under these Arbitration Provisions. If Investor fails to select in writing and within such 5-day period one (1) of the three (3) Proposed Arbitrators selected by Company, then Company may select the arbitrator from its three (3) previously selected Proposed Arbitrators by providing written notice of such selection to Investor.

(c) If a Proposed Arbitrator chosen to serve as arbitrator declines or is otherwise unable to serve as arbitrator, then the party that selected such Proposed Arbitrator may select one (1) of the other three (3) Proposed Arbitrators within three (3) calendar days of the date the chosen Proposed Arbitrator declines or notifies the parties he or she is unable to serve as arbitrator. If all three (3) Proposed Arbitrators decline or are otherwise unable to serve as arbitrator, then the arbitrator selection process shall begin again in accordance with this Paragraph 4.2.

(d) The date that the Proposed Arbitrator selected pursuant to this Paragraph 4.2 agrees in writing (including via email) delivered to both parties to serve as the arbitrator hereunder is referred to herein as the “**Arbitration Commencement Date**”. If an arbitrator resigns or is unable to act during the Arbitration, a replacement arbitrator shall be chosen in accordance with this Paragraph 4.2 to continue the Arbitration. If Utah ADR Services ceases to exist or to provide a list of neutrals and there is no successor thereto, then the arbitrator shall be selected under the then prevailing rules of the American Arbitration Association.

(e) Subject to Paragraph 4.10 below, the cost of the arbitrator must be paid equally by both parties. Subject to Paragraph 4.10 below, if one party refuses or fails to pay its portion of the arbitrator fee, then the other party can advance such unpaid amount (subject to the accrual of Default Interest thereupon), with such amount being added to or subtracted from, as applicable, the Arbitration Award.

4.3 *Applicability of Certain Utah Rules.* The parties agree that the Arbitration shall be conducted generally in accordance with the Utah Rules of Civil Procedure and the Utah Rules of Evidence. More specifically, the Utah Rules of Civil Procedure shall apply, without limitation, to the filing of any pleadings, motions or memoranda, the conducting of discovery, and the taking of any depositions. The Utah Rules of Evidence shall apply to any hearings, whether telephonic or in person, held by the arbitrator. Notwithstanding the foregoing, it is the parties’ intent that the incorporation of such rules will in no event supersede these Arbitration Provisions. In the event of any conflict between the Utah Rules of Civil Procedure or the Utah Rules of Evidence and these Arbitration Provisions, these Arbitration Provisions shall control.

4.4 *Answer and Default.* An answer and any counterclaims to the Arbitration Notice shall be required to be delivered to the party initiating the Arbitration within twenty (20) calendar days after the Arbitration Commencement Date. If an answer is not delivered by the required deadline, the arbitrator must provide written notice to the defaulting party stating that the arbitrator will enter a default award against such party if such party does not file an answer within five (5) calendar days of receipt of such notice. If an answer is not filed within the five (5) day extension period, the arbitrator must render a default award, consistent with the relief requested in the Arbitration Notice, against a party that fails to submit an answer within such time period.

4.5 *Related Litigation.* The party that delivers the Arbitration Notice to the other party shall have the option to also commence concurrent legal proceedings with any state or federal court sitting in Salt Lake County, Utah (“**Litigation Proceedings**”), subject to the following: (a) the complaint in the Litigation Proceedings is to be substantially similar

to the claims set forth in the Arbitration Notice, provided that an additional cause of action to compel arbitration will also be included therein, (b) so long as the other party files an answer to the complaint in the Litigation Proceedings and an answer to the Arbitration Notice, the Litigation Proceedings will be stayed pending an Arbitration Award (or Appeal Panel Award (defined below), as applicable) hereunder, (c) if the other party fails to file an answer in the Litigation Proceedings or an answer in the Arbitration proceedings, then the party initiating Arbitration shall be entitled to a default judgment consistent with the relief requested, to be entered in the Litigation Proceedings, and (d) any legal or procedural issue arising under the Arbitration Act that requires a decision of a court of competent jurisdiction may be determined in the Litigation Proceedings. Any award of the arbitrator (or of the Appeal Panel (defined below)) may be entered in such Litigation Proceedings pursuant to the Arbitration Act.

