

Exhibit D
PROJECT IP MANAGEMENT PLAN

This Project Intellectual Property Management Plan (the “**IP Management Plan**” or “IPMP”) is agreed to on _____, 202X (the “**Effective Date**”) by and among the University of Delaware (“**UD**”), on behalf of the National Institute for Innovation in Manufacturing Biopharmaceuticals (“**NIIMBL**”), and [Project Leader, located at _____] (“” or the “**Project Leader**”) and [first project participant, located at _____ (“”), [second project participant, located at _____ (“”), and [third project participant, located at _____ (“”) (each of [first name],[second name], and [third name] and collectively with the Project Leader the “**Project Participants**” pursuant to that Project Award Agreement (PAA) entered by and among UD and the Project Participants as of the date hereof (the “**Project Award Agreement**” or “PAA”). The terms in this IP Management Plan with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth in Exhibit A of the PAA or, if not otherwise defined, the meaning ascribed to such term in the Bylaws (as defined in item A-5 of EXHIBIT A (Definitions) to the PAA).

WHEREAS, UD has entered into a cooperative agreement, Number 70NANB21H086, effective July 31, 2021 with the National Institute of Standards and Technology (“**NIST**”), a division of the Department of Commerce (the “**Cooperative Agreement**”), to establish the National Institute for Innovation in Manufacturing Biopharmaceuticals (hereinafter referred to as “**NIIMBL**”) which is designed to accelerate biopharmaceutical manufacturing innovation in the United States, support the development of standards that enable more efficient and rapid manufacturing capabilities, and educate and train a world-leading biopharmaceutical manufacturing workforce, fundamentally advancing U.S. competitiveness in this industry.

WHEREAS, NIIMBL is a group consisting of public and private companies and institutions (collectively, “**Members**”) that, in exchange for membership fees, will be able to participate in activities related to and in support of NIIMBL.

WHEREAS, the NIIMBL Members have adopted a set of Bylaws governing the operation, rights, privileges and obligation of the NIIMBL Members, which Bylaws may be amended from time to time. References to the Bylaws in this Agreement shall refer to the version of the NIIMBL Bylaws in effect on the Effective Date.

WHEREAS, the Project Participants have agreed to carry out the proposed Institute Wide Project (as defined in the Bylaws) entitled “[*Insert Project Title*]” (the “**Project**”) as more fully described in the Project Award Agreement, and NIIMBL’s support of such research efforts is conditioned upon the agreement by all of the Project Participants to the terms and conditions of this IP Management Plan.

NOW, THEREFORE, for the mutual benefits and considerations each to the other, the parties agree to the following terms and conditions:

ARTICLE 1

Intellectual Property Rights

1.1 Inventorship and Authorship of Intellectual Property. Inventorship and Authorship of Project IP shall be determined in accordance with and by application of U.S. patent and copyright laws.

1.2 Ownership of Intellectual Property. Subject to Section 1.3 and any Research Materials (as defined therein) covered thereby, the Project Participants agree to the following:

1.2.1 Solely-Owned Project IP. Each Project Participant will own all Project IP solely invented or authored by or on behalf of such Project Participant and/or its Affiliates and/or their respective employees, agents and independent contractors in the course of conducting its activities under the Project.

1.2.2 Jointly-Owned Project IP. All Project IP invented or authored jointly by employees, Affiliates, agents, or independent contractors of two or more Project Participants in the course of conducting activities under the Project shall be owned jointly by such Project Participants.

1.2.3 Project IP Owner. Each Project Participant that owns Project IP is referred to herein as a **“Project IP Owner.”**

1.3 Background Intellectual Property.

1.3.1 Definition. **“Background Intellectual Property”** or **“BIP”** means all Intellectual Property developed, owned, or controlled by a Project Participant prior to the commencement of a Project and expressly identified on Appendix A as necessary to the Project, which would likely require a license for a Project Participant perform its obligations with respect to the Project under the Project Award Agreement without infringing such Intellectual Property. Appendix A hereto sets forth a list of all Background Intellectual Property owned or controlled by each Project Participant that is necessary to the Project, including, at a minimum, the titles of the invention(s) and the associated patent number(s), and a copy of the abstract(s).

