**JOINT VENTURE AGREEMENT**

**THIS AGREEMENT**, (the “Agreement”) is made on the \_\_day of \_\_month, year\_\_ by and between \_\_[Company A]\_\_\_, a \_\_[state]\_\_[business entity]\_\_ with its principal place of business at \_\_[address]\_\_ and \_\_[Company B]\_\_, a a \_\_[state]\_\_[business entity]\_\_ with its principal place of business at \_\_[address]\_\_. [Company A] and [Company B] shall collectively be referred to in this Agreement as the “Parties” or individually as a “Party.”

**Recitals:**

**WHEREAS,** The Parties wish to establish a joint venture for the purpose of \_ \_[describe purpose of joint venture]\_ \_ (the “Joint Venture”); and

**WHEREAS,** The Parties wish to enter into an agreement to carry out the purpose of the Joint Venture and to define the respective rights and obligations of the Parties with respect to the Joint Venture.

**Agreement:**

**NOW THEREFORE,** the Parties, in consideration of the promises and mutual covenants set forth hereafter, the receipt and sufficiency of which both Parties acknowledge, do herewith agree as follows:

**Definitions**

**DEFINITIONS**

**Section 1.** Certain Definitions. As used herein, the following capitalized terms shall have the following meanings:

*“Act”* means \_ \_[the California Uniform Partnership Act of 1994/the California Beverly-Killea Limited Liability Company Act]\_ \_, as it may be supplemented or amended from time to time after the date of this Agreement.

*“Affiliate”* means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person.

*“Articles”* means the Articles of Organization of the Joint Venture attached as Attachment A to this Agreement.

*“Authorized Capital”* has the meaning set forth in Section 5.1.

*“Board”* means the Board of Directors of the Joint Venture.

*“Collaboration Discoveries”* means any Information that is created, developed, or discovered pursuant to a Party’s activities under the Research Program. It is agreed that all Company B Technology and Company A Technology is excluded from the definition of “Collaboration Discoveries.”

*“Collaboration Patent”* means any Patent or application for a Patent that claims an invention in Collaboration Discoveries.

*“Collaboration Product”* means any commercial product that comprises or contains, or is developed or manufactured based on or utilizing, or is derived from, the Collaboration Technology or any part thereof.

*“Collaboration Technology”* means the Collaboration Discoveries and Collaboration Patents, either collectively or any part thereof.

*“Company A Technology”* means the Company A Improvements, the Company A Know-How, and the Company A Patents, either collectively or any part thereof.

*“Company A Territory”* means \_ \_[describe territory]\_ \_.

*“Company B Technology”* means the Company B Know-How, the Company B Improvements, and the Company B Patents, either collectively or any part thereof.

*“Company B Territory”* means all countries of the world and all territories and possessions thereof, excluding all countries, territories, and possessions within the Company A Territory and the Joint Territory.

*“Facilities”* means the offices of Company A listed on Attachment B hereto, as the same may from time to time be amended by the Parties in accordance with Section 16.5.

*“Force Majeure”* means: (a) any order, regulation, or written directive of any Governmental Authority that has jurisdiction over the Joint Venture or the Parties, whether promulgated in the form of law or otherwise; (b) any insurrection, riot, civil disturbance, or war; (c) any strike or other labor disturbance (other than a strike or other disturbance involving the employees of any Joint Venture Participant); (d) any earthquakes, fires, floods, or other acts of God or nature; or (e) any other similar cause or event beyond the reasonable control of the Joint Venture or the affected Party or Parties.

*“Formation”* means the formation of the Joint Venture as provided in Section 2.1.

*“FTE”* has the meaning set forth in Section 3.5.

*“Governmental Approvals”* means all licenses, consents, permits, decrees, orders, authorizations, or other approvals from, all filings and registrations with, and all notices to, any official of any Governmental Authority required for the formation or operation of the Joint Venture or for the execution, delivery, or performance by any of the Joint Venture Participants of any of the Joint Venture Documents.

*“Governmental Authority”* means \_ \_[name of agency]\_ \_, any public, national, regional, local, or municipal governmental body; any department, council, ministry, or other body, agency, instrumentality, or subdivision of any of the foregoing; or any other Person exercising or purporting to exercise executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

*“Joint Research Committee”* or “JRC” means the committee formed by the Parties to direct and manage the Research Program, as provided in Section 3.2.

*“Joint Territory”* means \_ \_[describe joint territory]\_ \_.