4.6 *Discovery.* Pursuant to Section 118(8) of the Arbitration Act, the parties agree that discovery shall be conducted as follows:

(a) Written discovery will only be allowed if the likely benefits of the proposed written discovery outweigh the burden or expense thereof, and the written discovery sought is likely to reveal information that will satisfy a specific element of a claim or defense already pleaded in the Arbitration. The party seeking written discovery shall always have the burden of showing that all of the standards and limitations set forth in these Arbitration Provisions are satisfied. The scope of discovery in the Arbitration proceedings shall also be limited as follows:

- (i) To facts directly connected with the transactions contemplated by the Agreement.
- (ii) To facts and information that cannot be obtained from another source or in another manner that is more convenient, less burdensome or less expensive than in the manner requested.

(b) No party shall be allowed (i) more than fifteen (15) interrogatories (including discrete subparts), (ii) more than fifteen (15) requests for admission (including discrete subparts), (iii) more than ten (10) document requests (including discrete subparts), or (iv) more than three (3) depositions (excluding expert depositions) for a maximum of seven (7) hours per deposition. The costs associated with depositions will be borne by the party taking the deposition. The party defending the deposition will submit a notice to the party taking the deposition of the estimated attorneys' fees that such party expects to incur in connection with defending the deposition. If the party defending the deposition fails to submit an estimate of attorneys' fees within five (5) calendar days of its receipt of a deposition notice, then such party shall be deemed to have waived its right to the estimated attorneys' fees. The party taking the deposition must pay the party defending the deposition the estimated attorneys' fees prior to taking the deposition, unless such obligation is deemed to be waived as set forth in the immediately preceding sentence. If the party taking the deposition believes that the estimated attorneys' fees are unreasonable, such party may submit the issue to the arbitrator for a decision. All depositions will be taken in the deponent's state of residence unless otherwise agreed or ordered by the arbitrator.

(c) All discovery requests (including document production requests included in deposition notices) must be submitted in writing to the arbitrator and the other party. The party submitting the written discovery requests must include with such discovery requests a detailed explanation of how the proposed discovery requests satisfy the requirements of these Arbitration Provisions and the Utah Rules of Civil Procedure. The receiving party will then be allowed, within five (5) calendar days of receiving the proposed discovery requests, to submit to the arbitrator an estimate of the attorneys' fees and costs associated with responding to such written discovery requests and a written challenge to each applicable discovery request. After receipt of an estimate of attorneys' fees and costs and/or challenge(s) to one or more discovery requests, consistent with subparagraph (c) above, the arbitrator will within three (3) calendar days make a finding as to the likely attorneys' fees and costs associated with responding to the discovery requests and issue an order that (i) requires the requesting party to prepay the attorneys' fees and costs associated with responding to the discovery requests, and (ii) requires the responding party to respond to the discovery requests as limited by the arbitrator within twenty-five (25) calendar days of the arbitrator's finding with respect to such discovery requests. If a party entitled to submit an estimate of attorneys' fees and costs and/or a challenge to discovery requests fails to do so within such 5-day period, the arbitrator will make a finding that (A) there are no attorneys' fees or costs associated with responding to such discovery requests, and (B) the responding party must respond to such discovery requests (as may be limited by the arbitrator) within twenty-five (25) calendar days of the arbitrator's finding with respect to such discovery requests. Any party submitting any written discovery requests, including without limitation interrogatories, requests for production subpoenas to a party or a third party, or requests for admissions, must prepay the estimated attorneys' fees and costs, before the responding party has any obligation to produce or respond to the same, unless such obligation is deemed waived as set forth above.

(d) In order to allow a written discovery request, the arbitrator must find that the discovery request satisfies the standards set forth in these Arbitration Provisions and the Utah Rules of Civil Procedure. The arbitrator must strictly enforce these standards. If a discovery request does not satisfy any of the standards set forth in these Arbitration Provisions or the Utah Rules of Civil Procedure, the arbitrator may modify such discovery request to satisfy the applicable standards, or strike such discovery request in whole or in part.