1.3.2 Right to Perform Projects. Each Project Participant that owns or controls Background Intellectual Property hereby grants, subject to any third party obligations (such as but not limited to a license or option agreement), to each other Project Participant a worldwide, non-exclusive, non-transferable, non-sublicensable, royalty-free, limited right to make, use, have made, reproduce, and create derivative works from the Background Intellectual Property identified in Appendix A solely as required during the Term of the Project, and solely as necessary to perform its obligations with respect to the Project under the Project Award Agreement. The license and rights granted by each Project Participant in and to its Background Intellectual Property pursuant to this Section 1.3.2 shall terminate upon the expiration or earlier termination of the PAA.

1.3.3 Rights to Background Intellectual Property. Other than as set forth above for the performance of obligations with respect to the Project, no Background Intellectual

Property will be contributed or licensed by any Project Participant to any other Member unless agreed to in writing by the applicable BIP owner and the requesting Member.

1.4 Other Background Intellectual Property.

1.4.1 Definition. “**Other Background Intellectual Property**” or “**OBIP**” shall mean all Intellectual Property owned by a Project Participant that would be infringed by another Project Team Member’s performance of its obligations with respect to the Project under the Project Award Agreement, but that was not identified in Appendix A by said Project Participant at the commencement of the Project. For the sake of clarity, “Other Background Intellectual Property” shall not include Intellectual Property (i) developed prior to the commencement of a Project or (ii) developed after the commencement of a Project outside of the Project, which in either case would *not* have required a license for a Member to practice Project IP without infringing such Intellectual Property.

1.4.2 Rights to Other Background Intellectual Property. If OBIP is necessary for the performance of the Project is identified after the Project commences, it shall be discussed in good faith by the parties as promptly as reasonably possible. For clarity, only OBIP that a Project Participant owning or controlling such OBIP expressly agrees to include, by executing a written amendment to Appendix A to this IP Management Plan (“Included OBIP”), shall be included for treatment hereunder as allowing its exercise by other Project Participants, solely for the purpose and in performance of the Project during its term. In the event that the Project Team Member owning or controlling such OBIP does not agree to include such OBIP in Exhibit A, the Project Team Member owning or controlling such OBIP covenants that, if any action taken by another Project Team Member and necessary for the performance of the Project infringes such OBIP, such Project Team Member will not directly or indirectly institute any action or proceeding against such another Project Team member that asserts infringement of such OBIP.

Project Participants also covenant that, if another Project Participant infringes upon OBIP which is not Included OBIP, the Project Participant owning such OBIP will not directly or indirectly institute any action or proceeding that asserts infringement of any claim of a patent or patent application pertaining to such OBIP against such Project Participant, provided the Project Participant did not knowingly or recklessly infringe on such OBIP and that the Project Participant used such OBIP solely for the purpose and in the performance of the Project.

1.4.3 Rights to OBIP. Other than as set forth above for the performance of obligations with respect to the Project, no OBIP will be contributed or licensed by any Project Participant to any other Member unless agreed to in writing by the applicable OBIP owner and the requesting Member.

1.5 Use of Separate MTAs for Transfer of Research Materials. From time to time, certain proprietary material (“**Research Materials**”) may be provided to a Project Participant, pursuant to a separate material transfer agreement (“**MTA**”), for use as described in the Project, and such MTA shall be provided to NIIMBL upon its execution. In the event of any conflict between this IP Management Plan and the applicable MTA, the language in the MTA shall govern, provided that, to the extent that any such conflicting terms may materially impair the

rights of NIIMBL Members not party to the MTA, UD shall have consented to such terms of the MTA in writing.

1.6 Reservation of Rights. Any rights that a Member may have, and any license that a Member may grant, to Publicly Funded Project IP shall be subject to a reservation of certain rights to the U.S. government under the provisions of 35 U.S.C. § 201 et seq.

1.7 Research and Education. Any license that a Project IP Owner may grant to its Publicly Funded Project IP will, if possible, reserve the option to permit private or public educational institutions to use Publicly Funded Project IP on a royalty-free basis for research and education, but not for commercial purposes, provided that such Publicly Funded Project IP is managed in accordance with the provisions of the Article 7 of this IP Management Plan.

