

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

I. BACKGROUND AND PURPOSE OF THIS POLICY

NMC, Inc, also known as New Mexico Consortium (“NMC”), is a New Mexico nonprofit research park corporation. NMC was created by its University Members acting as the New Mexico Research Consortium to facilitate research and collaboration among the University Members, industry, and LANL. In the course of its activities, employees of NMC may create intellectual property. The purpose of this Amended and Restated Intellectual Property Policy (the “IP Policy”) is to protect, manage, and encourage the practical application of such intellectual property for the benefit of the public and to provide for the equitable distribution of revenues generated from the intellectual property.

II. DEFINITIONS

A capitalized word or phrase used in this IP Policy shall have the meaning ascribed to such word or phrase in Appendix I.

III. SCOPE

A. This IP Policy applies to all Covered Persons and with respect to all Covered Intellectual Property.

B. To the extent that Covered Intellectual Property is jointly-owned by NMC and a third party, this IP Policy applies only with respect to the rights of NMC in such jointly-owned Covered Intellectual Property.

IV. DUTIES AND OBLIGATIONS OF COVERED PERSONS

A. All Covered Persons shall execute and deliver to NMC an agreement agreeing to assign, and making a present assignment of, Covered Intellectual Property created by the Covered Person to NMC and acknowledging and agreeing to fulfill all the duties and obligations imposed on the Covered Person under this IP Policy. Each Covered Person shall also execute and deliver to NMC such declarations, assignments, or other documents as may be requested by NMC in the course of the evaluation, protection, and licensing of Covered Intellectual Property and to assure the title of NMC in the Covered Intellectual Property.

B. Each Covered Person shall promptly report and fully disclose to NMC any Invention or Work created by the Covered Person. The disclosure shall be made by submittal of an IDF in the form and manner prescribed from time to time by NMC. The IDF shall: (1) identify the contract or agreement, if any, under which the Invention or Work was made; and (2) be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of disclosure, of the nature, purpose and operation of the Invention or Work, and the physical,

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

chemical, biological or electrical characteristics of any Invention. The IDF shall also identify any existing or planned publication, on sale, or public use of a disclosed Invention or Work and whether a manuscript describing the disclosed Invention or Work has been submitted for publication, and if so, whether it has been accepted for publication.

C. To the extent that any Covered Intellectual Property is a “subject invention” as defined in the Bayh-Dole Regulations, NMC must comply with the requirements of the Bayh-Dole Regulations. Each Covered Person must, at the expense of and upon the request of NMC, assist and provide such information, documents, assignments, instruments, or materials needed by NMC for compliance with the Bayh-Dole Regulations.

D. To the extent that any Covered Intellectual Property is subject to a Funding Agreement, NMC must comply with the requirements of the Funding Agreement. Each Covered Person must, at the expense of and upon the request of NMC, assist and provide such information, documents, assignments, instruments, or materials needed by NMC for compliance with the Funding Agreement.

E. To the extent that a Covered Person asserts that an Invention or Work is Excluded Intellectual Property, the Covered Person shall include with the IDF the basis for such assertion. Upon receipt of an assertion that an Invention or Work is Excluded Intellectual Property, NMC shall promptly review the assertion, make a determination as to whether the Invention or Work is Covered Intellectual Property or Excluded Intellectual Property, and advise the disclosing Covered Person of its determination in writing.

V. EVALUATION OF COVERED INTELLECTUAL PROPERTY

A. Upon receipt of an IDF, NMC shall promptly determine and comply with its duties and obligations, if any, with respect to the disclosed Covered Intellectual Property under any Funding Agreement and, if applicable, under the Bayh-Dole Regulations.

B. NMC shall evaluate and determine, in its sole and absolute discretion, the appropriate means to manage and encourage the practical application of the disclosed Covered Intellectual Property for the benefit of the public, which may include:

(1) a determination that the disclosed Covered Intellectual Property is insufficiently developed or documented, in which case NMC shall request additional development or documentation from the Covered Person making the disclosure;

(2) if the disclosed Covered Intellectual Property is a subject invention under the Bayh-Dole Regulations, whether to elect title to the subject invention in accordance with the Bayh-Dole Regulations;

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

(3) a determination as to whether the disclosed Covered Intellectual Property is jointly owned with any third party. If so, NMC shall notify the joint owner of the disclosure and engage in discussions with the joint owner regarding the execution of a joint ownership agreement setting out the respective rights, powers, duties and responsibilities of the joint owners as to protection and management of the jointly-owned intellectual property, including whether the joint owner will agree to take the lead in obtaining patent rights or copyright registration for the Covered Intellectual Property and in seeking one or more licensees for the commercial development and exploitation of Covered Intellectual Property as described in VI.A., below;

(4) seeking statutory patent or copyright protection for the disclosed Covered Intellectual Property;

(5) a determination as to whether to release the Covered Intellectual Property to the public domain if it is determined that it would be in the best interests of NMC and the public and if doing so is not in violation of any of the terms of any Funding Agreement;

(6) seeking one or more third parties to license the disclosed Covered Intellectual Property for commercial development and exploitation;

(7) assigning ownership of the disclosed Covered Intellectual Property to a third party, including the Covered Person that developed the disclosed Intellectual Property, upon such terms and conditions as determined appropriate by NMC; provided that if the disclosed Covered Intellectual Property is a subject invention under the Bayh-Dole Regulations, any such assignment is made in accordance with the requirements of the Bayh-Dole Regulations; and,

(8) any other determination deemed relevant by NMC.

VI. PROTECTION AND LICENSING

A. Because NMC's purpose is to promote collaboration among its University Members and LANL, Covered Intellectual Property will likely be jointly owned by NMC and a third party. Subject to any pre-existing agreement with the third party joint owner and the requirements of any Funding Agreement, it is anticipated that the interests of NMC will be normally best served by the third party joint owner taking the lead in obtaining statutory patent rights or copyright protection for the jointly owned Covered Intellectual Property and in seeking one or more third parties to license the jointly owned Covered Intellectual Property for commercial development and exploitation. In the event that the third party joint owner determines not to take the lead in such efforts, or in the case that the Covered Intellectual Property is solely owned by NMC, the NMC Chief Executive Officer shall evaluate the commercial potential of the Covered Intellectual Property. The NMC Chief Executive Officer may seek assistance in such evaluation by consultants, intellectual property counsel, and/or other technology transfer resources, including resources available at the Member Universities. After completing this evaluation, the NMC Chief Executive

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

Officer shall submit a commercialization plan/recommendation, including filing for any intellectual property protection at the expense of NMC, to the NMC Board of Directors or its designee for its approval. The NMC Chief Executive Officer shall notify the Covered Person that disclosed the Covered Intellectual Property of the decision of the NMC Board of Directors or its designee as to whether or not NMC will pursue commercialization thereof.

B. Each license agreement for Covered Intellectual Property shall include provisions consistent with and that reserve: (i) the rights of NMC to use the Covered Intellectual Property for research (including research for third parties under a Funding Agreement), development, and educational purposes, and the right to license such rights to universities, Federal laboratories, and nonprofit research organizations. If the Covered Intellectual Property includes Inventions that are subject inventions as defined under 35 U.S.C. §201(e), provisions reflecting the rights of the United States government with respect thereto, including: (A) that the United States Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world (and in some cases the right to assign or have assigned foreign patent rights); (B) that the United States Government retains “march-in” rights, in accordance with 35 U.S.C. §203; and (C) that licensing of the subject inventions is subject to other restrictions, including that preferences be given to small business firms (35 U.S.C. §202(c)(7)(D) and for U.S. manufacturing (35 U.S.C. §204).

C. Each license agreement for Covered Intellectual Property shall include an indemnification provision providing, at a minimum, that each licensee is obligated to fully indemnify, hold harmless and defend NMC, the University Members, and their respective regents, trustees, directors, officers, employees and agents against any and all claims, actions, demands, judgments, suits, losses, damages, costs, liabilities, fees and expenses (including reasonable fees of attorneys), regardless of the legal theory asserted, arising out of or connected with: (i) the practice or exercise of any right or license granted under the license agreement by the licensee, its affiliates or sublicensees; (ii) any act, error, or omission of the licensee, its affiliates or sublicensees or any of their respective directors, officers, employees, or agents, including the negligence or willful misconduct thereof; or (iii) research, development, design, manufacture, distribution, use, sale, importation, exportation or other disposition of any licensed products or services.

D. Each License Agreement for Covered Intellectual Property will include a prohibition against the use of the names of NMC or its University Members without their prior written consent.

