
**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): June 21, 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))

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

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

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

On June 21, 2019, the Board of Directors (the “Board”) of Innovate Biopharmaceuticals, Inc. (the “Company”) appointed Edward J. Sitar to serve as the Chief Financial Officer (principal financial officer and principal accounting officer) of the Company. Mr. Sitar’s employment with the Company will commence on July 1, 2019.

Mr. Sitar, age 59, most recently served as the Chief Financial Officer of Ammon Analytical Laboratory, a company focused on specialty testing for the drug treatment community, from April 2017 to November 2018. Previously, he served as the Chief Financial Officer of Cancer Genetics, Inc. (CGIX), a company focused on precision medicine for oncology, from March 2014 until February 2017. Prior to his service at Cancer Genetics, he served from January 2013 to December 2013 as the Chief Financial Officer-New Business of Healthagen, an Aetna company offering health products and services, and served as Chief Financial Officer of ActiveHealth Management from August 2010 to December 2012. From April 2001 to May 2010, he served as Executive Vice President and Chief Financial Officer of Cadent Holdings, Inc., a privately-held company that provided three-dimensional digital scanning services for dentists and orthodontists. From August 1998 to April 2001, Mr. Sitar served as Chief Financial Officer and Treasurer of MIM Corporation, now BioScrip, Inc., a publicly traded specialty pharmaceutical and pharmacy benefit management service provider. From May 1996 to August 1998, Mr. Sitar was the Vice President of Finance for Vital Signs, Inc., a publicly traded manufacturer and distributor of single use medical products. From June 1993 to April 1996, Mr. Sitar was the Controller of Zenith. From 1982 through July 1993, he was with Coopers & Lybrand, a public accounting firm. He holds a B.S. in accounting from the University of Scranton and is licensed as a Certified Public Accountant in New Jersey.

There are no family relationships between Mr. Sitar and any of the Company’s directors or executive officers. There are no arrangements or understandings between Mr. Sitar and any other persons pursuant to which he was selected as the Company’s Chief Financial Officer. Mr. Sitar has no direct or indirect material interest in any transaction or currently proposed transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Upon commencement of Mr. Sitar’s employment, Jay P. Madan, M.S., will no longer serve as the interim principal financial officer and interim principal accounting officer of the Company, but will continue to serve as the President and Chief Business Officer of the Company.

In connection with the appointment of Mr. Sitar to serve as the Company’s Chief Financial Officer, on June 22, 2019, the Company entered into an executive employment agreement with Mr. Sitar (the “Employment Agreement”), pursuant to which Mr. Sitar is entitled to receive an annual base salary of \$285,000, subject to periodic increase as the Company may determine. The Employment Agreement provides that Mr. Sitar will receive an initial grant of options to purchase up to 350,000 shares of the Company’s common stock, which award will vest with respect to 7.5% of the shares on the six-month anniversary of commencement of Mr. Sitar’s employment, 7.5% of the shares on the one-year anniversary of commencement of employment, and the remainder of the shares in equal monthly installments on the last day of each successive month thereafter, such that the grant shall be fully vested as of the last day of the 48-month anniversary of Mr. Sitar’s commencement of employment. In addition to Mr. Sitar’s initial equity award, Mr. Sitar is eligible to participate in (i) any equity compensation plan or similar program established by the Company and (ii) any bonus or similar incentive plans established by the Company that may be applicable to executives of the Company at Mr. Sitar’s level, with participation in such bonus or similar incentive plans based on a target of 30% - 50% of Mr. Sitar’s base salary. Any amount awarded under any such equity, bonus or other plan shall be in the discretion of the Board or any committee administering such plan. Mr. Sitar is also generally entitled to receive any additional benefits provided to the Company’s other executive employees.

If the Company terminates the Employment Agreement other than “for cause,” or if Mr. Sitar terminates the Employment Agreement for “Good Reason,” the Employment Agreement provides that Mr. Sitar will receive six months of his then-current base salary (provided that such termination occurs on or after the 12 -month anniversary of the date of the Employment Agreement, and if it occurs before such time, he will receive instead a prorated portion thereof) and up to three months of reimbursement of additional costs he incurs in connection with continuation of health insurance benefits (or such shorter time until he obtains reasonably comparable coverage under a new employment arrangement), provided that Mr. Sitar executes and does not revoke a release and settlement agreement in a form satisfactory to the Company.

