**CHECKLIST – CONSULTANT AGREEMENT**

 I.HEADING

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Consultant:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 name, title, address, reference

 Company:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 name (division or company), address, reference

INTRODUCTION

 \_\_\_\_1.The structure and wording of a consulting agreement will vary between an informal letter and a formal contract. The writer must balance legal and nonlegal objectives. Among the latter which are served by an informal letter are encouragement of a good working relationship, avoidance of forcing the consultant to refer to a lawyer, and prevention of strict interpretation by the consultant in the event of an eventuality unforeseen by the agreement.

 \_\_\_\_2.In general, two quite distinct overall objectives are sought by this type of agreement. First, the company may seek a source of information. Second, it may seek to prevent the use by other companies of some person's services. The latter is particularly true of the services of a director or officer of a recently acquired firm. The agreement must be drawn to meet the specific requirements of either objective.

 II.SERVICES

 Consultation, technical assistance, advice on a wide range of matters.

 \_\_\_\_A.Description

 General area and particular aspects:

 \_\_\_\_(1)general consulting

 --at Company's request,

 --at Consultant's convenience, no obligation to respond;

 \_\_\_\_(2)evaluation, experimentation, review of materials, processes, or formulae;

 \_\_\_\_(3)inspection of facilities of (Company or customer);

 \_\_\_\_(4)attend conventions or conferences as a representative of Company;

 \_\_\_\_(5)suggest persons, companies, or products for hire, acquisition, or development, respectively, without additional payments or fee from Company or a third party.

 \_\_\_\_B.Additional

 --As requested by Company in writing;

 --As submitted by Consultant without additional fee.

 \_\_\_\_C.Limitation

 --Not to undertake assignment requiring, in Consultant's estimation, more than \_\_\_\_\_\_\_\_ unless requested in writing.

 \_\_\_\_D.Specials

 --Company to have right to use all information and discoveries of Consultant except patents previously held by Consultant for any purpose including promotion;

 --Company won't publish results of Consultant's work until Consultant has had opportunity to do so first;

 --Company to have (not to have) right to use Consultant's name for promotion (alternatively only on prior written approval of Consultant).

 \_\_\_\_E.Procedures

 \_\_\_\_1.Conditions of Work

 --Company to provide lab space, materials, technicians, assays, testing, studies, books;

 --Company to furnish all (final) typing, (intermediate and final) copying;

 --Consultant to use Company's name in obtaining information.

 \_\_\_\_2.Meetings

 --Number, frequency, place, other as mutually convenient with (without) additional compensation;

 --Time to time

 --as mutually convenient,

 --as requested by Company,

 not to interfere with Consultant's (e.g., teaching responsibility).

 \_\_\_\_3.Travel

 --As required by agreement;

 --(Only) as requested by Company.

 \_\_\_\_4.Reports

 --Form, frequency, such detail as Company may request;

 --Compound samples to be supplied;

 --Amount, report of properties.

 III.INVENTIONS AND DISCOVERIES

 \_\_\_\_Any information, idea, invention, or discovery arrived at or conceived in course of consulting, patentable or not, solely by Consultant or jointly with third parties except as results from work in the area of \_\_\_\_\_\_\_\_\_\_ for (e.g., another company):

 \_\_\_\_disclose, including providing all samples, information, reports, or lab books;

 \_\_\_\_assign and convey all right, title, and interest, including patent rights;

 \_\_\_\_license (cross-license)

 \_\_\_\_length of time,

 \_\_\_\_royalty,

 \_\_\_\_free,

 \_\_\_\_as provided below,

 \_\_\_\_at a reasonable rate, equal to most favored licensee.

 \_\_\_\_Consultant extend full cooperation for development or patent:

 \_\_\_\_expense paid by Company,

 \_\_\_\_include/do any action or execute or cause to be executed any instruments necessary or desirable for transfer of right, title, and interest, patent applications, continuations, or reissue foreign or domestic, including powers of attorney, with additional charge upon request;

 \_\_\_\_Consultant will require his employees to execute a contract satisfactory in form and content to Company and its counsel, that they will convey to him all right, title, or interest they may have in any invention made in the course of this consulting arrangement;

 \_\_\_\_Company will inform and provide copies of any applications or publications concerning such ideas or discoveries.