E. Attached as Appendices II and III are the NMC standard form Option Agreement and Exclusive Patent License Agreement which are to be used by NMC for options and exclusive licenses of solely owned Covered Inventions and as a template for all other types of NMC licensing transactions.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

F. Subject to restrictions arising from contractual obligations of NMC pursuant to a Funding Agreement, NMC shall pay annually to the creator of Covered Intellectual Property or their heirs, successors, or assigns, thirty-five percent (35%) of the Net Royalties received by NMC from the licensing of the Covered Intellectual Property created by such individual. When there are two or more creators, each creator shall share equally in such payment, unless all creators have agreed otherwise in writing.

G. Payment to the creator shall be made annually by October 31 from the amount received by NMC in the preceding NMC June 30-end fiscal year. In the event of any litigation or other proceeding, actual or threatened, related to the Covered Intellectual Property, NMC may defer payments to the creators pending resolution of the litigation or proceeding.

H. Equity received by NMC in licensing transactions shall be owned by NMC. Upon liquidation of such equity, the proceeds of the liquidation, less any expenses incurred by NMC related to the liquidation, shall be treated as gross royalties with the associated Net Royalties distributed as provided in this IP Policy.

VII. RESEARCH DATA

All Research Data created by a Covered Person other than Research Data directly related to an Excluded Invention or an Excluded Work shall be owned by NMC. Research Data not otherwise provided to NMC or maintained by the NMC records systems shall be provided to NMC by the Covered Person upon the written request of NMC.

VIII. ADMINISTRATION

The Chief Executive Officer of NMC, or the designee of the Chief Executive Officer of NMC, has responsibility and authority for the implementation, interpretation and administration of this IP Policy.

IX. EFFECTIVE DATE

This Amended and Restated Intellectual Property Policy is effective September 1, 2023. All prior versions of the NMC Intellectual Property Policy are amended and restated in their entirety as of that date. This Amended and Restated Intellectual Property Policy was approved and adopted by the NMC Board of Directors on August 1, 2023.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

APPENDIX I
DEFINED WORDS AND PHRASES

“Bayh-Dole Regulations” means the regulations set out at 34 C.F.R. 401, et. seq., as amended.

“Covered Intellectual Property” means Covered Inventions, Covered Works, and Research Data.

“Covered Invention” means an Invention conceived or reduced to practice by a Covered Person other than an Excluded Invention.

“Covered Person” means: (a) any NMC employee; and, (b) any individual not employed by NMC utilizing NMC funding, equipment, supplies, facilities or NMC Confidential Information and who agrees in writing to be subject to this IP Policy.

“Research Data” means tangible research results, including data, graphs, charts, lab notebooks, technical drawings, biological materials and samples.

“Covered Work” means a Work created by a Covered Person other than an Excluded Work.

“Excluded Intellectual Property” means an Excluded Invention or an Excluded Work.

“Excluded Invention” means an Invention created by a Covered Person entirely on the Covered Person’s own time without use of NMC funding, equipment, supplies, facilities, or NMC Confidential Information, except for Inventions that either: (a) relate at the time of conception or reduction to practice to the past, present, or anticipated business, activities, or research projects of NMC; or (b) result from any work performed by the Covered Person for NMC.

“Excluded Work” means a Work consisting of scholarly, educational or instructional materials, artwork, musical compositions and literary works, except for: (a) a Work created in the performance of a written NMC work assignment or commission to create the Work; or, (b) a Work created under a Funding Agreement that requires the rights to the Work be assigned to the third party.

“Funding Agreement” means any gift, grant, award, contract or other agreement between NMC and a third-party for research or other services provided by NMC, including contracts, grants, or cooperative agreements between NMC and any federal agency.

“IDF” means the intellectual property disclosure document as prescribed from time-to-time by NMC providing information about the disclosed intellectual property.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

“Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

“IP Policy” means the NMC Amended and Restated Intellectual Property Policy effective September 1, 2023, and as the same may be further amended and/or restated from time-to-time.

“LANL” means Los Alamos National Laboratory, a government owned, contractor operated research facility of the National Nuclear Security Administration of the United State Department of Energy.

“Net Royalties” means gross royalties and other revenue from the licensing of Covered Intellectual Property to third parties, less expenses incurred by NMC for the protection, maintenance and licensing of such Covered Intellectual Property. Gross royalties and other revenue shall not include amounts received by NMC under a Funding Agreement.

“NMC” means NMC, Inc., a New Mexico nonprofit research park corporation.

“NMC Confidential Information” means non-public information developed or held by NMC, including inventions, patent applications, technologies; strategies; trade secrets; data, research results; software; algorithms, formulas; business plans; product licensing plans; and any other information that by its nature would typically be considered non-public information.

“University Members” means the New Mexico Institute of Mining and Technology, New Mexico State University, and the University of New Mexico.

“Work” means any original work of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “Work” includes algorithms, software, and computer code.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

APPENDIX II

EXCLUSIVE OPTION AGREEMENT
between
NMC, INC. and [OPTIONEE NAME]

EXCLUSIVE OPTION AGREEMENT (“Option Agreement”) effective MONTH, DAY, 20__, (the “Option Effective Date”) by and between NMC, INC, a New Mexico nonprofit research park corporation having its principal place of business at 4200 W. Jemez Rd., Suite 301, Los Alamos, New Mexico 87544 (“NMC”) and [ENTITY OPTIONEE NAME, a LEGAL JURISDICTION, TYPE OF ENTITY][INDIVIDUAL OPTIONEE NAME], with an address at [ADDRESS, CITY, STATE AND ZIP CODE] (“OPTIONEE”).

BACKGROUND

NMC holds title to and has certain rights and interests in the Patents. NMC desires to have products and services utilizing the Patents developed and marketed at the earliest possible time in order that such products and services may be available for public use and benefit. OPTIONEE desires to obtain an option to acquire a license to the Patents for commercial purposes and NMC desires to grant OPTIONEE an option to acquire a license to the Patents in accordance with the terms and conditions of this Option Agreement.

ARTICLE I. DEFINITIONS

Capitalized terms in this Option Agreement shall mean as follows:

“Exclusive License” means that during the term of the license, NMC shall not grant a license to the Patents to any third party in the Licensed Territory within the Field of Use. The exclusivity of any license shall be subject to any rights of the United States government as described in Article III and to the rights retained by NMC to utilize the Patents for research, development, and educational purposes.

“Exclusive Option” means that during the term of this Option Agreement, NMC shall not grant a license or an option to acquire a license to the Patents to any third party.

“Field of Use” means <<all fields of use>>.

“License Negotiation Period” shall have the meaning ascribed to it in Section 2.3, below.

“Licensed Products” shall mean any process, service, or product, the manufacture, use, sale, or import of which is covered by a Valid Claim.

“Licensed Territory” means <<worldwide>>.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

“Option” means the option granted to OPTIONEE by NMC under Section 2.1, below.

“Option Effective Date” means the date this Option Agreement is effective as set out in the initial paragraph of this Option Agreement.

“Option Expiration Date” shall have the meaning ascribed to it in Section 2.4, below.

“Patents” means the patents and patent applications described on attached Schedule A, any U.S. and foreign patents that issue pursuant to any such patent applications, and any divisions, continuations (not including continuations-in-part), or reissues thereof.

“Term” means the period of time beginning on the Option Effective Date and ending upon the earlier of: (a) the termination of this Option Agreement by OPTIONEE under Section 2.5, below; (b) the termination of this Option Agreement by NMC under Section 2.6, below; or, (c) the Option Expiration Date.

“Valid Claim” means a claim of an issued and unexpired Patent, or a claim of a patent application, included within the Patents, which claim shall not have been irrevocably abandoned or held invalid, unpatentable, or unenforceable in an unappealable decision of a court or other authority of competent jurisdiction, and which shall not have been admitted to be invalid or unenforceable through reissue, re-examination, disclaimer, or otherwise.