*“Joint Venture”* has the meaning set forth in Recital A.

*“Joint Venture Documents”* means, collectively, this Agreement, the lease referred to in Section 5.3.2, \_ \_[list other applicable joint venture documents]\_ \_ and each other agreement or document required (in the determination of either Party) to give effect to the Parties’ contributions under Article 5 or its other obligations under this Agreement, as each such agreement or document may be amended, modified, or supplemented, and as in effect from time to time.

*“Joint Venture Main Facility”* means the facility located in \_ \_[name of location]\_ \_, as more fully described in Attachment B to this Agreement.

*“Joint Venture Participants”* means each Party.

*“Know-How”* means unpublished research and development information, unpatented inventions, know-how, trade secrets, and technical data.

*“Law”* means any law, statute, rule, regulation, decree, decision, order, instruction, or other pronouncement having the effect of law issued by any Governmental Authority.

*“Net Revenue”* means the total revenue received by a Party for sale or other disposition of a Collaboration Product by such Party or an Affiliate or Sublicensee of such Party to a Third Party, less the following to the extent actually incurred or allowed with respect to such sale or disposition: (a) discounts, including cash discounts or rebates, retroactive price reductions, or allowances actually allowed or granted from the billed amount; (b) credits or allowances actually granted on claims, rejections, or returns of Collaboration Products, including recalls, regardless of the Party requesting them; (c) freight, postage, shipping, and insurance charges paid for delivery of Collaboration Product, to the extent billed; and (d) taxes, duties, or other governmental charges levied on or measured by the billing amount when included in billing, as adjusted for rebates and refunds.

*“Operating Plan”* has the meaning set forth in Section 9.1.

*“Ownership Interests”* has the meaning set forth in Section 5.5.

*“Patent”* means (a) a valid and enforceable patent, including any extension, registration, confirmation, reissue, re-examination, or renewal thereof; and (b) to the extent valid and enforceable rights are granted by a governmental authority thereunder, a patent application.

*“Person”* means any individual, corporation, partnership, association, party, group, joint venture, trust, unincorporated organization, juridical entity, or Governmental Authority.

*“Operating Plan”* has the meaning set forth in Section 9.1.

*“Reasonable Efforts”* means efforts and resources commonly used in the research-based pharmaceutical industry for the research, development, and commercialization of a product at a similar stage in its product life, taking into account the establishment of the product in the marketplace, the competitiveness of the marketplace, the proprietary position of the product, the regulatory structure involved, the profitability of the product, and other relevant factors.

*“Regulatory Approval”* means any approvals, licenses, registrations, or authorizations of any federal, state, or local regulatory agency, or any department, bureau, or other government entity, necessary for the manufacture, use, storage, import, transport, or sale of products in a regulatory jurisdiction.

*“Research Plan”* means the plan established by the Joint Research Committee setting forth in reasonable detail the goals and activities to be undertaken in the Research Program, performed by the Parties in accordance with Sections 3.1 and 3.5.

*“Research Program”* means the cooperative research conducted by Company B, in collaboration with Company A, under this Agreement in accordance with the Research Plan.

*“Research Term”* means the period commencing on the Start Date and ending on the anniversary thereof, as determined and agreed by the JRC as provided in Section 3.2.

*“Start Date”* means the date, established by mutual agreement of the Parties, on which the Research Program shall commence, as provided in Sections 3.1 and 3.2.

*“Sublicensee”* means any Third Party expressly licensed by a Party to make and sell one or more Collaboration Products. A Sublicensee shall not include distributors or sales agents that do no more than purchase and resell finished Products on behalf of a Party.

*“Third Party”* means any entity other than Company B or Company A or an Affiliate of Company B or Company A.

**Section 2.** Interpretation. Unless the context otherwise requires, (a) all references herein to “this Agreement” (or words of similar import) shall be deemed to refer collectively to this Agreement (as amended, modified, or supplemented and in effect from time to time) and to the Articles (which are hereby adopted by the Parties) and each other Attachment hereto (all of which form an integral part of this Agreement and are hereby incorporated into this Agreement by reference); (b) all references herein to the word “including” shall be deemed to be followed by the words “but not limited to”; and (c) terms defined in the singular shall have the same meanings when used in the plural and vice versa.

**Formation of the Joint Venture**

1. **Joint Venture Project and Responsibilities.** The Parties have agreed to enter into this joint venture whereby each Party will be responsible for certain activities or will provide certain services all as set forth on the *Project Description and Detail Schedule* attached as Exhibit No. 1, which is attached hereto and incorporated herein by reference.