Mr. Sitar’s employment is also subject to other customary terms and provisions, including provisions relating to confidentiality, nonsolicitation, noncompetition and invention assignment.

The foregoing description of the Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Employment Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Executive Employment Agreement, dated June 22, 2019, between the Company and Edward J. Sitar

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: June 27, 2019

By: /s/ Jay P. Madan

Jay P. Madan
President and Chief Business Officer

EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (“Agreement”) is executed on the 22nd day of June, 2019 (the “**Effective Date**”), by and between Innovate Biopharmaceuticals, Inc., a Delaware corporation (the “**Company**”), and Edward J. Sitar (the “**Executive**”). The Executive and the Company may be referred to herein as a “**Party**” or collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, the Company wishes to employ the Executive, and the Executive desires to accept employment with the Company, upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein, and of other good and valuable consideration, including the employment of the Executive by the Company and the compensation to be received by the Executive from the Company from time to time, and specifically the compensation to be received by the Executive pursuant to Section 4 hereof, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

1. **Employment.** As of the Effective Date, the Company hereby employs the Executive and the Executive hereby accepts employment as the Chief Financial Officer (“**CFO**”) of the Company upon the terms and conditions of this Agreement. The Executive shall report to the Chief Executive Officer (“**CEO**”) of the Company. Executive shall commence employment as of 1st day of July 2019 (the “**Employment Commencement Date**”).

2. **Duties.**

(a) The Executive shall faithfully perform all duties of the Company related to the position or positions held by the Executive, including but not limited to all duties set forth in this Agreement and/or in the Bylaws of the Company related to the position or positions held by the Executive and all additional duties that are prescribed from time to time by the Board. The Executive shall devote the Executive’s full time and attention to the performance of the Executive’s duties and responsibilities on behalf of the Company and in furtherance of its best interests; provided, however, that the Executive, subject to the Executive’s obligations hereunder, shall also be permitted to make personal investments, perform reasonable volunteer services and, with the written prior consent of the Company, serve on outside boards of directors for non-profit or for profit corporations.. The Executive shall comply with all written Company policies, standards, rules and regulations (the “**Company Policies**”) and all applicable government laws, rules and regulations that are now or hereafter in effect. The Executive acknowledges receipt of copies of all written Company Policies that are in effect as of the date of this Agreement.

(b) Executive’s base of operations shall be his residence in Mahwah, NJ subject to reasonable business travel, including frequent travel to the Company headquarters in Raleigh, North Carolina.

3. **Term.** The term of this Agreement shall continue until terminated by either party as set forth in Section 5 of this Agreement (the “**Term**”).

4. Compensation. During the Term, as compensation for the services rendered by the Executive under this Agreement, the Executive shall be entitled to receive the following (all payments are subject to applicable withholdings):

(a) Base Salary. Executive shall be paid an annual salary in the amount of Two-Hundred Eighty-Five Thousand Dollars (\$285,000), less applicable withholdings, which shall be payable in accordance with the then-current payroll schedule of the Company (the "**Base Salary**"). The Executive's salary will be reviewed periodically and may be increased from time to time by the Company at its discretion.

(b) Bonuses. Executive shall be eligible to participate in any bonus or similar incentive plan adopted by the Company as approved by the Board of Directors ("**Board**") for executives at Executive's level, based on a target of 30% to 50% of Executive's Base Salary. The amount awarded, if any, to the Executive under any bonus or incentive plan shall be in the discretion of the Board or any committee administering such plan. Executive's bonus, if any, shall be subject to the terms and conditions of any plan or program adopted or approved by the Board. Any bonus earned hereunder shall be paid no later than 2-1/2 months after the end of the calendar year in which it is earned. For calendar year 2019, Executive's bonus shall be prorated to reflect the portion of such year that Executive was actually employed by the Company. Executive must be employed as of December 31 of any calendar year to be eligible for a bonus under this Section 4(b).