(e) Each party may submit expert reports (and rebuttals thereto), provided that such reports must be submitted within sixty (60) days of the Arbitration Commencement Date. Each party will be allowed a maximum of two (2) experts. Expert reports must contain the following: (i) a complete statement of all opinions the expert will offer at trial and the basis and reasons for them; (ii) the expert's name and qualifications, including a list of all the expert's publications within the preceding ten (10) years, and a list of any other cases in which the expert has testified at trial or in a deposition or prepared a report within the preceding ten (10) years; and (iii) the compensation to be paid for the expert's report and testimony. The parties are entitled to depose any other party's expert witness one (1) time for no more than four (4) hours. An expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the expert report.

4.6 *Dispositive Motions.* Each party shall have the right to submit dispositive motions pursuant Rule 12 or Rule 56 of the Utah Rules of Civil Procedure (a "**Dispositive Motion**"). The party submitting the Dispositive Motion may, but is not required to, deliver to the arbitrator and to the other party a memorandum in support (the "**Memorandum in Support**") of the Dispositive Motion. Within seven (7) calendar days of delivery of the Memorandum in Support, the other party shall deliver to the arbitrator and to the other party a memorandum in opposition to the Memorandum in Support (the "**Memorandum in Opposition**"). Within seven (7) calendar days of delivery of the Memorandum in Opposition, as applicable, the party that submitted the Memorandum in Support shall deliver to the arbitrator and to the other party a reply memorandum to the Memorandum in Opposition ("**Reply Memorandum**"). If the applicable party shall fail to deliver the Memorandum in Opposition as required above, or if the other party fails to deliver the Reply Memorandum as required above, then the applicable party shall lose its right to so deliver the same, and the Dispositive Motion shall proceed regardless.

4.7 *Confidentiality.* All information disclosed by either party (or such party's agents) during the Arbitration process (including without limitation information disclosed during the discovery process or any Appeal (defined below)) shall be considered confidential in nature. Each party agrees not to disclose any confidential information received from the other party (or its agents) during the Arbitration process (including without limitation during the discovery process or any Appeal) unless (a) prior to or after the time of disclosure such information becomes public knowledge or part of the public domain, not as a result of any inaction or action of the receiving party or its agents, (b) such information is required by a court order, subpoena or similar legal duress to be disclosed if such receiving party has notified the other party thereof in writing and given it a reasonable opportunity to obtain a protective order from a court of competent jurisdiction prior to disclosure, or (c) such information is disclosed to the receiving party's agents, representatives and legal counsel on a need to know basis who each agree in writing not to disclose such information to any third party. Pursuant to Section 118(5) of the Arbitration Act, the arbitrator is hereby authorized and directed to issue a protective order to prevent the disclosure of privileged information and confidential information upon the written request of either party.

4.8 *Authorization; Timing; Scheduling Order.* Subject to all other portions of these Arbitration Provisions, the parties hereby authorize and direct the arbitrator to take such actions and make such rulings as may be necessary to carry out the parties' intent for the Arbitration proceedings to be efficient and expeditious. Pursuant to Section 120 of the Arbitration Act, the parties hereby agree that an Arbitration Award must be made within one hundred twenty (120) calendar days after the Arbitration Commencement Date. The arbitrator is hereby authorized and directed to hold a scheduling conference within ten (10) calendar days after the Arbitration Commencement Date in order to establish a scheduling order with various binding deadlines for discovery, expert testimony, and the submission of documents by the parties to enable the arbitrator to render a decision prior to the end of such 120-day period.

4.9 *Relief.* The arbitrator shall have the right to award or include in the Arbitration Award (or in a preliminary ruling) any relief which the arbitrator deems proper under the circumstances, including, without limitation, specific performance and injunctive relief, provided that the arbitrator may not award exemplary or punitive damages.