ARTICLE II. GRANT

- 2.1 NMC hereby grants to OPTIONEE and OPTIONEE hereby accepts the Exclusive Option (the “Option”) to acquire an Exclusive License in the Field of Use to make, use, sell and import Licensed Products in the Licensed Territory.
- 2.2 OPTIONEE agrees to exercise due diligence in reviewing the validity and enforceability of the Patents, whether the Patents may be exploited without infringing the rights of a third party, and in conducting research on potential commercial applications for the Patents. NMC makes no representations or warranties whatsoever with regard to the Patents.
- 2.3 OPTIONEE may exercise the Option by providing written notice of exercise to NMC at any time during the Term. Upon the exercise of the Option by OPTIONEE, NMC and OPTIONEE agree to negotiate in good faith the terms and conditions of an Exclusive License to be executed on or before the date that is ninety (90) days from the date of the exercise of the Option by the OPTIONEE (the “License Negotiation Period”). If the parties fail to execute an Exclusive License on or before the end of the License Negotiation Period, NMC will have no further duty or obligation to negotiate or grant a license to OPTIONEE and OPTIONEE shall have no further rights or powers under this Option Agreement.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

- 2.4 This Option Agreement shall expire at midnight on the date that is six (6) months from the Effective Date (the “Option Expiration Date”).
- 2.5 OPTIONEE agrees to provide written notice to NMC promptly at any time during the Term if OPTIONEE has determined, based upon results of its independent research or other factors, not to exercise the Option. Upon receipt of such notice by NMC, this Option Agreement shall terminate.
- 2.6 NMC may terminate this Option Agreement by written notice to OPTIONEE upon the failure of OPTIONEE to make any payment when due to NMC under this Option Agreement.
- 2.7 Upon the expiration or termination of this Option Agreement, the right and power of OPTIONEE to exercise the Option and to acquire an Exclusive License shall terminate, and OPTIONEE shall have no residual or other rights in or to the Patents. OPTIONEE payment obligations under Article IV, below, shall survive the expiration or termination of this Option Agreement.

ARTICLE III. GOVERNMENT RIGHTS

The Patents or portions thereof may have been developed with financial or other assistance through grants or contracts funded by the United States government. OPTIONEE acknowledges that in accordance with Public Law 96-517 and other statutes, regulations, and Executive Orders as now exist or may be amended or enacted, the United States government has certain rights in the Patents. OPTIONEE shall take all action necessary to enable NMC to satisfy its obligations under any federal law relating to the Patents.

ARTICLE IV. CONSIDERATION

- 4.1 Option Fee. In consideration for the grant of the Option, OPTIONEE shall pay to NMC a nonrefundable option fee of two thousand five hundred dollars (\$2,500.00) upon the signing of this Option Agreement (the “Option Fee”). The Option Fee shall not be creditable against any amounts payable to NMC under the Exclusive License if the OPTIONEE exercises the Option.
- 4.2 Reimbursement for Patent Legal Expenses and Costs. In addition to the Option Fee, OPTIONEE shall reimburse and pay to NMC the amount of all out-of-pocket legal and other fees, costs, and expenses incurred by NMC during the Term and, if the Option is exercised, during the License Negotiation Period, in the filing, prosecuting, and maintenance of the Patents. OPTIONEE shall pay such amounts to NMC within thirty (30) days after NMC notifies OPTIONEE from time-to-time of the amount of such fees, costs, and expenses.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

ARTICLE V. NOTICES AND PAYMENTS

Notices under this Option Agreement shall be in writing and addressed as follows:

To NMC: NMC
 4200 W. Jemez Rd., Suite 301
 Los Alamos, NM 87544
 Attention: Chief Executive Officer
 Email: jrengen@newmexicoconsortium.org

To OPTIONEE: OPTIONEE
 Address
 City, State Zip Code
 Attention: [NAME]
 Email: _____

All payments due to NMC under this Option Agreement shall be made to NMC at the above physical address or electronically to a bank account identified to OPTIONEE by NMC in a written notice. Notices shall be hand delivered, sent by private overnight delivery service, sent by U.S. mail, postage prepaid, or sent by electronic mail, and addressed to the party to receive such notice at the address given above, or such other address as may hereafter be designated by written notice given as provided in this section. Notices and payments shall be effective upon receipt.

ARTICLE VI. ASSIGNMENT

This Option Agreement may not be assigned, transferred, or conveyed in any manner, directly or indirectly, by the OPTIONEE, including by merger, reorganization, consolidation, or sale of OPTIONEE's assets or ownership interests, without the prior written consent of NMC. Any attempted assignment, transfer, or conveyance in contravention of this Option Agreement shall be void and of no force and effect.

ARTICLE VII. SCOPE OF AGREEMENT

This Option Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. No representative of NMC or OPTIONEE has been authorized to make any representation, warranty, or promise not contained herein. No license in or to the Patents is granted to OPTIONEE under this Option Agreement.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

ARTICLE VIII. APPLICABLE LAW

This Option Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of New Mexico.

ARTICLE IX. MULTIPLE COUNTERPARTS/ELECTRONIC SIGNATURES

This Option Agreement may be executed in one or more counterparts all of which together shall constitute one and the same instrument. This Option Agreement may be: (a) created and submitted to each party for signature in pdf or other similar type electronic file format; and, (b) executed by manual or electronic signature and executed signature pages may be delivered using pdf or similar type file transmitted by facsimile, electronic mail, cloud-based server, e-signature technology or other similar electronic means. When executed and delivered as provided in this section, an electronic record of this Option Agreement in a form that is capable of being accurately reproduced, whether by transmission, printing, or otherwise, may be relied upon by a party for any purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement in duplicate originals by their duly authorized officers or representatives.

NMC

OPTIONEE

By: _____

By: _____

Printed Name
Chief Executive Officer

Printed Name: _____

Title: _____

Date: _____

Date: _____

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

Schedule A
Description of Patents

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

APPENDIX III

EXCLUSIVE PATENT LICENSE AGREEMENT

Between
NMC, INC. and [COMPANY]

EXCLUSIVE PATENT LICENSE AGREEMENT (the “Agreement”) entered into effective [MONTH] [DATE], [YEAR] (the “Effective Date”) between **NMC, INC.**, a New Mexico nonprofit research park corporation with its principal office at 4200 W. Jemez Rd., Suite 301, Los Alamos, New Mexico 87544 (hereinafter referred to as “NMC”) and **[LICENSEE NAME]**, a [LEGAL JURISDICTION] [TYPE OF ENTITY] with its principal office at _____ (hereinafter referred to as “LICENSEE”). (NMC and LICENSEE are individually a “Party” and collectively, the “Parties”).

In consideration of the mutual covenants and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, NMC and LICENSEE agree:

BACKGROUND

NMC holds title to and has certain rights and interests in the Licensed Patents and the Licensed Technology. NMC desires to have products and services utilizing the Licensed Patents and the Licensed Technology developed and marketed at the earliest possible time in order that such products and services may be available for public use and benefit. LICENSEE desires to obtain rights to use the Licensed Patents and Licensed Technology for commercial purposes and NMC desires to grant certain rights and licenses in and to the Licensed Patents and Licensed Technology to LICENSEE, all in accordance with the terms and conditions of this Agreement.

ARTICLE I
DEFINITIONS

A capitalized terms used in this Agreement shall have the meaning ascribed to it below:

“Affiliate” means a person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control, with the person or entity specified. For purposes of this definition, “control” and cognates thereof mean, with respect to an entity, the direct or indirect ownership of (a) at least fifty percent (50%) of the capital stock or share capital entitled to vote for the election of directors of the entity; or (b) at least fifty percent (50%) of equity or voting interests of the entity, or (c) the ability to otherwise direct the management and operations of the entity.

“Agreement” or “License Agreement” means this Agreement and all attached exhibits.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

"Change-In-Control" means each and all of the following occurrences after the Effective Date: (i) the consummation of any form of merger (including, without limitation a forward triangular merger or reverse triangular merger) or consolidation of LICENSEE with any other entity, other than a merger or consolidation which would result in the voting securities of LICENSEE outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent company) more than fifty percent (50%) of the total voting power represented by the voting securities of LICENSEE or such surviving entity, or its parent company, outstanding immediately after such merger or consolidation, or (ii) the consummation of a sale or disposition by LICENSEE of all or substantially all LICENSEE's assets, or (iii) the acquisition by any person or group of persons directly or indirectly, of securities of the LICENSEE representing fifty percent (50%) or more of the total voting power represented by LICENSEE's then outstanding voting securities.

"Commercial Sublicense" means any sublicensing agreement or arrangement between LICENSEE and a third party by which the third party is licensing Licensed Patents or Licensed Technology primarily for its own commercial development of Licensed Products or to provide Licensed Services. The holder of a Commercial Sublicense is a "Commercial Sublicensee."

"Effective Date" means the date set out on the opening paragraph of this Agreement.

"Field of Use" means [DESCRIBE FIELD OF USE].