1.8 Right to Commercialize Project IP. Pursuant to the provisions of the NIIMBL Bylaws, each Project IP Owner may exploit its Project IP subject to (i) its obligations under the Bylaws, (ii) the rights granted to other Members under the Bylaws, (iii) US Government rights, and (iv) the rights granted to other Project Participants under the Project Award Agreement.

ARTICLE 2

Management of Intellectual Property

2.1 NIIMBL Responsibilities. NIIMBL will commit reasonably sufficient technology transfer administration resources to manage Project IP and Project Award Agreements in a manner consistent with the Project Award Agreement, Bylaws, this IP Management Plan, and Applicable Law.

2.2 Project Participant Responsibilities. Each Project Participant will make reasonable and good faith efforts to:

2.2.1 inform, on a periodic basis, employees, faculty, staff, students and consultants of such Project Participant who are involved in the performance of the Project of the expectation that the Project is to serve the public benefit and the importance of prompt disclosure of developments and potential inventions.

2.2.2 identify documents and share with the Institute Director the existence of any relevant Background Intellectual Property or any prior contractual agreements that may affect rights in Project IP or Background Intellectual Property, including any relevant MTAs.

2.2.3 expedite disclosure to NIIMBL, and as applicable dissemination to Members of, Project IP, Background Intellectual Property, and results and data of Projects.

2.2.4 encourage on a periodic basis, employees, faculty, staff, students and consultants of such Project Participant who are involved in the performance of Projects to disclose all proposed Publications to the Scientific Project Manager and to each Project Participant prior to final disclosure for publication (submission or presentation), as required by the Bylaws.

2.3 IP Sharing. NIIMBL will be responsible for overseeing that Project IP and Background Intellectual Property related to each Project is shared with the Members having rights to such Project IP, and Background Intellectual Property in accordance with the Bylaws, the Project Award Agreement, and this IP Management Plan. Each Project Participant will cooperate fully with NIIMBL and the Institute Director to enable and facilitate the sharing of Project IP, and Background Intellectual Property by and among the appropriate Members.

2.4 Disclosure of Inventions. Each Project Participant shall ensure that all employees, faculty, staff, students and consultants of such Project Participant who invent any Intellectual Property in the performance of the Project, whether patentable or not, will submit invention disclosures that describe the invention in as much detail as practicable to the appropriate office or officer of such Project Participant (each, a “**Project IP Disclosure**”). Each Project Participant shall promptly disclose to the Institute Director each Project IP Disclosure within two (2) months of receipt of the submission. Each Project Participant shall, and shall ensure that its employees, faculty, staff, students and consultants shall, respond promptly to reasonable requests from the Institute Director for more information relating to such inventions. The Institute Director shall have the right to propose revisions to any such Project IP Disclosure, which shall be taken into account by the Project Participant, at its discretion, in any resulting patent preparation. Such Project IP Disclosure shall be deemed Confidential Information under Article V of the Bylaws.

2.5 Technology Transfer. At the completion of the Project, the Project Participant that has been designated as the Project Leader shall provide to the Institute Director the following:

2.5.1 a detailed description of the products, services, processes, technologies, materials, software, data, other innovations, and intellectual property constituting Project IP;

2.5.2 a detailed description of all raw materials, excipients and components, and all other supplies of any kind used in connection with the Project IP; and

2.5.3 copies of all documentation, records, and know-how relating to the Project IP that is not otherwise set out in the foregoing that would be necessary or useful to enable the Members to utilize the Project IP, including performance advice, shop practice, control methods and any other specifications or protocols.

2.6 Each Project Participant shall make available to the designees of the Institute Director, from time to time at mutually convenient times, such personnel as may be reasonably necessary to enable such designees to use and practice the Project IP.

ARTICLE 3

Patent Prosecution and Use of Resulting Rights

3.1 Oversight of Patenting Activities. NIIMBL shall oversee implementation of this IP Management Plan and shall collaborate with the Project Participants to manage:

3.1.1 review, revision, and coordination as necessary, of the strategy for patenting and licensing;

3.1.2 disclosure and patenting activity with respect to Project IP;

3.1.3 efforts among Project Participants to obtain third-party licenses for Intellectual Property as necessary or desirable, or if no Project Participant is seeking a license to any such Intellectual Property, to seek to obtain such licenses in the name of NIIMBL.