4.10 *Fees and Costs.* As part of the Arbitration Award, the arbitrator is hereby directed to require the non-prevailing party to (a) pay the full amount of any unpaid costs and fees of the Arbitration, and (b) reimburse the prevailing party for all reasonable attorneys' fees, arbitrator costs and fees, deposition costs, other discovery costs, and other expenses,

costs or fees paid or otherwise incurred by the prevailing party in connection with the Arbitration. The arbitrator shall determine the prevailing party, if any, in the arbitrator's discretion based on all the facts and circumstances of the case.

5. Arbitration Appeal.

5.1 *Initiation of Appeal.* Following the entry of the Arbitration Award, either party (the “**Appellant**”) shall have a period of thirty (30) calendar days in which to notify the other party (the “**Appellee**”), in writing, that the Appellant elects to appeal (the “**Appeal**”) the Arbitration Award (such notice, an “**Appeal Notice**”) to a panel of arbitrators as provided in Paragraph 5.2 below. The date the Appellant delivers an Appeal Notice to the Appellee is referred to herein as the “**Appeal Date**”. The Appeal Notice must be delivered to the Appellee in accordance with the provisions of Paragraph 4.1 above with respect to delivery of an Arbitration Notice. In addition, together with delivery of the Appeal Notice to the Appellee, the Appellant must also pay for (and provide proof of such payment to the Appellee together with delivery of the Appeal Notice) a bond in the amount of 110% of the sum the Appellant owes to the Appellee as a result of the Arbitration Award the Appellant is appealing. In the event an Appellant delivers an Appeal Notice to the Appellee (together with proof of payment of the applicable bond) in compliance with the provisions of this Paragraph 5.1, the Appeal will occur as a matter of right and, except as specifically set forth herein, will not be further conditioned. In the event a party does not deliver an Appeal Notice (along with proof of payment of the applicable bond) to the other party within the deadline prescribed in this Paragraph 5.1, such party shall lose its right to appeal the Arbitration Award. If no party delivers an Appeal Notice (along with proof of payment of the applicable bond) to the other party within the deadline described in this Paragraph 5.1, the Arbitration Award shall be final. The parties acknowledge and agree that any Appeal shall be deemed part of the parties' agreement to arbitrate for purposes of these Arbitration Provisions and the Arbitration Act.

5.2 *Selection and Payment of Appeal Panel.* In the event an Appellant delivers an Appeal Notice to the Appellee (together with proof of payment of the applicable bond) in compliance with the provisions of Paragraph 5.1 above, the Appeal will be heard by a three (3) person arbitration panel (the “**Appeal Panel**”).

(a) Within ten (10) calendar days after the Appeal Date, the Appellee shall select and submit to the Appellant the names of five (5) arbitrators that are designated as “neutrals” or qualified arbitrators by Utah ADR Services (<http://www.utahadrservices.com>) (such five (5) designated persons hereunder are referred to herein as the “**Proposed Appeal Arbitrators**”). For the avoidance of doubt, each Proposed Appeal Arbitrator must be qualified as a “neutral” with Utah ADR Services, and shall not be the arbitrator who rendered the Arbitration Award being appealed (the “**Original Arbitrator**”). Within five (5) calendar days after the Appellee has submitted to the Appellant the names of the Proposed Appeal Arbitrators, the Appellant must select, by written notice to the Appellee, three (3) of the Proposed Appeal Arbitrators to act as the members of the Appeal Panel. If the Appellant fails to select three (3) of the Proposed Appeal Arbitrators in writing within such 5-day period, then the Appellee may select such three (3) arbitrators from the Proposed Appeal Arbitrators by providing written notice of such selection to the Appellant.

(b) If the Appellee fails to submit to the Appellant the names of the Proposed Appeal Arbitrators within ten (10) calendar days after the Appeal Date pursuant to subparagraph (a) above, then the Appellant may at any time prior to the Appellee so designating the Proposed Appeal Arbitrators, identify the names of five (5) arbitrators that are designated as “neutrals” or qualified arbitrators by Utah ADR Service (none of whom may be the Original Arbitrator) by written notice to the Appellee. The Appellee may then, within five (5) calendar days after the Appellant has submitted notice of its selected arbitrators to the Appellee, select, by written notice to the Appellant, three (3) of such selected arbitrators to serve on the Appeal Panel. If the Appellee fails to select in writing within such 5-day period three (3) of the arbitrators selected by the Appellant to serve as the members of the Appeal Panel, then the Appellant may select the three (3) members of the Appeal Panel from the Appellant's list of five (5) arbitrators by providing written notice of such selection to the Appellee.