"Gross Receipts" means the gross payments and other consideration accrued or received by LICENSEE for: (i) the sale or other disposition of Licensed Products; or (ii) the performance of Licensed Services. The expression "other disposition" or "otherwise disposed of" with respect to Licensed Products means: (a) Licensed Products not sold but delivered by LICENSEE to others (including deliveries for export) regardless of the basis for compensation, if any; (b) Licensed Products put into use by LICENSEE for any purpose other than routine testing of such products; and (c) Licensed Products not sold as such but sold by LICENSEE as components or constituents of other products. Where Licensed Products are not sold, but are otherwise disposed of, Gross Receipts from such products for the purpose of computing royalties will be the selling price at which products of a similar kind and quality, sold in similar quantities, are currently being offered for sale by LICENSEE. Where such products are not currently being offered for sale by LICENSEE, Gross Receipts from such products for the purpose of computing royalties will be the selling price at which products of a similar kind and quality, sold in similar quantities, are currently being offered for sale by other manufacturers. Where such products are not currently sold or offered for sale by LICENSEE or others, then Gross Receipts for the purposes of computing royalties shall be determined by LICENSEE's cost of manufacture, determined by LICENSEE's customary accounting procedures, plus one hundred percent (100%). Gross Receipts with respect to a Licensed Product or a Licensed Service excludes the following items as separately charged and enumerated on an invoice to customers: packing, transportation and insurance charges; and import, export, excise, sales, use and value added taxes, and customs duties. Any royalty income

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

or other consideration for a Commercial Sublicense that is subject to Section 4.2 hereof shall not be deemed to be "Gross Receipts".

"Indemnitees" means NMC, its University Members, each of their respective regents, trustees, employees, officers, and directors and their respective heirs, executors, administrators, assigns, and legal representatives.

"Inventors" means [NAMES OF INVENTORS].

"Licensed Patents" means all rights in inventions or discoveries covered by or embodied in the patents and patent applications listed on attached Exhibit A, and all divisions, continuations, reissues, reexaminations or extensions thereof, any letters patent that issue thereon, and existing and future foreign patent applications and patents that correspond thereto. "Licensed Patents" does not include, however, any continuation-in-part patent application or patent, other than a continuation-in-part entitled to claim priority to the date of any other Licensed Patent listed on Exhibit A that is fully supported by a Licensed Patent listed on Exhibit A and names the same inventors and has the same assignee(s) as a Licensed Patent listed on Exhibit A.

"Licensed Products" means products, the development, manufacture, use, sale, or import of which would, but for the license granted to LICENSEE under this Agreement, infringe, induce infringement, or contribute to the infringement of a Valid Claim or which involves the use of Licensed Technology.

"Licensed Services" means services that (a) make use of the Licensed Patents or the Licensed Technology in a manner which would, but for the license granted to LICENSEE under this Agreement infringe, induce infringement, or contribute to the infringement of a Valid Claim; (b) involve the use of Licensed Technology; or, (c) utilize or consume Licensed Products.

"Licensed Technology" means all technical information known to one or more Inventors that is, as of the date of this Agreement, legally vested in NMC and within the scope of the disclosure of Licensed Technology set forth in attached Exhibit A. The term "Licensed Technology" does not include either: (a) any invention covered by a Valid Claim or any other patent; or, (b) any right or interest in or to or arising from any research at NMC that occurs after the Effective Date.

"Licensed Territory" means [DESCRIBE LICENSED TERRITORY].

"Patent Expenses" means all out-of-pocket legal and other fees, costs, and expenses heretofore and hereafter incurred by NMC and paid in the filing, prosecuting, and maintenance the Licensed Patents in the Licensed Territory that have not been previously reimbursed to NMC by LICENSEE, another licensee, or an optionee of the Licensed Patents.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

“Sublicense Income” means all amounts accrued or received under a Commercial Sublicense, net of any sales taxes (paid or payable, including value added tax) imposed upon LICENSEE and not reimbursed or paid by a third party with respect to such amounts, as consideration under the Commercial Sublicense, including, without limitation, license fees, maintenance fees, milestone payments and reimbursement for Patent Expenses.

“University Members” means the University of New Mexico, New Mexico State University, and the New Mexico Institute of Mining and Technology, each a New Mexico state educational institution under the Article 12, §11 of the Constitution of the State of New Mexico.

“Valid Claim” means a claim of an issued and unexpired patent, or a claim of a patent application, included within the Licensed Patents, which claim shall not have been irrevocably abandoned or held invalid, unpatentable, or unenforceable in an unappealable decision of a court or other authority of competent jurisdiction, and which shall not have been admitted to be invalid or unenforceable through reissue, re-examination, disclaimer, or otherwise.

ARTICLE II
GRANT OF LICENSE

2.1 License Grant. Subject to the terms and conditions of this Agreement, NMC grants to LICENSEE, to the extent of the Field of Use and Licensed Territory, a license under the Licensed Patents and the Licensed Technology, to: (a) make, use, sell, offer for sale, and import Licensed Products and to provide Licensed Services; and (b) in accordance with the provisions of section 2.5, below, to grant Commercial Sublicenses allowing a Commercial Sublicensee to make, use, sell, offer for sale, and import Licensed Products and to provide Licensed Services. The license granted to LICENSEE under this Section 2.1 is exclusive with respect to the Licensed Patents (subject to the reservations set out in this Article II and the rights, if applicable, of the United States government set out, below) and is non-exclusive with respect to Licensed Technology.

2.2 Rights Reserved. Except as expressly granted by NMC to LICENSEE herein, all rights and entitlements, whether now existing or that may hereafter come into existence, are reserved to NMC.

2.3 No Implied License. This Agreement shall not be construed to confer any rights upon LICENSEE by implication or estoppel.

2.4 Retained Rights of NMC. Notwithstanding any provision of this Agreement, NMC reserves and retains the royalty-free right to use the Licensed Patents and Licensed Technology and the inventions described therein for research, development, and educational purposes, and to grant such rights to other nonprofit institutions, academic institutions or Federal laboratories.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

2.5 Commercial Sublicenses. Prior to entering into a Commercial Sublicense, LICENSEE shall notify NMC in writing of the proposed grant of the Commercial Sublicense and the terms thereof. LICENSEE shall ensure that all uses of Licensed Patents and Licensed Technology and all development and distribution of Licensed Products and Licensed Services by Commercial Sublicensees: (a) are consistent with the terms and conditions of this Agreement; and, (b) return value to LICENSEE commensurate with the benefits conferred on the Commercial Sublicensee by the Commercial Sublicense. LICENSEE may not authorize a Commercial Sublicensee to further sublicense a Licensed Patent or the Licensed Technology. LICENSEE shall submit each proposed Commercial Sublicense to NMC for its review and determination as to whether the proposed Commercial Sublicense conforms to this Agreement. NMC shall be deemed to have approved the proposed Commercial Sublicense unless, within thirty (30) days of LICENSEE'S tender of the proposed Commercial Sublicense to NMC, NMC provides to LICENSEE either written notice of non-approval and the reasons for non-approval or written notice of approval that is conditioned on specified actions by LICENSEE and/or the proposed Commercial Sublicensee. LICENSEE shall remain responsible for the operations of Commercial Sublicensees as if such operations were carried out by LICENSEE, including but not limited to the payment of all fees and royalties due to NMC under this Agreement, whether or not such payments are made to LICENSEE by the Commercial Sublicensees.

2.6 U.S. Government Rights. The Licensed Patents and Licensed Technology, or portions thereof, may have been developed with financial or other assistance through grants or contracts funded by the United States government. LICENSEE acknowledges that in accordance with Public Law 96-517, Title 35 Section 200 et. seq. of the United States Code, 37 C.F.R. 401 et. seq., and other statutes, regulations, and Executive Orders as now exist or may be amended or enacted, the United States government may have certain rights in the Licensed Patents and the Licensed Technology. LICENSEE shall take all action necessary to enable NMC to satisfy its obligations under any federal law relating to the Licensed Patents and Licensed Technology, including any right of the United States government to a noncommercial use license. Without limiting the foregoing, if the inventions described in the Licensed Patents are subject inventions as defined under 35 U.S.C. §201(e), the rights and licenses granted hereunder are subject to the rights of the United States government with respect thereto, including: (A) that the United States government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world (and in some cases the right to assign or have assigned foreign patent rights); (B) the United States government retains "march-in" rights, in accordance with 35 U.S.C. §203; and (C) that licensing of the subject inventions is subject to other restrictions, including that preferences be given to small business firms (35 U.S.C. §202(c)(7)(D) and for U.S. manufacturing (35 U.S.C. §204). LICENSEE shall require that any Commercial Sublicense shall include provisions consistent with the rights of and obligations to the United States government as described in this Section and notifying the Commercial Sublicensee of the rights of the United States government in and obligations of the Commercial Sublicensee with respect to the subject inventions.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

ARTICLE III
DILIGENCE AND COMMERCIALIZATION

3.1 Diligence and Commercialization. Throughout the term of this Agreement, LICENSEE will diligently develop, manufacture and sell Licensed Products and/or Licensed Services and diligently develop markets for Licensed Products and or Licensed Services.

