

Utah Valley University
Research and Development Instructional Experience Agreement

This Research and Development Instructional Experience Agreement (“Agreement”) is entered into and effective as of the last signature date below (“Effective Date”), by and between Utah Valley University a body corporate and politic of the State of Utah with its principal business location at 800 West University Parkway, Orem, Utah 84058 (“University”), on behalf of its College of Science’s University InnovaBio laboratory program (“InnovaBio”), and _____ (“Sponsor”), a legal entity duly licensed to do business in the State of Utah and located at _____ (University and Sponsor each being a “Party” and collectively the “Parties”).

RECITALS

InnovaBio is a University program through which commercial entities may contract with University for University students (“InnovaBio Students”) supervised by the InnovaBio Director, or the InnovaBio Director’s designee, to conduct biotechnology research related to new product development and similar services. The goals of InnovaBio are to provide work experience to InnovaBio Students through an internal internship at the University, and to provide an environment where commercial entities may develop biotechnology. Through InnovaBio, Sponsor will obtain access to practical experimental outcomes, while facilitating the development of future biotechnology professionals.

TERMS

In consideration of the above recitals and the terms and conditions of this Agreement as set forth below, the Parties agree as follows:

- 1. DEFINITION OF ACTIVITIES, MATERIALS AND OUTCOMES.** The Parties shall prepare and execute an “Experimental Outline” that shall, as a minimum: (a) have a descriptive title or name, and contain a detailed description of the nature of research and development activities in which they will engage; (b) define the expected or possible outcomes of those activities; (c) identify the research and development activities in which the InnovaBio Students will participate; (d) identify all materials reasonably necessary to complete those activities including, by way of example and without limitation, equipment, supplies, reagents and consumables; (e) specify the materials that will be obtained by University at Sponsor’s expense (“University Materials”); (f) specify the materials that will be provided by Sponsor (“Sponsor Materials”); and, (g) specify a payment plan, with milestones, target dates, and dollar amounts, indicating with specificity each step that must be completed in order for a payment milestone to be fulfilled (such steps shall not be tied to achieving specific experimental outcomes, but merely to taking steps that can be scheduled and controlled by InnovaBio). The University research and development activities performed by or for University under this Agreement, including those described in or relating to the Experimental Outline, are referred to hereafter as the “Research.” Materials not identified in the Experimental Outline will be deemed University Materials to be provided by University. The InnovaBio Director, or the InnovaBio Director’s designee, and a person designated by

Sponsor shall collaborate in preparing the Experimental Outline. The Attachment to this Agreement provides a template for the Experimental Outline. The template shall be discarded and replaced by a mutually agreed upon Experimental Outline, executed by a duly authorized representative of each Party, thereby being incorporated in, and made part, of this Agreement.

2. OBLIGATIONS OF UNIVERSITY

- 2.1. Administration of Program Activities: The research and development activities described in the Experimental Outline shall be implemented under the direction of the InnovaBio Director or his/her designee. University will select the InnovaBio Students who will participate in those activities and represents that they have appropriate technical skills to do so.
- 2.2. Records and Reporting: University will create and maintain any records required by the Experimental Outline. University agrees to make those records available to the designated Sponsor contact within a reasonable time after it receives a written request from Sponsor. Upon completion of the Research, no later than within 60 days of the last day of the project period and after the final payment has been received, University will deliver to Sponsor a final written report.
- 2.3. Results of Activities Not Warranted: The Parties acknowledge that the Experimental Outline describes research and development activities sponsored by Sponsor, the milestones, and outcomes of which, by their very nature, cannot be known or predicted with any certainty. Accordingly, University does not represent or warrant that the activities or outcomes anticipated by the Experimental Outline will result in any specific, desired, anticipated, or marketable outcome, and Sponsor expressly waives any claims against and any liability of University for any failure of the Experimental Outline activities and outcomes to achieve the goals of Sponsor. Sponsor agrees that any such failure shall not relieve Sponsor of its obligations hereunder.

3. OBLIGATIONS OF SPONSOR

- 3.1. Provision and Ownership of Sponsor Materials; No Liability: Sponsor shall promptly provide all Sponsor Materials to University. Sponsor Materials provided to University and not used in the Research shall remain the sole property of Sponsor, and the unused portion thereof shall be returned to Sponsor upon Sponsor's request at the conclusion of the Research; if Sponsor does not request any such unused portions of the Sponsor Materials within thirty (30) days of the conclusion of the Research, such Sponsor Materials will become the property of University and University may use or dispose of such Sponsor Materials at University's discretion. Sponsor agrees that neither University nor any InnovaBio Student shall be liable for any breakage, damage, loss, devaluation, or waste of Sponsor Materials.
- 3.2. Remuneration: University shall invoice Sponsor for the cost of University Materials used by University according to the payment terms, deliverables and schedule set forth

in the Experimental Outline, or, if any of such terms are not set forth in the Experimental Outline, University may invoice Sponsor on commercially reasonable terms within a reasonable time of obtaining University Materials. Sponsor agrees to pay such invoices in full within thirty (30) days following receipt thereof by Sponsor.