(c) If a selected Proposed Appeal Arbitrator declines or is otherwise unable to serve, then the party that selected such Proposed Appeal Arbitrator may select one (1) of the other five (5) designated Proposed Appeal Arbitrators within three (3) calendar days of the date a chosen Proposed Appeal Arbitrator declines or notifies the parties he or she is unable to serve as an arbitrator. If at least three (3) of the five (5) designated Proposed Appeal Arbitrators decline or are otherwise unable to serve, then the Proposed Appeal Arbitrator selection process shall begin again in accordance with this Paragraph 5.2; *provided, however*, that any Proposed Appeal Arbitrators who have already agreed to serve shall remain on the Appeal Panel.

(d) The date that all three (3) Proposed Appeal Arbitrators selected pursuant to this Paragraph 5.2 agree in writing (including via email) delivered to both the Appellant and the Appellee to serve as members of the Appeal

Panel hereunder is referred to herein as the “**Appeal Commencement Date**”. No later than five (5) calendar days after the Appeal Commencement Date, the Appellee shall designate in writing (including via email) to the Appellant and the Appeal Panel the name of one (1) of the three (3) members of the Appeal Panel to serve as the lead arbitrator in the Appeal proceedings. Each member of the Appeal Panel shall be deemed an arbitrator for purposes of these Arbitration Provisions and the Arbitration Act, provided that, in conducting the Appeal, the Appeal Panel may only act or make determinations upon the approval or vote of no less than the majority vote of its members, as announced or communicated by the lead arbitrator on the Appeal Panel. If an arbitrator on the Appeal Panel ceases or is unable to act during the Appeal proceedings, a replacement arbitrator shall be chosen in accordance with Paragraph 5.2 above to continue the Appeal as a member of the Appeal Panel. If Utah ADR Services ceases to exist or to provide a list of neutrals, then the arbitrators for the Appeal Panel shall be selected under the then prevailing rules of the American Arbitration Association.

(d) Subject to Paragraph 5.7 below, the cost of the Appeal Panel must be paid entirely by the Appellant.

5.3 *Appeal Procedure.* The Appeal will be deemed an appeal of the entire Arbitration Award. In conducting the Appeal, the Appeal Panel shall conduct a de novo review of all Claims described or otherwise set forth in the Arbitration Notice. Subject to the foregoing and all other provisions of this Paragraph 5, the Appeal Panel shall conduct the Appeal in a manner the Appeal Panel considers appropriate for a fair and expeditious disposition of the Appeal, may hold one or more hearings and permit oral argument, and may review all previous evidence and discovery, together with all briefs, pleadings and other documents filed with the Original Arbitrator (as well as any documents filed with the Appeal Panel pursuant to Paragraph 5.4(a) below). Notwithstanding the foregoing, in connection with the Appeal, the Appeal Panel shall not permit the parties to conduct any additional discovery or raise any new Claims to be arbitrated, shall not permit new witnesses or affidavits, and shall not base any of its findings or determinations on the Original Arbitrator’s findings or the Arbitration Award.