3.2 Financial Capability. At all times during the term of this license, LICENSEE shall maintain the financial capability to comply with Section 3.1. Upon inquiry from NMC regarding said capability, LICENSEE shall provide NMC with information regarding LICENSEE's financial capabilities and shall permit NMC to inspect LICENSEE's financial records.

ARTICLE IV
CONSIDERATION FOR LICENSE AND ROYALTIES

LICENSEE shall pay to NMC the amounts described in this Article IV:

4.1 License Fees. LICENSEE shall pay and deliver to NMC the following:

- (a) _____ dollars (\$_____) upon execution of this Agreement; and,
- (b) License Maintenance Fees payable as follows:

Calendar Year	License Maintenance Fee U.S. \$ Per Calendar Year	Due Date
20__	\$	January 31, 20__
20__	\$	January 31, 20__
20__	\$	January 31, 20__

Each License Maintenance Fee relates to the calendar year set forth above. In the event that this Agreement is terminated for any reason prior to the end of a calendar year, the License Maintenance Fee payable to NMC for the calendar year in which termination occurs shall be determined in accordance with the following formula:

$$TYLMF = LMF \times (DAYS/365)$$

where:

TYLMF is the License Maintenance Fee payable for the calendar year in which termination occurs;

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

LMF is the License Maintenance Fee that would have been payable for the calendar year in which termination occurs: and,

DAYS is the number of days elapsed during such calendar year prior to the effective date of termination.

[INSERT FOR EQUITY]

[IF LICENSEE IS A CORPORATION]

(c) Within thirty (30) days of the Effective Date, LICENSEE shall issue to NMC that number of shares of the common stock of LICENSEE such that NMC will own five percent (5%) of the aggregate equity ownership of LICENSEE on a Fully Diluted Basis. Thereafter, at any time the equity ownership issued to NMC in LICENSEE under this Agreement shall fall below five percent (5%) on a Fully Diluted Basis, LICENSEE shall issue to NMC additional shares of common stock of LICENSEE so that at all times NMC owns under this Agreement five percent (5%) of the aggregate equity ownership of LICENSEE on a Fully Diluted Basis. The obligation of LICENSEE to maintain NMC's ownership at ___ percent (X%) of the aggregate equity ownership of LICENSEE on a Fully Diluted Basis under this Agreement: (i) shall continue through and up to the issuance of equity by LICENSEE for equity capital received by LICENSEE of an aggregate amount of two million dollars (\$2,000,000.00); and (ii) includes the obligation of LICENSEE to issue additional shares to NMC under this Agreement without additional consideration for equity capital investments made in LICENSEE, if any, after the Effective Date by NMC. Nothing in this Agreement shall be construed, however, as an obligation on the part of NMC to make an equity capital investment in LICENSEE. The term "Fully Diluted Basis" will be calculated to include conversion of all issued and outstanding securities convertible into ownership interests, and the exercise of all then outstanding options, warrants and other rights to acquire ownership interests, whether or not then exercisable. All common shares issued to NMC under this Section will be considered fully paid and non-assessable.

[IF LICENSEE IS A LIMITED LIABILITY COMPANY]

(c) Within thirty (30) days of the Effective Date, LICENSEE shall issue to NMC that number of membership units or percentage of membership interests of LICENSEE such that will own 5 percent (5%) of the aggregate equity ownership of LICENSEE on a Fully Diluted Basis. Thereafter, at any time the equity ownership issued to NMC in LICENSEE under this Agreement shall fall below 5 percent (5%) on a Fully Diluted Basis, LICENSEE shall issue to NMC additional membership units or increased membership interests of LICENSEE so that at all times NMC owns under this Agreement five percent (5%) of the aggregate equity ownership of LICENSEE on a Fully Diluted Basis. The obligation of LICENSEE to maintain NMC's ownership at five percent (5%) of the aggregate equity ownership of LICENSEE on a Fully Diluted Basis under this Agreement: (i) shall continue through and up to the issuance of equity by LICENSEE for equity capital received by LICENSEE of an aggregate amount of two million dollars (\$2,000,000.00); and (ii) includes the

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

obligation of LICENSEE to issue additional membership units or increased membership interests to NMC under this Agreement without additional consideration for equity capital investments made in LICENSEE, if any, after the Effective Date by NMC or its Assignees. Nothing in this Agreement shall be construed, however, as an obligation on the part of NMC to make an equity capital investment in LICENSEE. The term "Fully Diluted Basis" will be calculated to include conversion of all issued and outstanding securities convertible into ownership interests, and the exercise of all then outstanding options, warrants and other rights to acquire ownership interests, whether or not then exercisable. All membership units or membership interests issued to NMC under this Section will be considered fully paid and non-assessable.

(d) milestone payments as follows:

(i) Upon the occurrence of a Change-In-Control, LICENSEE shall pay to NMC a milestone payment determined as follows:

(A) \$250,000.00 if the Transaction Price associated with the Change-In-Control is less than \$20,000,000.00;

(B) \$500,000.00 if the Transaction Price associated with the Change -In-Control is \$20,000,000.00 or more and less than \$40,000,000.00; or,

(C) \$1,000,000.00 if the Transaction Price associated with the Change-In-Control is equal to or greater than \$40,000,000.00.

The term "Transaction Price" as used above shall mean the U.S. dollar value of the consideration for the Change-In-Control transaction as set by the parties to the Change-In-Control transaction.

(ii) OTHER MILESTONE PAYMENT PROVISIONS, IF ANY]

4.2 Royalty on Commercial Sublicensing Income. LICENSEE shall pay to NMC fifty percent (50%) of all Sublicense Income.

4.3 Royalty on Gross Receipts. LICENSEE shall pay NMC an earned cumulative annual royalty of five percent (5%) of Gross Receipts during each calendar year during the term of this Agreement.

4.4 Minimum Annual Royalties. LICENSEE shall pay NMC royalties as stated in Section 4.3, but in no event will royalties paid under Section 4.3 for any calendar year during the term of this Agreement be less than the following minimum royalties during the calendar years indicated:

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

Calendar Year	Minimum Royalty U.S. \$ Per Calendar Year
20____	\$
20____	\$
20____, and each succeeding calendar year	\$

In the event that this Agreement is terminated for any reason prior to the end of a calendar year, the minimum royalty payable to NMC for the year of termination shall be determined in accordance with the following formula:

$$\text{TYMR} = \text{MR} \times (\text{DAYS}/365)$$

where:

TYMR is the minimum royalty payable for the year of termination;

MR is the minimum royalty that would have been payable to NMC for the year but for the termination: and,

DAYS is the number of days of the year of termination prior to the date of termination.

4.5 Reimbursement for Patent Expenses. LICENSEE shall reimburse NMC for all Patent Expenses as follows:

(a) With respect to Patent Expenses incurred by NMC prior to the Effective Date in the amount of \$_____, LICENSEE shall reimburse and pay to NMC such amount upon execution of this Agreement; and,

(b) With respect to Patent Expenses incurred by NMC on or after the Effective Date, Patent Expenses shall be reimbursed in advance by the LICENSEE in accordance with this Section 4.5(b). NMC shall provide LICENSEE from time to time with written estimates of the anticipated amount of such expenses (with supporting documentation) over a stated time period, not to exceed six (6) months. LICENSEE shall pay over and advance to NMC the amount of the estimated expenses (the "Advanced Patent Expense Amount") within the time period stated in the notice. As the Advanced Patent Expense Amount is expended by NMC in payment of actual Patent Expenses, NMC shall provide LICENSEE with invoices showing the amount of such actual expenses (with supporting documentation) reflecting the application of the Advanced Patent Expense Amount as a credit. LICENSEE shall reimburse and pay to NMC any Patent Expenses in excess of the Advanced Patent Expense Amount credited on any invoice within thirty (30) days

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

after NMC invoices LICENSEE. For avoidance of doubt, LICENSEE is obligated to reimburse NMC for all Non-U.S. Patent Expenses invoiced to LICENSEE, even if NMC has not provided an estimate.