- 3.3. Notice of Changes in Sponsor's Procedures or Staff: Sponsor agrees to promptly inform University of changes in Sponsor's policies or procedures that may affect activities under the Experimental Outline. Sponsor also agrees to promptly notify University in advance and in writing of any relevant changes in Sponsor's staffing. Sponsor agrees that any such changes shall not affect this Agreement, or the research or development activities described in the Experimental Outline, except as provided in paragraph 4.1 below.

4. INTELLECTUAL PROPERTY; PUBLICATION; CONFIDENTIALITY

- 4.1. Changes and Extensions: Any change to this Agreement, including any change to or extension of the time for completion of the activities set forth in the Experimental Outline, shall require a written addendum to this Agreement executed by the Parties.

4.2. Intellectual Property:

4.2.1. Intellectual property developed by either party prior to or outside the scope of this Agreement shall remain with the developing party. No license or right to such background intellectual property is granted other than as expressly stated herein.

4.2.2. University shall own all right, title and interest in all inventions and improvements conceived or reduced to practice by University, University personnel, or InnovaBio Students in the performance of the Research (hereinafter collectively "Invention") and may, at its election, file all patent applications relating thereto. In consideration of Sponsor's support of University in performance of the Research and subject to receipt of compensation as provided for under Section 3.2 of this Agreement, and provided Sponsor is compliant with all of its obligations to University under this or any other agreement between the parties, University hereby grants to Sponsor an option for a non-exclusive license to said Invention, which shall expire six months after University has provided written notice to Sponsor of any such Invention ("Option Period"). Upon exercise of the option in writing, the parties will meet within thirty (30) days to begin negotiating the terms of the license. The parties agree to negotiate in good faith. In the event a license is not executed within six (6) months from the exercise of the option, or the option is not exercised within the Option Period, the University shall be free to license the Invention to others at the University's sole discretion with no further obligation to the Sponsor.

4.3. Publication Rights:

- 4.3.1. In furtherance of University's role as a public institution of higher education, it is necessary that significant results of research activities be reasonably available for publication by the University, and Sponsor acknowledges that University may publish the results of the Research conducted in connection with this Agreement.
- 4.3.2. Notwithstanding the foregoing, University agrees that it shall not publish the results of Research conducted in connection with this Agreement, without the prior written consent of Sponsor, until the expiration of six (6) months following the first to occur of either the termination of this Agreement or submission of the final written report required under Section 2.2 above hereof. In the event University wishes to publish Research results prior to the expiration of the above described six (6) month period, University shall first provide to Sponsor written notice of University's intent to publish and a draft of such publication. Sponsor shall have thirty (30) days after receipt of the draft publication to request in writing the removal of portions deemed by Sponsor to contain confidential or patentable material owned by Sponsor, or to request a delay in submission of the draft for publication pending Sponsor's application for patent protection. In either event, University shall have no obligation to delay publication of the draft for longer than six (6) months following delivery of University's notice to Sponsor of intent to publish. If University does not receive Sponsor's written response to the notice of intent to publish within the thirty (30) day period, then Sponsor shall be deemed to have consented to such publication. Information supplied to University by Sponsor and identified by Sponsor as proprietary information shall not be included in any material published by University without prior written consent of Sponsor.

4.4. Confidentiality:

- 4.4.1. Subject to the other terms of this Agreement, if University is provided with or learns of trade secrets or confidential matters of Sponsor ("Sponsor Confidential Information") during the term of this Agreement, University agrees to exert commercially reasonable efforts to maintain the confidentiality of all such matters, both during the term of this Agreement and for three years thereafter, except with Sponsor's prior written consent or as required by law. Sponsor Confidential Information shall mean written materials provided to University by Sponsor that are clearly marked by Sponsor as "Confidential."
- 4.4.2. Sponsor acknowledges that University is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code Ann. § 63G-2-101, et seq., as amended ("GRAMA"); that certain records within University's possession or control, including without limitation this Agreement and any related documents, may be subject to public disclosure; and that University's confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to section 63G-2-309 of GRAMA, any confidential information provided to University that Sponsor believes should be protected from disclosure

must be accompanied by a written claim of confidentiality and a concise statement of the reasons supporting the claim. Notwithstanding any provision to the contrary in this Agreement, including paragraph 4.4.1 above, University may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to University's attorneys, accountants, and consultants on a need-to-know basis. University has no obligation to notify Sponsor before release of information or documents disclosed under GRAMA.