(c) Equity. Executive shall be eligible to participate in any equity compensation plan or similar program adopted by the Company. The amount awarded, if any, to the Executive under any such plan shall be in the discretion of the Board or any committee administering such plan and shall be subject to the terms and conditions of any plan or program adopted or approved by the Board and the applicable award agreement. Subject to the approval of specific grant by the Board, the Company will make an initial grant to Executive of three-hundred, fifty-thousand (350,000) options to purchase shares of common stock of the Company priced at fair market value at the time of grant, which shall be no earlier than the Employment Commencement Date. The options shall be granted as incentive stock options (ISOs) to the maximum extent permitted under the law and the Company's equity compensation plan. Such grant will be effective when made, following approval by the Board, and shall be subject to terms and conditions to be imposed by the Board under its plans or programs, and/or applicable award agreement, which terms the parties anticipate will include, among other things, vesting of seven and one-half (7.5%) (26,250 shares) upon the completion of six (6) full months of continuous employment with the Company, another seven and one-half percent (7.5%) (26,250 shares) upon the completion of twelve (12) full months of continuous employment with the Company, with the remainder vesting on a monthly basis over the following three (3) year period conditioned upon continued employment with the Company. For clarity and the avoidance of doubt, beginning after twelve months of continuous employment with the Company, at least 8,264 shares shall vest on the last day of each successive month of Executive's continuous employment with the Company such that all options, including ISOs, shall be fully vested as of the last day of Executive's 48th month of employment with the Company

(d) Benefits. The Executive shall be entitled to receive those benefits provided from time to time to other executive employees of the Company, in accordance with the terms and conditions of the applicable plan documents; provided that the Executive meets the eligibility requirements thereof. All such benefits are subject to amendment or termination from time to time by the Company without the consent of the Executive or any other employee of the Company.

(e) Paid Time Off. The Executive shall be entitled to four weeks of paid time off

(“PTO”) to be taken in accordance with the Company’s standard PTO policies.

(f) Business Expenses. The Company will reimburse Executive for reasonable travel, entertainment, office and other expenses incurred by Executive in the furtherance of the performance of Executive’s duties hereunder, in accordance with the Company’s expense reimbursement policy for senior executives as in effect from time to time. Provided, however, that the Company will make the reimbursement only if the corresponding expense is incurred during the term of this Agreement and the reimbursement is made on or before the last day of the calendar year following the calendar year in which the expense is incurred, the amount of expenses eligible for such reimbursement during a calendar year will not affect the amount of expenses eligible for such reimbursement in another calendar year, and the right to such reimbursement is not subject to liquidation or exchange for another benefit from the Company.

5. Termination. This Agreement and the Executive’s employment by the Company shall or may be terminated, as the case may be, as follows:

(a) Termination by the Executive. The Executive may terminate this Agreement and Executive’s employment by the Company:

(i) for “Good Reason” (as defined herein). For purposes of this Agreement, “**Good Reason**” shall mean, the existence, without the consent of the Executive, of any of the following events: (A) the Executive’s duties and responsibilities are substantially reduced or diminished; (B) the Executive’s base salary is reduced by more than fifteen percent (15%) from the level prior to such reduction, except for an across the board reduction in base salary for all executive officers; (C) the Company materially breaches its obligations under this Agreement; or (D) the Executive’s place of employment is relocated by more than fifty (50) miles. In addition to any requirements set forth above, in order for any of the above events to constitute “Good Reason,” the Executive must (X) inform the Company of the existence of the event within 90 days of the initial existence of the event, after which date the Company shall have no less than 30 days to cure the event which otherwise would constitute “Good Reason” hereunder and (Y) the Executive must terminate employment with the Company for such “Good Reason” no later than two years after the initial existence of the event which prompted the Executive’s termination.

(ii) Other than for Good Reason 30 days after notice to the Company.