ARTICLE V
REPORTS AND PAYMENTS

5.1 Quarterly Reporting. Not later than the last day of each January, April, July, and October during the term of this Agreement, LICENSEE shall deliver to NMC a written report stating for the quarterly period ended the last days of the preceding December, March, June, and September, respectively:

(a) for Licensed Products, the number of units sold and the Gross Receipts of LICENSEE;

(b) for Licensed Services, a description of the services provided and the Gross Receipts of the LICENSEE from Licensed Services;

(c) for each Commercial Sublicense, the name and address of the Commercial Sublicensee, any reports received by LICENSEE from the Commercial Sublicensee during the reporting period, and the consideration received by LICENSEE from the Commercial Sublicensee;

(d) such other detail as NMC may reasonably require from time to time; and,

(e) the total amount due to NMC from LICENSEE, with supporting calculations.

5.2 Payment. With the delivery of each report required under Section 5.1, but not later than the last day of each January, April, July, and October during the term of this Agreement, LICENSEE shall pay to NMC all amounts due with respect to the preceding calendar quarter. In the event that the amounts due under Section 4.3 at the end of any calendar year do not equal or exceed the minimum royalties specified in Section 4.4, LICENSEE shall pay to NMC, on or before the last day of the following January, the amount required to satisfy the minimum royalty obligation for the preceding calendar year. If no amount is accrued during any quarterly period, a written statement to that effect shall be delivered to NMC.

5.3 Foreign Receipts. All amounts to be paid by LICENSEE hereunder shall be paid in U.S. Dollars. To the extent that Gross Receipts received by LICENSEE in any calendar quarter are received in currencies other than U.S. Dollars, for purposes of calculating the royalties due hereunder the rate of exchange to be used in computing the amount of currency equivalent in U.S. Dollars due NMC shall be made at the monthly rate of exchange published in The Wall Street Journal (U.S., Western Edition) prevailing on the last business day of the month preceding the month in which such Gross Receipts are recorded by LICENSEE. All payments due must be made without deduction for taxes, assessments, or other charges of any kind that may be imposed on

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

NMC by any government other than that of the United States, or any political subdivision of such other government, with respect to any amounts payable to NMC pursuant to this Agreement, and such taxes, assessments, or other charges must be assumed and paid by LICENSEE.

5.4 Interest on Overdue Payments. Payments required under this Agreement, when overdue, shall bear interest at a rate per annum rate of five percent (5%) in excess of the Prime Rate as published by The Wall Street Journal (U.S., Western Edition) at the time such payment is due and until payment is received by NMC. The accrual of such interest shall not foreclose NMC from exercising any other rights it may have resulting from the failure of LICENSEE to make the payment when due.

5.5 Terminal Report. If this Agreement is terminated for any reason before all of the payments provided for have been made (including the license maintenance fee or minimum royalties for the year in which the Agreement is terminated and any Patent Expenses incurred by NMC prior to the termination date), LICENSEE must immediately submit a terminal report and pay to NMC any remaining unpaid balance even though the due date as above provided has not been reached. Any excess Advance Patent Expense Amount held by NMC shall be first applied to any other amounts owed NMC on termination, then, to the extent there is a balance, returned to the LICENSEE.

ARTICLE VI
RECORDS

6.1 Records of Operations and Audit. LICENSEE and its Commercial Sublicensees shall keep full and accurate records containing particulars that may be necessary for the purpose of calculating the amounts payable to NMC hereunder sufficient to verify the amounts payable to NMC, including their detailed calculations and bases therefor, and to further allow such investigation of its operations as may be necessary to determine LICENSEE's and/or the Commercial Sublicensee's compliance with this Agreement in all respects, as well as the accuracy of the reports and statements furnished hereunder. LICENSEE shall keep these records carefully preserved and available for inspection for a period of at least five (5) years following the end of the calendar year to which they pertain. At its expense, NMC, its authorized representative or agents, or a third party auditor designated by NMC shall have the right to inspect the records upon reasonable (at least five (5) calendar days) notice and during regular business hours. If the audit discloses an underpayment of more than five percent (5%) from the amount of the original report or payment calculation, LICENSEE shall, in addition to paying to NMC any deficiency plus interest thereon in accordance with Section 5.4, reimburse NMC for the full cost of the performance of the audit.

ARTICLE VII
PATENT PROSECUTION AND
MAINTENANCE/LICENSEE PATENT DISPUTES

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

7.1 Prosecution and Maintenance of Licensed Patents. The prosecution and maintenance of the Licensed Patents shall be the primary responsibility of and controlled by NMC. NMC shall keep LICENSEE reasonably informed as to material developments with respect to the prosecution and maintenance of the Licensed Patents. LICENSEE shall be afforded reasonable opportunities to advise NMC and cooperate with NMC in such prosecution and maintenance. If LICENSEE should fail to reimburse or advance to NMC for Patent Expenses incurred under this Section and Section 4.5 of this Agreement, NMC shall have no further obligation to prosecute or maintain the Licensed Patents. LICENSEE may, upon ninety (90) days advance written notice to NMC, advise NMC that it no longer wishes to reimburse NMC for expenses for Patent Expenses for one or more of the Licensed Patents. The giving of such notice, however, shall not relieve LICENSEE of its obligation to reimburse NMC for such expenses incurred prior to the expiration of the ninety (90) day period. NMC may, at its option, elect to pay such expenses or permit such Licensed Patents to become abandoned or lapsed. If NMC elects to pay such expenses, such patents shall not be subject to any license granted to LICENSEE hereunder.

7.2 Extension of Licensed Patents. LICENSEE may request that NMC have the normal term of any Licensed Patent extended or restored under a country's procedure of extending life for time lost in government regulatory approval processes, and the expense of same shall be borne in accordance with the terms of Section 4.5. LICENSEE shall assist NMC to take whatever action is necessary to obtain such extension. In the case of such extension, royalties pursuant to Article IV hereof shall be payable until the end of the extended life of the patent. In the event that LICENSEE does not elect to extend Licensed Patents, NMC may, at its own expense, effect the extension of such Licensed Patents. If NMC elects to pay such expenses, such extended Licensed Patents shall not be subject to any license granted to LICENSEE hereunder.

7.3 Licensee Patent Dispute. With respect to any assertion or claim by LICENSEE of the patentability, invalidity, unenforceability, or non-infringement of a Licensed Patent, including inter partes review proceedings and post-grant review proceedings of the U.S. Patent Office (a "Licensee Patent Dispute"):

(a) LICENSEE will bring to NMC's attention any prior art or other information known to LICENSEE that is relevant to the patentability or validity of the Licensed Patent and that might cause a court, the Patent Trial and Appeal Board, an arbitration, or a governmental patent office to deem a Licensed Patent wholly or partially inoperative or invalid. LICENSEE will disclose such prior art or other information to NMC at the time it learns thereof, and not less than ninety (90) days prior to bringing any action, arbitration, or proceeding against NMC arising out of a Licensee Patent Dispute.

(b) Any Licensee Patent dispute shall be resolved by arbitration as provided for under Section 14.2 of this Agreement.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

(c) Notwithstanding any other provision of this Agreement and specifically notwithstanding Section 12.3 of this Agreement, NMC may by written notice to LICENSEE terminate this Agreement in the event that LICENSEE initiates any action, arbitration, or other proceeding arising out of a Licensee Patent Dispute.

(d) Notwithstanding any other provision of this Agreement, in the event that LICENSEE initiates any action, arbitration, or other proceeding arising out of a Licensee Patent Dispute, then effective as of the date such proceeding is initiated:

(i) LICENSEE shall pay to NMC one hundred percent of all Sublicense Income;

(ii) The royalty rate on Gross Receipts under Section 4.3 shall be increased to two times the amount provided for under Section 4.3 during the pendency of the action, arbitration, or other proceeding, and three times the amount provided for under Section 4.3 in the event that any judgment or award in such action, arbitration, or proceeding upholds the validity or enforceability of the Licensed Patent, or any claim thereof, or determines that LICENSEE has infringed or is infringing the Licensed Patent.