2. **Distribution of Revenue and Profits.** The Parties have agreed that there are certain revenues which will be generated from the Venture, and that there will be certain expenses, related to the Venture which are identified and specifically described on Exhibit No. 1. The Parties additionally agree that the distribution of all revenues, expenses and profits generated from the Venture will be as further agreed upon and specifically described on Exhibit No. 1.

3. **Accounting.** The Parties agree that the accounting for and the management and handling of funds for the Joint Venture will be specifically set forth on Exhibit No. 1.

4. **Term and Termination.** This Agreement shall be effective as of the date of execution by both Parties and shall extended or terminated as described hereafter.

*a. Term. This Agreement shall be for a term of \_\_[months]\_\_ commencing upon the date of execution by both Parties hereof. The Agreement shall automatically renew for additional and consecutive \_\_[months]\_\_ terms unless a Party provides written notice of termination of the Agreement to the other Party no less than 60 days prior to the expiration of a term.*

*b. Immediate Right of Termination. Either Party shall have the right to immediately terminate this Agreement by giving written notice to the other in the event that either Party does any of the following: files a petition in bankruptcy or is adjudicated as bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or if a Party discontinues or dissolves its business or if a receiver is appointed for a Party or for the Party’s business and such receiver is not discharged within thirty (30) days.*

*c. Right to Terminate on Notice of Default; Right to Cure. In the event of breach or default according to the terms hereof, either Party may terminate this Agreement by providing the other Party thirty (30) days written notice of the breach or default, if the Party receiving such notice does not cure the breach or default within said 30 day period, then the Party providing the notice may consider the Agreement to be terminated.*

*d. Fulfillment and Residual Rights Following Termination. In the event of any termination the Parties agree to an orderly fulfillment of their respective responsibilities for matters which originated prior to the notice of termination which reasonably require completion subsequent to the date of termination. Additionally, any ongoing responsibilities or residual rights which have inured to a Party as a result of this Agreement shall survive termination hereof.*

5. **Relationship of the Parties.** It is the express intention of the Parties that the relationship between them for tax purposes each shall be considered an independent contractor of the other, and not: an employee, an agent, franchisee, or a member of a formal partnership agreement. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between them. Unless otherwise provided or agreed neither Party shall have authority to act on or enter into any contract or understanding, incur any liability or make any representation on behalf of the other Party, without the prior written approval of the other Party.

6. **Mutual Indemnification.** Each Party shall indemnify, defend, and hold harmless the other Party, its directors, officers, employees and agents with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys’ fees, to the extent that it is based upon liability caused by the indemnifying party’s negligence, recklessness, willful misconduct, violation of law or other similar acts. In claiming any indemnification hereunder, the Party claiming indemnification (the “Claimant”) shall provide the other Party with prompt written notice of the claim which the Claimant believes falls within the scope of the indemnification. The Claimant may, at its own expense, assist in the defense if it so chooses; provided that the other Party shall control such defense and all negotiations relative to the settlement of any such claim and further provided that any settlement intended to bind the Claimant shall not be final without the Claimant’s written consent. The Claimant’s failure to give prompt written notice shall relieve the indemnifying Party of responsibility only to the extent that it is actually prejudiced thereby.

7. **Confidential Information.** In carrying out the terms of this Agreement, the Parties may be required to disclose confidential or proprietary information to one another. The Parties agree to protect and preserve all proprietary and/or confidential information of the other, including any email/membership list that is produced as a result of the Venture, and not to disclose the same to any third party with out the express prior written consent of the other Party.

8. **Warranties.** Each Party represents and warrants that it has the right and power to enter into this Agreement and that there are no other agreements with any other party in conflict with this Agreement.

9. **Notices.** Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested or delivered by an overnight express delivery or mail service. The address for such notification shall be as set forth on page one of this Agreement unless written notice of change is provided by one Party to another.