(b) Termination by the Company. The Company may terminate this Agreement and the Executive’s employment by the Company upon notice to the Executive (or personal representative):

(i) at any time and for any reason;

(ii) upon the death of the Executive, in which case this Agreement shall terminate immediately; provided that, such termination shall not prejudice any benefits payable to the Executive’s spouse or beneficiaries which are fully vested as of the date of death;

(iii) if the Executive is “permanently disabled” (as defined herein), in which case this Agreement shall terminate immediately; provided that, such termination shall not prejudice any benefits payable to the Executive, the Executive’s spouse or beneficiaries which are fully vested as of the date of the termination of this Agreement. For purposes of this Agreement, the Executive shall be considered “**permanently disabled**” when a qualified medical doctor mutually acceptable to the Company and the Executive or the Executive’s personal representative shall have certified in

writing that: (A) the Executive is unable, because of a medically determinable physical or mental disability, to perform substantially all of the Executive's duties, with or without a reasonable accommodation, for more than 180 calendar days measured from the last full day of work; or (B) by reason of mental or physical disability, it is unlikely that the Executive will be able, within 180 calendar days, to resume substantially all business duties and responsibilities in which the Executive was previously engaged and otherwise discharge the Executive's duties under this Agreement; or

(iv) "for cause" (as defined herein). "**For cause**" shall be determined by the Company and shall mean:

A. Any material breach of the terms of this Agreement by the Executive, or the material failure of the Executive to diligently perform the Executive's duties for the Company or the Executive's material failure to achieve his objectives specified by the Board; provided, however, that the Company must first provide Executive with written notice of the grounds under this Section 5(b)(iv)(A) and a period of twenty (20) business days in which to cure such grounds;

B. The Executive's unauthorized use of the Company's tangible or intangible property (excluding incidental use) or Executive's breach of the Proprietary Information Agreement (as defined herein) or any other similar agreement regarding confidentiality, intellectual property rights, non-competition or non-solicitation;

C. Any material failure to comply with material Company Policies, applicable government laws, rules and regulations and/or directives of the Board;

D. The Executive's use of illegal drugs or any illegal substance, or the Executive's use of alcohol in any manner that materially interferes with the performance of the Executive's duties under this Agreement;

E. Any dishonest or illegal action (including, without limitation, embezzlement) or any other action whether or not dishonest or illegal by the Executive which is materially detrimental to the interest and well-being of the Company, including, without limitation, harm to its reputation;

F. The Executive's failure to fully disclose any material conflict of interest that the Executive may have with the Company in a transaction between the Company and any third party which is materially detrimental to the interest and well-being of the Company; or

G. Any knowing and intentional adverse action or omission by the Executive which would be required to be disclosed pursuant to public securities laws or which would limit the ability of the Company or any entity affiliated with the Company to sell securities under any Federal or state law or which would disqualify the Company or any affiliated entity from any exemption otherwise available to it.

(c) Obligations of the Company Upon Termination.

(i) Upon the termination of this Agreement: (A) by the Executive pursuant to paragraph 5(a)(ii); or (B) by the Company pursuant to paragraph 5(b)(ii), (iii), or (iv) the Company shall have no further obligations hereunder other than the payment of all compensation and other benefits payable to the Executive through the date of such termination which shall be paid on or before the Company's next regularly scheduled payday unless such amount is not then-calculable, in which case payment shall be made on the first regularly scheduled payday after the amount is

calculable.

(ii) Upon termination of this Agreement: (A) by the Executive pursuant to paragraph 5(a)(i); or (B) by the Company pursuant to paragraph 5(b)(i) and provided that the Executive first executes and does not revoke a release agreement in the form acceptable to the Company within the time period then-specified by the Company but in any event no later than sixty (60) days after the date of termination (the “**Release**”):

A. (i) if the termination date of Executive’s employment occurs on or after the twelve (12) month anniversary of the Effective Date of this Agreement, the Company shall pay the Executive an amount equal to six (6) months of Executive’s then-current Base Salary (less all applicable deductions), or, (ii) if such termination of Executive’s employment occurs prior to the twelve (12) month anniversary of the Effective Date of this Agreement, the Company shall pay the Executive an amount equal to $x/12$ times 50% of Executive’s then current Base Salary, where “x” represents the number of months Executive has been employed following the Effective Date; provided that in either case, such amount is payable in installments over the six (6) month period immediately following the termination date in accordance with the then-current generally applicable payroll schedule of the Company commencing on the first regularly scheduled pay date of the Company processed after Executive has executed, delivered to the Company and not revoked the Release (with the first payment to include a catchup for any amounts that would have been paid had the Release been effective on the termination date); and

B. conditioned on Executive’s proper and timely election to continue the Company’s health insurance benefits under COBRA, or under applicable state law, the Company shall provide Executive with reimbursement of the additional costs incurred by Executive for continuing such benefits at the same level in which Executive participated prior to the date Executive’s employment terminated, including any additional taxes, for the shorter of (i) three (3) months from the date of termination or (ii) until the Executive obtains reasonably comparable coverage under a new employment arrangement, with such reimbursements to begin at the same time as severance pay set forth in Section 5(c)(ii)(A).