(iii) The license maintenance fees and the minimum annual royalty under Sections 4.1(b) and 4.4 shall be increased to two times the amount provided for under Sections 4.1(b) and 4.4 during the pendency of the action, arbitration, or other proceeding, and three times the amount provided for under Sections 4.1(b) and 4.4 in the event that any judgment or award in such action, arbitration, or proceeding upholds the validity or enforceability of the Licensed Patent, or any claim thereof, or determines that LICENSEE has infringed or is infringing the Licensed Patent.

(e) Reports and payments to NMC under Section 5.1 shall be made on a monthly basis, with reports and payments for each month due and payable on or before the tenth (10th) day of the following month.

(f) LICENSEE shall reimburse and pay NMC its costs, expenses, attorney's and expert fees, and all other amounts incurred by NMC in any action, arbitration or proceeding arising out of a Licensee Patent Dispute in the event that any arbitration award or judgment in such action, arbitration or proceeding upholds the validity or enforceability of the Licensed Patents, or any claim thereof, or determines that LICENSEE has infringed or is infringing the Licensed Patents.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

ARTICLE VIII
ABATEMENT OF INFRINGEMENT AND OTHER PROCEEDINGS

8.1 Protection of Licensed Patents. LICENSEE acknowledges that the Licensed Patents and Licensed Technology are of great value to NMC, and therefore, LICENSEE promises to take all appropriate measures to protect NMC's interests therein. LICENSEE shall not permit any entity, individual or firm to have access to the Licensed Patents and Licensed Technology, except as authorized in this Agreement.

8.2 Notice of Infringement of Validity. Each Party shall promptly give written notice to the other Party of: (i) any suspected infringement of a Licensed Patent; (ii) the threat of or filing of any declaratory judgment or other action by a third party, including inter partes review proceedings and post-grant review proceedings of the U.S. Patent Office alleging the invalidity, unenforceability, or non-infringement of the Licensed Patent.

8.3 Rights to Address Infringement. LICENSEE shall have the first right (but not the obligation) to notify an infringer and initiate legal proceedings to abate the infringement of a Licensed Patent within LICENSEE's Field of Use. NMC agrees to join as a party plaintiff in any such lawsuit initiated by LICENSEE, if requested to do so by LICENSEE, with all costs, attorneys' fees, and expenses of NMC to be paid by LICENSEE. Should LICENSEE elect not to institute such an action to enforce the Licensed Patent against infringement within LICENSEE's Field of Use within ninety (90) days after receipt of written notice from NMC of NMC's intention to bring suit for such infringement, NMC shall have the right (but not the obligation) at its own expense to take those steps on behalf of itself and LICENSEE, provided that LICENSEE shall have the right to participate at its own expense in any action brought by NMC.

8.4 Infringement Recoveries. If LICENSEE leads proceedings to abate and remedy infringement, any monetary recovery from the infringement of Licensed Patents received by LICENSEE shall first be applied to reimburse LICENSEE's unreimbursed expenses of such proceedings and then NMC's unreimbursed expenses of such proceedings, including without limitation, reasonable attorneys' fees and court costs. Any remainder shall, to the extent the same pertain to an infringement of the Licensed Patents within LICENSEE's Field of Use, be treated as Gross Receipts and subject to LICENSEE's royalty obligations pursuant to Section 4.3 above. If NMC leads proceedings to abate and remedy infringement, any monetary recovery from the infringement of Licensed Patents shall be paid to NMC, with no obligation to pay any portion thereof to the LICENSEE.

8.5 Declaratory Judgment and Other Proceedings. In the event that a declaratory judgment or other proceeding is brought by a third party against NMC or LICENSEE alleging invalidity, unenforceability, or non-infringement of the Licensed Patents, including inter partes review proceedings and post-grant review proceedings of the U.S. Patent Office, NMC, at its option, shall have the right within twenty (20) days after commencement of such action to take over the sole defense of the action or proceeding at its own expense. If NMC does not exercise this

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

right, LICENSEE may take over the defense of the action or proceeding at LICENSEE's expense, either solely or in conjunction with other licensees of NMC holding licenses with respect to fields of use of the Licensed Patents other than the Field of Use. NMC agrees to participate in such defense as a party, if requested by LICENSEE, with all costs, attorneys' fees, and expenses of NMC to be paid by LICENSEE (either solely or in combination with other NMC licensees of the Licensed Patents). In either case, the non-controlling Party as between NMC and LICENSEE shall have the right to participate in, comment on, and make recommendations regarding the course of the controlling Party's defense of such action or proceeding, which recommendations the controlling Party agrees to follow except to the extent the recommendations would result, in NMC's reasonable determination, in an unwarranted narrowing of the Licensed Patents. The controlling Party shall provide to the non-controlling Party each document or a draft thereof pertaining to the declaratory judgment action or other proceeding, including but not limited to each communication to opposing counsel, pleading, discovery request, or other court filing as follows: (a) documents received from the court, administrative agency, or other tribunal or opposing counsel shall be provided to the non-controlling Party promptly after receipt; and (b) for a document to be served upon opposing counsel or filed in court, administrative agency, or other tribunal, a draft of such document shall be provided to the non-controlling Party sufficiently prior to its filing, to allow for review and comment by the non-controlling Party.

ARTICLE IX
CONFIDENTIALITY

9.1 Confidential Information. Except as provided herein, NMC shall maintain in confidence, and shall not use for any purpose or disclose to any third party, information disclosed to it by or on behalf of LICENSEE in writing and marked "Confidential" or that is disclosed by or on behalf of LICENSEE orally and confirmed in writing as confidential within forty-five (45) days following such disclosure (collectively, "Confidential Information"). Confidential Information shall not include any information that: (i) is already known to NMC at the time of disclosure hereunder, or (ii) now or hereafter becomes publicly known other than through acts or omissions of NMC, or (iii) is disclosed to NMC by a third party under no obligation of confidentiality to the disclosing Party or (iv) is independently developed by NMC without reliance on the Confidential Information of LICENSEE.

9.2 Confidentiality of Agreement Terms. Neither Party shall, without the express written consent of the other, for any reason or at any time either during or subsequent to the term of this Agreement disclose to third parties the financial terms set forth in this Agreement, except upon a subpoena or other court order made with appropriate provision for protection of confidential information or as required by securities or other applicable laws or to advisors (including financial advisors, attorneys and accountants), potential and existing investors, and others on a need to know basis, in each case under circumstances that reasonably protect the confidentiality thereof. Notwithstanding the foregoing, NMC may disclose the financial terms of this Agreement to its University Members and to the Inventors under a duty of confidentiality.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

ARTICLE X
LIMITED WARRANTY,
MERCHANTABILITY AND EXCLUSION OF WARRANTIES

10.1 Representations and Warranties. Each Party warrants to the other that it has the right and power to enter into this Agreement. NMC represents, in good faith and to the best of its knowledge, that there are not, as of the date of the Effective Date, any claims, demands, suits, or judgments against it that in any manner would or might impair or interfere with NMC's performance of the license granted by NMC to LICENSEE under this Agreement. Notwithstanding the foregoing, NMC does not warrant the validity of any Licensed Patent or the Licensed Technology or that a patent will issue with respect to any patent application included in the Licensed Patents. NMC does not warrant the content contained in the Licensed Patents or Licensed Technology or that they will be error free or that any defects will be corrected. NMC makes no representation whatsoever with regard to the scope or commercial potential or profitability or income of or from the Licensed Patents or Licensed Technology or that such Licensed Patents or Licensed Technology may be exploited by LICENSEE without infringing any rights of any other party. NMC makes no covenant either to defend any infringement charge by a third party or to institute action against infringers of Licensed Patents or Licensed Technology. NMC does not warrant that the Licensed Patents or Licensed Technology will meet LICENSEE's or any of LICENSEE's customer's specific requirements. LICENSEE warrants that it possesses the necessary expertise and skill to make, and has made, its own evaluation of the capabilities, safety, utility, and commercial application of the Licensed Patents and Licensed Technology.

10.2 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. ACCORDINGLY, THE LICENSED PATENTS AND LICENSED TECHNOLOGY ARE PROVIDED "AS IS." NMC MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE LICENSED PATENTS AND LICENSED TECHNOLOGY AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER IMPLIED WARRANTIES WITH RESPECT TO THE CAPABILITIES, SAFETY, UTILITY, OR COMMERCIAL APPLICATION OF LICENSED PATENTS AND LICENSED TECHNOLOGY.