3.2 Patent Prosecution.

3.2.1 Generally. Each Project IP Owner shall control and pay for the prosecution of Patents Controlled by such Project Participant and the selection of patent counsel,. For all Project IP that is jointly owned by two or more Project Participants, such joint owners shall determine which Project Participant shall have the right to control prosecution of Patents Controlled by such Project Participants, the countries in which such applications will be filed, and responsibility for out-of-pocket expenses of patenting. Each Project IP Owner shall provide copies of all documents (other than provisional or other urgent patent filings) prepared by patent counsel to the Institute Director not less than thirty (30) days prior to filing such documents, and the Institute Director shall have the right and reasonable opportunity for review and comment prior to filing, such comments not to be unreasonably excluded, and in the case of provisional, or other urgent patent filings, Institute Director will be provided copies of all documents, within 48 hours of such filings. All such Patents will be in the Project IP Owner's name or names. Each Project IP Owner controlling the prosecution of a Patent shall, within one (1) month of such event, inform the Institute Director of any request for, or filing or declaration of, any interference, opposition, revocation or reexamination, or equivalent to any of the foregoing actions, relating to any such Patent and the Institute Director shall have the right and reasonable opportunity to comment. The Institute Director shall have the right to review and comment on any submission to be made in connection with such proceeding, such comments not to be unreasonably excluded. Absent comment within such time, the filing shall be deemed approved.

3.2.2 Prosecution at NIIMBL Request. If the Project IP Owner or Owner(s) decide not to pursue Patent or trade secret protection of Project IP, the Institute Director may request that such Project IP Owner or Owner(s) pursue such Patent protection at the expense of NIIMBL using patent counsel selected by the Institute Director. All such Patents will be in the name(s) of the Project IP Owner(s).

3.2.2.1 *Grant of Commercial Rights.* Each Project IP Owner shall grant and hereby does so grant each eligible Tier 1 Industry Member a worldwide, irrevocable, non-exclusive, non-transferable, royalty-free, without the right to sublicense, right to make, use, have made, reproduce, and create derivative works of all such Patents on Project IP owned or controlled by such Project IP Owner at any time during the Term for which the prosecution through issuance of the Patent was paid by NIIMBL.

3.2.2.2 *Step-in Rights.* In the event NIIMBL determines that it no longer wishes to pay for the prosecution of any Patent in a particular country, the Project IP Owner and any other Tier 1 Industry Member shall have the right, but not the obligation, to maintain any

such Patent. Upon receipt by the Project IP Owner of written notice from NIIMBL at least sixty (60) days prior to the date of payment cessation (“Payment Cessation Date”) of its intent to terminate payment for the prosecution of a Patent, NIIMBL shall be released from its obligation to reimburse the Project IP Owner for the expenses incurred after such Payment Cessation Date as to such abandoned Patent and there shall be no further grant of rights to any Tier 1 Industry Project Team Member pursuant to Section 3.2.2.1. .

3.3 Citation. Any patent application filed on Project IP must cite the support of the prime award under the Cooperative Agreement.

ARTICLE 4

Bayh Dole Reporting

4.1 Solely Owned Project IP. Each Project Participant having sole title to Project IP is solely responsible for compliance with the Bayh-Dole Act, as applicable, including reporting, patenting and other obligations related to the Project IP.

4.2 Jointly-Owned Project IP. All Project Participants jointly owning Project IP are jointly responsible for compliance with the Bayh-Dole Act, as applicable, including reporting, patenting and all obligations related to the Project IP. Such Project Participants shall jointly determine which Project Participant determines whether an application for patent or copyright will be filed on such Project IP, the identity of the Project Participant who will prepare and file such application, which Project Participant will determine the country(ies) in which such application will be filed, and responsibility for out-of-pocket expenses.

ARTICLE 5

Covenants

5.1 No Conflicting Rights. Each Project Participant shall not, after the Effective Date and for as long as it has any obligations under this IP Management Plan and the Bylaws, grant any right to any third party that would conflict with the rights granted to Members.

5.2 Employees and Agents. Each Project Participant shall ensure that every employee of such Project Participant and such Project s Participant’s Affiliates, and every agent of such Project Participant and such Project Participants’ Affiliates, are bound by obligations of confidentiality and non-use of Confidential Information as restrictive as those in Article 7, and obligations of invention disclosure and assignment of inventions, so as to enable such Project Participant to meet its obligations under this IP Management Plan and the Bylaws.