10. **Jurisdiction and Disputes.** This Agreement shall be governed by the laws of the State of \_\_[state]\_\_, in the United States of America. The Parties agree to submit any dispute regarding this Agreement to professional mediation, prior to any other action, or arbitration. Each Party shall pay its own expenses related to the mediation and shall share the costs of the mediation equally. Any dispute or claim that cannon be resolved by mediation arising out of or related to this Agreement, its performance, breach, or interpretation (including issues about its validity or enforceability), will thereafter be exclusively (except as provided below) resolved by binding arbitration before the American Arbitration Association (AAA). The arbitrator will not award attorney’s fees, or punitive, indirect, incidental, special, consequential, treble or other multiple or exemplary damages, and the Parties hereby agree to waive and not seek such damages. All costs of arbitration shall be borne by the losing party. The losing party shall be the party designated as such by the Arbitrator. In the event both parties prevail on certain issues and lose on others the arbitration costs shall be apportioned between the parties in any manner the Arbitrator orders. Either Party may seek judicial relief to compel the other Party to comply with the provisions of this Section, or seek injunctive or other equitable relief as long as (unless prohibited by applicable law) the remainder of the dispute or claim is submitted to arbitration. The arbitration will be held in \_\_[state]\_\_. Both Parties hereby give their irrevocable consent to the processes of the AAA in \_\_[state]\_\_ as well as the jurisdiction of the courts of \_\_[state]\_\_ for enforcement purposes. Awards will be final, binding and non-appealable (except on the minimal grounds required under the U.S. Federal Arbitration Act or other applicable law). All awards may be filed with one or more courts, state, federal or foreign, having jurisdiction over the Party against whom such award is rendered or its property, as a basis of judgment and of the issuance of execution for its collection.

11. **Agreement Binding on Successors.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

12. **Transfer and Assignability.** This Agreement may not be assigned by a Party without the prior written consent of the other Party. Consent to such a transfer under this Section shall not constitute a waiver of any claims a party may have against the transferor or assignor under this Agreement, nor shall it be deemed a waiver of a Party’s right to demand exact compliance with any of the terms or conditions of the Agreement by the assignee or transferee.

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

14. **Severability.** If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

15. ‘**Integration.** This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict herewith.

**IN WITNESS WHEREOF,** the Parties hereto, intending to be legally bound hereby, have each executed this Agreement on the date indicated above.

[Company A]
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[name], [title]

[Company B]
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[name], [title]

**Exhibit No. 1**

**PROJECT DESCRIPTION AND DETAIL SCHEDULE**

This Project Description and Detail Schedule, is attached to and incorporated into a Joint Venture Agreement (the “Agreement”). The project which is the subject of the Venture and the detailed terms and conditions of the business related to the Venture are as described hereafter.

1. **General Scope of Venture.** This Venture between [Company A] and [Company B] is intended to \_\_[describe nature of venture]\_\_.

2. **Responsibilities of [Company B].**

*a. \_\_[Describe Responsibilities of Company B]\_\_. No other use, except as provided for in this Agreement shall be permitted without the prior written consent of [Company B].*

3. **Responsibilities of [Company A].**

*a. \_\_[Describe Responsibilities of Company B]\_\_. No other use, except as provided for in this Agreement shall be permitted without the prior written consent of [Company A].*

4. **Pricing, Advertising, Expenses, Distributions and other Consideration.**

*a. Pricing. The Parties agree that all pricing of products and services related to \_\_[the product]\_\_ will be identified and mutually agreed upon in writing prior to any offerings of the same for sale.*

*b. Prohibition against undisclosed compensation. The Parties agree that neither Party will accept any monetary or non-monetary compensation from vendors, contractors, employees, affiliates, or anyone else they conduct business with, within the scope of this Venture or subsequent joint ventures between them.*

*c. Past Expenses. Prior to Formation, each Party shall bear its own expenses incurred in connection with the transactions contemplated in this Agreement. Following Formation, all reasonable expenses incurred by the Parties for and on behalf of the Joint Venture and as set forth in the Operating Plan then in effect shall be for the account of the Joint Venture and shall be reimbursed by the Joint Venture to such Party in the currency in which incurred.*

*d. Distribution Policy. The Parties agree that the Board shall distribute to each Party its share (based on the Parties’ respective Ownership Interests) of all net profits of the Joint Venture (after the payment of applicable taxes and withholding any amounts owing from such Party to the Joint Venture). The Parties shall promptly file, and shall cause the Joint Venture to file, such applications or other documents and to take any other action that may be necessary to obtain any Governmental Approvals as may be required for the remittance \_ \_[(and in the case of Company B, the repatriation)]\_ \_ of any such distributions as promptly as practicable.*

5. **Accounting and Recordkeeping.** The books and records of the Venture shall be maintained and kept at the offices of \_\_[Company responsible for books]\_\_ and subject to inspection by [other Company] with reasonable prior notice.

[Company A]
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[Name, Title]

[Company B]
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[Name, Title]