(d) Resignation as Officer. Upon termination of this Agreement and the Executive’s employment hereunder for any reason by either party, the Executive shall be deemed to have resigned from all offices and positions the Executive may hold with the Company at such time including without limitation Board membership and/or positions as an officer of the Company.

6. Proprietary Information Agreement. The terms of the Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement by and between the Company and the Executive, entered into simultaneously herewith (the “**Proprietary Information Agreement**”) and any other similar agreement regarding confidentiality, intellectual property rights, non-competition or non-solicitation between the Company and the Executive, are hereby incorporated by reference and are a material part of this Agreement.

7. Representations and Warranties.

(a) The Executive represents and warrants to the Company that the Executive’s performance of this Agreement and as an employee of the Company does not and will not breach any noncompetition agreement or any agreement to keep in confidence proprietary information acquired by the Executive in confidence or in trust prior to the Executive’s employment by the Company. The Executive represents and warrants to the Company that the Executive has not entered into, and agrees

not to enter into, any agreement that conflicts with or violates this Agreement.

(b) The Executive represents and warrants to the Company that the Executive has not brought and shall not bring with the Executive to the Company, or use in the performance of the Executive's responsibilities for the Company, any materials or documents of a former employer which are not generally available to the public or which did not belong to the Executive prior to the Executive's employment with the Company, unless the Executive has obtained written authorization from the former employer or other owner for their possession and use and provided the Company with a copy thereof.

8. Indemnification.

(a) By the Employee. The Executive shall indemnify and hold harmless the Company, its directors, officers, stockholders, agents, and employees against all claims, costs, expenses, liabilities, and lost profits, including amounts paid in settlement, incurred by any of them as a result of Executive engaging in actions that constitute Cause under Section 5(b) (iv) B, E, F, or G of this Agreement or the breach by the Executive of any provision of Section 6 and/or 7 of this Agreement.

(b) By the Company. The Company will indemnify and hold harmless the Executive from any liabilities and expenses arising from Executive's actions as an officer, director or employee of the Company to the fullest extent permitted by law, excepting any unauthorized acts, intentional or illegal conduct which breaches the terms of this or any other agreement or Company policy, including but not limited to the Proprietary Information Agreement.

9. Notices. All notices, requests, consents, approvals, and other communications to, upon, and between the parties shall be in writing and shall be deemed to have been given, delivered, made, and received when: (a) personally delivered; (b) deposited for next day delivery by Federal Express, or other similar overnight courier services; (c) transmitted via telefacsimile or other similar device to the attention of the Company President with receipt acknowledged; or (d) three days after being sent or mailed by certified mail, postage prepaid and return receipt requested, addressed

If to the Company,

Innovate Biopharmaceuticals, Inc.
8480 Honeycutt Road, Suite 120
Raleigh, NC 27615
Attn: Kendyle Woodard
Email: kwoodard@innovatebiopharma.com

If to Executive:

Edward J. Sitar
[****]

10. Effect. This Agreement may be assigned by the Company to its successors in interests. This Agreement shall be binding on and inure to the respective benefit of the Company and its successors and assigns and the Executive and Executive's personal representatives.

11. Entire Agreement. This Agreement and the Proprietary Information Agreement and any other similar agreement regarding confidentiality, intellectual property rights, non-competition or non-solicitation constitute the entire agreement between the parties with respect to the matters set

forth herein and supersede all prior agreements and understandings between the parties with respect to the same.

12. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

13. Amendment and Waiver. A waiver of any breach of this Agreement shall not constitute a waiver of any other provision of this Agreement or any subsequent breach of this Agreement. No provision of this Agreement may be amended, modified, deleted, or waived in any manner except by a written agreement executed by the parties.