 IV.LIMITATION ON DISCLOSURE

 \_\_\_\_Consultant to provide only nonprivileged information;

 \_\_\_\_No information obtained in the course of past or present employment (or from (specify employer)) not previously known by the trade generally or by either Consultant or Company not since published;

 \_\_\_\_Consultant to provide written assurances of no conflict of interests;

 \_\_\_\_Disclose past or present employment which might present potential conflicts or inhibit the full performance of this agreement.

 V.CONFIDENTIALITY

 \_\_\_\_Any information, etc., provided by Company or discovered or developed by Consultant or his employees in the course of the consulting arrangement, written or oral

 \_\_\_\_of a confidential nature,

 \_\_\_\_designated (in writing) by Company as Confidential, not previously known by the trade generally or by Consultant including processes, techniques, formulae, recipes, drawings, cost calculations, and customer lists treated as confidential.

 \_\_\_\_No disclosure or use (other than in the course of the consulting arrangement), including publication of scientific and technical papers, until

 \_\_\_\_(1)such information becomes part of public knowledge through no fault of Consultant by publication in patents or patent applications text books or trade publications;

 \_\_\_\_(2)such information is supplied by a third party lawfully in possession;

 \_\_\_\_(3)written permission from Company;

 \_\_\_\_(4)notice by Consultant to Company to enable Company to obtain patent protection.

 \_\_\_\_Consultant will take reasonable precautions to prevent disclosure on the part of his employees, agents, or associates, including not disclosing to associates unless necessary to performance of this agreement, instructing employees in the necessity for treating such information as confidential, requiring employees to execute a contract satisfactory in form and content to Company and its counsel that they will not disclose such information at Company's request.

 \_\_\_\_The timing (and content) of publication by Consultant of information, etc., discovered in the course of the consulting arrangement will be determined by

 \_\_\_\_mutual agreement,

 \_\_\_\_Company.

 \_\_\_\_At the end of the consulting arrangement Consultant will turn over all accumulated data, reports, etc.

 \_\_\_\_If Company has not accepted or initiated a patent application on an idea or discovery within (one) year or if Company has given written notice of its intention not to so accept or patent, Consultant is released to disclose or sell such information or to prosecute such patent application provided sufficient notice from Consultant to enable Company to accept or initiate such patent application.

 VI.NONCOMPETITION

 Subject to applicable law, during consulting arrangement or afterwards for a period of \_\_\_\_\_\_\_\_\_\_\_ without written permission of Company:

 \_\_\_\_Do no work for self or third party with respect to the subject matter of the consulting arrangement;

 \_\_\_\_Do not act as consultant, director, officer, employee, stock-holder, partner, or joint venturer nor receive compensation for services or information from any person manufacturing or selling any product competing directly or indirectly with Company (ownership of not more than \_\_\_\_\_\_ percent of stock not deemed to be a violation);

 \_\_\_\_Do no act or accept any position which might inhibit the performance of this agreement;

 \_\_\_\_Disclose any present or future potential conflicts.

 VII.COMPENSATION

 \_\_\_\_A.General

 Retainer

 \_\_\_\_Amount per (time or item), exclude (include) travel time, additional per (time or item) over that required by agreement;

 \_\_\_\_Payable (frequency), not conditioned upon service, generally used only for retiring personnel in connection with noncompetition agreements;

 \_\_\_\_Employee benefits not available;

 \_\_\_\_Entire consideration, includes fees, costs, and expenses.

 \_\_\_\_B.Expenses

 Reasonable expenses incurred in course of consulting arrangement include (exclude) research materials, lab assistants, travel (out of town), transportation, board, lodging

 \_\_\_\_requested by Company,

 \_\_\_\_in performance of the consulting arrangement not to include intracity travel, travel between residence and place of business.

 \_\_\_\_C.Royalties

 \_\_\_\_Based on net sales of any product covered by claims of one or more issued, valid, unexpired patents resulting from consulting arrangement retroactive to first sale;

 \_\_\_\_Rate until (date or amount), rate after

 \_\_\_\_lump sum of (amount) on (date),

 \_\_\_\_installments of (amount), (frequency),

 \_\_\_\_negotiated as to be fair to both parties.

 \_\_\_\_D.Finder's Fee

 \_\_\_\_None

 \_\_\_\_if acquisition more than \_\_\_\_\_\_\_ after negotiation begun by Consultant terminated,

 \_\_\_\_if previously considered and discussed,

 \_\_\_\_if paid by seller, included in total compensation.

 \_\_\_\_Based on \_\_\_\_\_\_ percent of purchase price up to \_\_\_\_\_\_\_.