5.4 *Timing.*

(a) Within seven (7) calendar days of the Appeal Commencement Date, the Appellant (i) shall deliver or cause to be delivered to the Appeal Panel copies of the Appeal Notice, all discovery conducted in connection with the Arbitration, and all briefs, pleadings and other documents filed with the Original Arbitrator (which material Appellee shall have the right to review and supplement if necessary), and (ii) may, but is not required to, deliver to the Appeal Panel and to the Appellee a Memorandum in Support of the Appellant’s arguments concerning or position with respect to all Claims, counterclaims, issues, or accountings presented or pleaded in the Arbitration. Within seven (7) calendar days of the Appellant’s delivery of the Memorandum in Support, as applicable, the Appellee shall deliver to the Appeal Panel and to the Appellant a Memorandum in Opposition to the Memorandum in Support. Within seven (7) calendar days of the Appellee’s delivery of the Memorandum in Opposition, as applicable, the Appellant shall deliver to the Appeal Panel and to the Appellee a Reply Memorandum to the Memorandum in Opposition. If the Appellant shall fail to substantially comply with the requirements of clause (i) of this subparagraph (a), the Appellant shall lose its right to appeal the Arbitration Award, and the Arbitration Award shall be final. If the Appellee shall fail to deliver the Memorandum in Opposition as required above, or if the Appellant shall fail to deliver the Reply Memorandum as required above, then the Appellee or the Appellant, as the case may be, shall lose its right to so deliver the same, and the Appeal shall proceed regardless.

(b) Subject to subparagraph (a) above, the parties hereby agree that the Appeal must be heard by the Appeal Panel within thirty (30) calendar days of the Appeal Commencement Date, and that the Appeal Panel must render its decision within thirty (30) calendar days after the Appeal is heard (and in no event later than sixty (60) calendar days after the Appeal Commencement Date).

5.5 *Appeal Panel Award.* The Appeal Panel shall issue its decision (the “**Appeal Panel Award**”) through the lead arbitrator on the Appeal Panel. Notwithstanding any other provision contained herein, the Appeal Panel Award shall (a) supersede in its entirety and make of no further force or effect the Arbitration Award (provided that any protective orders issued by the Original Arbitrator shall remain in full force and effect), (b) be final and binding upon the parties, with no further rights of appeal, (c) be the sole and exclusive remedy between the parties regarding any Claims, counterclaims, issues, or accountings presented or pleaded in the Arbitration, and (d) be promptly payable in United States dollars free of any tax, deduction or offset (with respect to monetary awards). Any costs or fees, including without limitation attorneys’ fees, reasonably and necessarily incurred in connection with or incident to enforcing the Appeal Panel Award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. The Appeal Panel Award shall include Default Interest (with respect to monetary awards) at the rate

specified in the Note for Default Interest both before and after the Arbitration Award. Judgment upon the Appeal Panel Award will be entered and enforced by a state or federal court sitting in Salt Lake County, Utah.

5.6 *Relief.* The Appeal Panel shall have the right to award or include in the Appeal Panel Award any relief which the Appeal Panel deems proper under the circumstances, including, without limitation, specific performance and injunctive relief, provided that the Appeal Panel may not award exemplary or punitive damages.

5.7 *Fees and Costs.* As part of the Appeal Panel Award, the Appeal Panel is hereby directed to require the non-prevailing party to (a) pay the full amount of any unpaid costs and fees of the Arbitration and the Appeal Panel, and (b) reimburse the prevailing party the reasonable attorneys' fees, arbitrator and Appeal Panel costs and fees, deposition costs, other discovery costs, and other expenses, costs or fees paid or otherwise incurred by the prevailing party in connection with the Arbitration (including without limitation in connection with the Appeal). The Appeal Panel shall determine the prevailing party, if any, in the Appeal Panel's discretion based on all the facts and circumstances of the case.

6. Miscellaneous.

6.1 *Severability.* If any part of these Arbitration Provisions is found to violate or be illegal under applicable law, then such provision shall be modified to the minimum extent necessary to make such provision enforceable under applicable law, and the remainder of the Arbitration Provisions shall remain unaffected and in full force and effect.

6.2 *Governing Law.* These Arbitration Provisions shall be governed by the laws of the State of Utah without regard to the conflict of laws principles therein.

6.3 *Interpretation.* The headings of these Arbitration Provisions are for convenience of reference only and shall not form part of, or affect the interpretation of, these Arbitration Provisions.

6.4 *Waiver.* No waiver of any provision of these Arbitration Provisions shall be effective unless it is in the form of a writing signed by the party granting the waiver.

6.5 *Time is of the Essence.* Time is expressly made of the essence with respect to each and every provision of these Arbitration Provisions.

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