14. Section 409A Matters. This Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended and the Treasury Regulations and other applicable guidance thereunder (“**Section 409A**”). To the extent that there is any ambiguity as to whether this Agreement (or any of its provisions) contravenes one or more requirements of Section 409A, such provision shall be interpreted and applied in a manner that does not result in a Section 409A violation. Without limiting the generality of the above:

(a) For clarity, the severance benefits specified in this Agreement (the “**Severance Benefits**”) are only payable upon a “separation from service” as defined in Section 409A. The Severance Benefits shall be deemed to be series of separate payments, with each installment being treated as a separate payment. The time and form of payment of any compensation may not be deferred or accelerated to the extent it would result in an impermissible acceleration or deferral under Section 409A.

(b) To the extent this Agreement contains payments which are subject to Section 409A (as opposed to exempt from Section 409A), the Executive’s rights to such payments are not subject to anticipation, alienation, sale, transfer, pledge, encumbrance, attachment or garnishment and, where applicable, may only be transferred by will or the laws of descent and distribution.

(c) To the extent the Severance Benefits are intended to be exempt from Section 409A as a result of an “involuntary separation from service” under Section 409A, if all conditions necessary to establish the Executive’s entitlement to such Severance Benefits have been satisfied, all Severance Benefits shall be paid or provided in full no later than December 31st of the second calendar year following the calendar year in which the Executive’s employment terminated unless another time period is applicable. To the extent required by Section 409A, any portion of the severance benefits payable to Executive under Section 5(c)(ii) that are contingent on the Executive’s execution and non-revocation of the Release and that could be paid in the calendar year in which Executive terminates employment or in the immediately following calendar year, depending on when the Release becomes effective shall be paid on the first payroll date in such immediately following calendar year or such later date required by Section 5(c)(ii) (with all remaining payments of such severance benefits to be paid as if no such delay had occurred).

(d) If the Executive is a “specified employee” (as defined in Section 409A) on the termination date and a delayed payment is required by Section 409A to avoid a prohibited distribution under Section 409A, then no Severance Benefits that constitute “non-qualified deferred compensation” under Section 409A shall be paid until the earlier of (i) the first day of the 7th month following the date of Employee’s “separation from service” as defined in Section 409A, or (ii) the date of Employee’s death. Upon the expiration of the applicable deferral period, all payments deferred under this clause shall be paid in a lump sum and any remaining severance benefits shall be paid per

the schedule specified in this Agreement.

(e) The Company makes no representation that this Agreement will be exempt from or compliant with Section 409A and makes no affirmative undertaking to preclude Section 409A from applying, but does reserve the right to unilaterally amend this Agreement as may be necessary or advisable to permit the Agreement to be in documentary and operational compliance with Section 409A which determination will be made in the sole discretion of the Company.

15. Governing Law. This Agreement shall be construed, interpreted, and governed in accordance with and by North Carolina law and the applicable provisions of federal law ("Applicable Federal Law"). Any and all claims, controversies, and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by the laws of the state of North Carolina, including its statutes of limitations, except for Applicable Federal Law, without giving effect to any North Carolina conflict-of-laws rule that would result in the application of the laws of a different jurisdiction. Both Executive and the Company acknowledge and agree that the state or federal courts located in North Carolina have personal jurisdiction over them and over any dispute arising under this Agreement, and both Executive and the Company irrevocably consent to the jurisdiction of such courts.

16. Consent to Jurisdiction and Venue. Each of the parties agrees that any suit, action, or proceeding arising out of this Agreement may be instituted against it in the state or federal courts located in Wake County, North Carolina. Each of the parties hereby waives any objection that it may have to the venue of any such suit, action, or proceeding, and each of the parties hereby irrevocably consents to the personal jurisdiction of any such court in any such suit, action, or proceeding.

17. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall be deemed a single agreement.

18. Headings. The headings herein are for convenience only and shall not affect the interpretation of this Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

INNOVATE BIOPHARMACEUTICALS, INC.

By: /s/ Jay Madan

Name: Jay Madan

Edward J. Sitar
/s/ Edward J. Sitar