5. INDEMNIFICATION; LIABILITY

5.1. Indemnification:

- 5.1.1. Indemnification by University. University is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G -7-101 to 904, as amended (the "Act"). Nothing in the Agreement shall be construed as a waiver by University of any protections, rights, or defenses applicable to University under the Act, including without limitation, the provisions of section 63G-7-604 regarding limitation of judgments. It is not the intent of University to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of University contained in the Agreement are subject to the Act, are limited to the amounts established in section 63G-7-604 of the Act and are further limited only to claims that arise from the negligent acts or omissions of University. Subject to the Act, University shall indemnify, defend, and hold harmless Sponsor, its directors, officers, agents and employees against any actions, suits, proceedings, liabilities, and damages to the extent caused by the negligent acts or omissions of University, its officers, agents, or employees in connection with the performance of University's obligations under this Agreement.
- 5.1.2. Indemnification by Sponsor: Sponsor shall indemnify, defend, and hold harmless University, its directors, officers, agents and employees against any actions, suits, proceedings, liabilities, and damages to the extent caused by the negligent acts or omissions of Sponsor, its officers, agents, or employees in connection with this Agreement.
- 5.1.3. Notice of Claim: Each Party agrees that it shall give the other Party prompt written notice of any claim, threatened, or made, or suit instituted against it which could result in a claim for indemnification under this Agreement.

5.2. Insurance:

- 5.2.1. Insurance: Sponsor agrees, at its own cost, to provide and maintain reasonable insurance coverage for liability and the protection of its own personal property at all times during the term of this Agreement, either through commercial insurance

or self-insurance. The nature and amount of the insurance provided and maintained by Sponsor will be, upon request, reasonably provided to University.

5.2.2. Worker's Compensation: The Parties agree that University faculty members, staff and InnovaBio Students are not employees of Sponsor, and that Sponsor is not responsible for any worker's compensation or disability claims filed by University faculty members, staff, or InnovaBio Students. InnovaBio Students who are not employed by University are internal interns in the InnovaBio program and, as such, are entitled to worker's compensation medical benefits under Utah Code Ann. § 53B-16-401, *et seq.*

5.3. Liability:

5.3.1. Limitation of Liability. IN NO EVENT UNIVERSITY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED UPON CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE) EXCEED \$10,000.

5.3.2. Disclaimer of Consequential and other Indirect Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR OTHER INTANGIBLE PROPERTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. LAWS, RULES AND REGULATIONS: NON-DISCRIMINATION

6.1. Laws, Rules and Regulations: University and Sponsor agree to abide by all applicable executive orders, federal, state, and local laws, rules, and regulations in effect as of the date of this Agreement, and as they may change or be amended from time to time.

6.2. Non-Discrimination: University and Sponsor agree that no person shall be subject to unlawful discrimination on the basis of race, color, religion, sex, national origin, age, veteran status, or disability in connection with participation in activities under the Experimental Outline.

7. TERM AND TERMINATION

- 7.1. Term: The term of this Agreement shall commence on the Effective Date and shall terminate, unless terminated earlier according to any provisions of this Agreement, on the earlier of one (1) year from the Effective Date or the Parties' completion of their obligations under the Experimental Outline.
- 7.2. Termination:
- 7.2.1. In the event that a Party materially defaults in the performance of its obligations under this Agreement or materially breaches any representation under this Agreement, and the defaulting Party fails to cure the default or breach within thirty (30) days of written notice from the other Party, the other Party may terminate this Agreement by providing written notice to the defaulting or breaching Party. The Parties recognize that the results of any particular research project cannot be accurately predicted or guaranteed despite the use of best efforts by both Parties. The failure of University to achieve specific research results will not constitute a default or breach of this Agreement.
- 7.2.2. Either Party may terminate this Agreement without cause by providing at least thirty (30) days written notice to the other Party.
- 7.2.3. University may immediately terminate this Agreement should University's Institutional Review Board or Institutional Animal Care and Use Committee, at any time, and at University's sole discretion, determine that the Project violates human or animal research subject policy or would put the health, safety, or humane treatment of research subjects at risk.
- 7.3. Termination and Payment. If this Agreement is terminated by a Party other than for University's failure to cure, Sponsor shall be obligated to pay: (a) all amounts due under the Experimental Outline for services completed by University through the effective date of such termination; and (b) all expenses and costs, including the cost of University Materials used by University, accruing to University that University reasonably obligated itself to pay prior to receiving notice of termination from Sponsor and that are based on University's original expectation of completing all activities under the Experimental Outline. University shall promptly invoice Sponsor for all such services, costs and expenses, and Sponsor shall pay such invoice within thirty (30) days of receipt thereof by Sponsor.
- 7.4. Non-appropriation of Funds: Sponsor acknowledges that University cannot maintain programs that are not funded by the Utah State Legislature. If funding to University is reduced by order of the Utah Legislature, Governor, Board of Regents, or by Utah State law, or if federal funding (when applicable) is reduced or eliminated, University may terminate this Agreement or proportionately reduce any services and other obligations of University under this Agreement or any Experimental Outline, including any amount due from University, upon thirty (30) days written notice to Sponsor. In the case that