ARTICLE 6

General Provisions

6.1.1.1 Confidentiality, Publication and Conflicts. All exchanges of
6.1.1.1 “Confidential Information” (as defined in the Bylaws) shall be
6.1.1.1 governed by Article V of the Bylaws. Every “Publication” (as defined in the Bylaws) hereunder shall be governed by Article VII of the Bylaws. For clarity, any person who desires to publish a Publication shall provide advance, written notification of such proposed Publication to NIIMBL and to all Project Participants as required by said Article VII. In the event of any conflict between the terms and conditions of this IP Management Plan, the Project Award Agreement, and/or the Bylaws, the terms and conditions of this IP Management Plan, then the Project Award Agreement, and then the Bylaws shall govern.

6.2 Binding Obligations. The provisions of this IP Management Plan will be binding upon and inure to the benefit of all Project Participants and its permitted assigns. The terms and conditions of this IP Management Plan may not be assigned or transferred by any Project Participant other than, if it is in full compliance herewith and provides written notice hereunder to all Project Participants of such assignment, to its own Affiliates, in whole or in part to any third party without the prior written consent of the Institute Director, which consent will not be unreasonably withheld, unless the Affiliate is a Foreign Entity. Any assignment to an Affiliate that is a Foreign Entity will require prior written consent of the Institute Director, and any proposed assignment to a Foreign Entity without such written consent is hereby deemed invalid.

6.3 Invalidity of Provisions. If any provision of this IP Management Plan is deemed to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the Project Participants, it will be stricken and the remainder of this IP Management Plan will remain in full force and effect.

6.4 Construction. The use of the words "include" or "including" in this IP Management Plan will be by way of example rather than by limitation.

6.5 Notices. Any notices required to be given under this IP Management Plan must be delivered to the contacts listed in the “Notice” section of the Project Award Agreement: (a) in person; (b) by registered, express, or certified mail, postage prepaid, return receipt requested, or messenger service; (c) by a generally recognized overnight courier with signature return receipt required for all legal notices; or (d) by electronic mail with an accompanying delivery and read receipt. Further, for all legal notices, the transmittal parcel must be clearly marked “legal notice”. Documents are deemed delivered when actually delivered, or delivery is refused, at the address set forth below for notices. Any party can furnish, from time to time, replacement addresses for notices by providing notice thereof to all other Project Participants, UD and NIIMBL in accordance with these notice provisions.

6.6 Waiver. No waiver of any rights will be effective unless given in a signed written document. Waivers will not be construed as, or constitute, a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this IP

Management Plan. No single or partial exercise of any right granted to a party under this IP Management Plan shall preclude any other or further exercise thereof or the exercise of any other such right. No waiver of any right shall be deemed a waiver of any other right under this IP Management Plan.

6.7 Section Headings. The headings of several sections of this IP Management Plan are intended for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of this IP Management Plan.

6.8 Obligations of the Project Participants. Each Project Participant will work together with the other Project Participants and use reasonable efforts to carry out the Project Participant's responsibilities as set forth in this IP Management Plan and Project Award Agreement to which it is a party.

6.9 Amendment. This IP Management Plan shall not be amended, altered, modified or changed, in whole or in part, except by express written agreement signed by all parties hereto.

[Remainder of page intentionally left blank; Signatures on following page(s)]

The Project Participants and UD have caused this IP Management Plan to be executed by its duly authorized representatives.

PROJECT TEAM:

PROJECT PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____

NIIMBL:

By: UNIVERSITY OF DELAWARE

By: _____

Name: Kelvin Lee

Title: Institute Director

Date: _____

[PROJECT PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____

[PROJECT PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____

[PROJECT
PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____

Appendix A**Background Intellectual Property** [create a new table for each BIP record]

Project Participant	Title/Description of BIP	BIP Patent #
Patent Abstract: [copy & paste or attach abstract to this document]		

Project Participant	Title/Description of BIP	BIP Patent #
Patent Abstract: [copy & paste or attach abstract to this document]		

Other Background Intellectual Property

Project Participant	Title/Description of Other BIP