funds are not appropriated or are reduced, University will not be obligated to provide further services or materials under this Agreement or any Experimental Outline after the date of reduction or elimination, and University will not be liable for any future commitments, penalties, or liquidated damages.

8. OTHER PROVISIONS

- 8.1. Force Majeure: Without affecting any right of cancellation or termination set forth in this Agreement, and except for obligations to make payments, either Party may suspend its performance under this Agreement at any time because of a labor dispute or disruption of its personnel, war, the declaration of a state of national emergency, acts of God or the public enemy, or other cause beyond the control of such Party, by giving the other Party written notice of such suspension and the reason for the same. Services to be provided hereunder shall be made and performed to the date of such suspension and shall thenceforth cease until the period of such suspension has ended.
- 8.2. Use of Name: Except as expressly permitted herein, neither Party shall, without prior written consent of the other, use the other's trade name, trademarks, or service marks in any manner that is likely to suggest that the Parties are related, or that one Party sponsors or endorses the products, services, activities, or views of the other Party. Notwithstanding the foregoing, University shall have the right to use and publish the name of Sponsor as an InnovaBio program participant.
- 8.4. Entire Agreement and Modification: This Agreement and its attachments, including the Experimental Outline, constitute the entire understanding between the Parties with respect to Sponsor's participation in the InnovaBio program, and shall supersede all prior or contemporaneous writings, oral discussions, or representations. This Agreement, including the Experimental Outline, may be modified only by a writing signed by a duly authorized representative of each Party.
- 8.5. Governing Law; Venue: This Agreement shall be governed by and construed under the laws of the State of Utah, without reference to conflicts of laws provisions. Any dispute arising between the Parties related to this Agreement shall be resolved exclusively in the state or federal courts located in Salt Lake County, Utah.
- 8.6. Agreement Binding on Successors: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their administrators, successors, and permitted assigns. The parties acknowledge that they are independent contractors and may not purport to bind, bind, or otherwise affect the duties or obligations of the other.
- 8.7. Notices: All notices required or permitted under this Agreement shall be sent to the attention of the authorized persons executing this Agreement at the addresses specified in the first paragraph of this Agreement and shall be deemed received as of the date of actual receipt as evidenced by any delivery records.

8.8. Waiver: No waiver by either Party of any default shall be deemed a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

8.9. Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any other provision of this Agreement; provided, however, that in the event that the invalidity or unenforceability of any provision of this Agreement has a material adverse effect on any of the rights or obligations of the Parties, the Parties shall negotiate in good faith to modify this Agreement so as to effect, as closely as possible, the original intent of the Parties.

IN WITNESS WHEREOF, the parties have caused this Research and Development Instructional Experience Agreement to be executed by their duly authorized representatives.

UTAH VALLEY UNIVERSITY

SPONSOR

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT

EXPERIMENTAL OUTLINE

Effective as of the last signature date below, this Experimental Outline is an attachment to the Research and Development Instructional Experience Agreement dated _____ (“Agreement”) by and between Utah Valley University a body corporate and politic of the State of Utah with its principal business location at 800 West University Parkway, Orem, Utah 84058 (“University”), on behalf of its College of Science’s University InnovaBio laboratory program (“InnovaBio”), and _____ (“Sponsor”). Each capitalized term in this Experimental Outline has the meaning assigned to it in the Agreement unless a different meaning is assigned in this Experimental Outline.

[INSTRUCTION: THE EXPERIMENTAL OUTLINE IS TO BE COMPLETED BY THE PARTIES IN ACCORDANCE WITH SECTION 1 OF THE AGREEMENT. THIS INSTRUCTION IS TO BE DELETED FROM THE COMPLETED EXPERIMENTAL OUTLINE]

IN WITNESS WHEREOF, the parties have caused this Experimental Outline to be executed by their duly authorized representatives.

UTAH VALLEY UNIVERSITY

SPONSOR

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____