ARTICLE XI
DAMAGES, INDEMNIFICATION, AND INSURANCE

11.1 Indemnification by LICENSEE. LICENSEE shall defend, indemnify and hold the Indemnitees harmless from any and all claims, demands, actions and causes of action against the Indemnitees, and each of them, whether groundless or not, in connection with any and all injuries, losses, damages or liability of any kind whatsoever arising, directly or indirectly, out of use, exploitation, distribution, or sale of Licensed Patents, Licensed Technology, Licensed Products, or Licensed Services by or through the LICENSEE or its Affiliates or Commercial Sublicensees, whether or not the claims, demands, actions or causes of action are alleged to have resulted in whole or in part from the negligent acts or omissions of an Indemnatee or from acts

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

or omissions of such persons for which an Indemnitee would otherwise be strictly liable. This indemnification obligation shall include, without limiting the generality of the foregoing, reasonable attorney fees and other costs or expenses incurred in connection with the defense of any and all such claims, demands, actions, or causes of action.

11.2 Insurance. Without limiting LICENSEE's indemnity obligations, within ninety (90) days of the commercial distribution of any Licensed Product or provision of Licensed Services, or, if applicable, on the date of initiation of any human trials, whichever occurs sooner, LICENSEE shall acquire a liability insurance policy and shall further maintain said policy throughout the term of this Agreement and for five (5) years thereafter, said policy to cover each Indemnitee as a named insured (with right to prior notice of cancellation) for all liabilities, claims, damages, and actions arising from or relating to LICENSEE's exercise of its license under this Agreement, including but not limited to product liability and other matters within the scope of LICENSEE's indemnity obligations under this Agreement, said coverage to be in an amount no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and Five Million Dollars (\$5,000,000) per occurrence for property damage, subject to a reasonable aggregate amount.

NMC shall promptly notify LICENSEE of each claim, demand, action and cause of action for which NMC or any Indemnitee intends to claim indemnification under Section 11.1 and provide, to the extent that such an evaluation is reasonably possible by NMC, LICENSEE with NMC's good-faith evaluation of the claim, demand, action or cause of action.

11.3 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES OR PROFITS RELATING TO THE SAME), ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME. THE LIABILITY OF NMC UNDER THIS AGREEMENT SHALL BE SUBJECT IN ALL CASES TO THE IMMUNITIES AND LIMITATIONS OF THE NEW MEXICO TORT CLAIMS ACT, SECTIONS 41-4-1 ET. SEQ., NMSA 1978, AS AMENDED.

ARTICLE XII
TERM AND TERMINATION

12.1 Term. Unless otherwise extended in writing by mutual agreement of the Parties, this Agreement will remain valid and in force until the later of: (i) ten (10) years from the date of the first sale of a Licensed Product or provision of a Licensed Service; or (ii) the expiration date of the last of the Valid Claims of the last to expire of the Licensed Patents. Any extension of the term of this Agreement may include additional provisions or modifications to other provisions of this Agreement as, negotiated between the Parties.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

12.2 Termination by LICENSEE. LICENSEE shall have the right to terminate this Agreement at any time, upon ninety (90) days prior written notice, without cause and for any reason. If LICENSEE terminates this Agreement under this provision, NMC will not be under any obligation to return any portion of the consideration paid by LICENSEE to NMC.

12.3 Termination by NMC. In the event of material breach of this Agreement by LICENSEE, NMC may at any time provide written notice to LICENSEE of such material breach. If LICENSEE fails to cure the identified material breach within thirty (30) days after the date of the notice, NMC may by written notice given to LICENSEE terminate this Agreement. A “material breach” of this Agreement for purposes of this Section 12.3 would include, but not be limited to, the failure to make the reports required under Article V of this Agreement on time or the failure to make the payments or deliveries required under Article IV of this Agreement on time.

12.4 LICENSEE’s Financial Condition.

(a) LICENSEE shall immediately notify NMC in writing of its intent to: (a) liquidate and/or cease to carry on its business, (b) become “insolvent” (as such term is defined in the United States Bankruptcy Code, as amended from time to time), or (c) voluntarily seek, consent to or acquiesce in the benefits of any bankruptcy or similar debtor-relief laws within thirty (30) days of such action. Upon receipt of such notice, NMC may, at its sole option, terminate this Agreement without prejudice to any other remedy to which NMC may be entitled at law or in equity or elsewhere under this Agreement, by giving written notice of termination to LICENSEE. Failure by LICENSEE to provide such notice of intent will be deemed a material, pre-petition, incurable breach of this Agreement and the Agreement will terminate automatically on the date of such voluntary or involuntary petition in bankruptcy.

(b) NMC may terminate this Agreement on written notice to LICENSEE on or any time after the LICENSEE makes a general assignment for the benefit of creditors, petitions for or acquiesces in the appointment of any receiver, trustee or similar officer to liquidate or conserve its assets, or commences or becomes a party under the laws of any jurisdiction any proceeding involving its insolvency, bankruptcy, reorganization, adjustment of debt, dissolution, liquidation or any other similar proceeding for the release of financially distressed debtors.

12.5 Effect of Termination on Commercial Sublicenses. Upon termination of the Agreement, any Commercial Sublicenses granted hereunder shall survive, provided that: at the time of such termination, the Commercial Sublicensee of the Commercial Sublicense is not in material default under the Commercial Sublicense; under such Commercial Sublicense the duties and obligations of NMC to the Commercial Sublicensee under the Commercial Sublicense are not greater than the duties and obligations of NMC under this Agreement; and, upon request by NMC, such Commercial Sublicensee promptly agrees in to assume all the obligations of LICENSEE

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

under this Agreement after the termination and to be bound by the applicable terms of this Agreement.

12.6 Effect of Termination on LICENSEE. If this Agreement is terminated for any reason whatsoever, LICENSEE shall return, or at NMC's direction destroy, all plans, drawings, papers, notes, writings and other documents, samples, organisms, biological materials and models pertaining to the Licensed Patents and Licensed Technology, retaining no copies, and shall refrain from using or publishing any portion thereof. Upon termination of this Agreement, LICENSEE shall cease manufacturing, processing, producing, using, or selling Licensed Products and cease providing Licensed Services; provided, however, that LICENSEE may continue to sell in the ordinary course of business for a period of three (3) months reasonable quantities of Licensed Products that are fully manufactured and in LICENSEE's normal inventory at the date of termination if (a) all monetary obligations of LICENSEE to NMC have been satisfied, and (b) royalties on such sales are paid to NMC in the amounts and in the manner provided in this Agreement. However, nothing herein shall be construed to release either Party of any obligation that matured prior to the effective date of such termination.

12.7 Survival of Provisions on Termination. The word "termination" and cognate words such as "term" and "terminate" as used in this Article and elsewhere in this Agreement are to be read as omitting from their effect the following rights and obligations, all of which shall survive any termination to the degree reasonably necessary to permit their fulfillment or discharge:

(a) LICENSEE's obligation to provide financial reports and pay all amounts due pursuant to Articles IV and V through the date of termination, LICENSEE's obligation to reimburse NMC for Patent Expenses incurred prior to the date of termination, and LICENSEE'S other obligations under Article V of this Agreement;

(b) Any cause of action or claim of NMC accrued, or to accrue, because of any breach or default by LICENSEE; and

(c) The provisions of Section 4.6 and 7.3 and of Articles VI, IX, X, XI, XII, XIV and XV of this Agreement.

ARTICLE XIII
ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the legal representatives and assigns of NMC and LICENSEE, provided, however, that any assignment of this Agreement by LICENSEE to a third party may be made only upon prior written consent of NMC, which consent may be withheld or conditioned by NMC as necessary to prevent prejudice to the Licensed Patents and Licensed Technology and to preserve the value of the consideration promised by LICENSEE to NMC under this Agreement.

ARTICLE XIV

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

MISCELLANEOUS

14.1 Export Controls. LICENSEE acknowledges that NMC is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities and that NMC's obligations under this Agreement are contingent upon compliance with applicable United States export laws and regulations. The transfer of technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without the prior approval of certain United States agencies. NMC neither represents that an export license shall not be required nor that, if required, such export license shall issue.

14.2 Arbitration.

(a) Any dispute, claim or controversy arising out of or relating to this Agreement, the validity or infringement of the Licensed Patents, or the breach, termination, enforcement, interpretation or validity of this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Santa Fe, New Mexico before one arbitrator. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(b) The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, as modified by this Agreement. To the extent that the rules of JAMS conflict with this Agreement, this Agreement shall control.

(c) In the event that the dispute, claim, or controversy involves the validity or infringement of the Licensed Patents, the arbitrator shall meet the following criteria: either (i) he or she shall be a licensed, U.S. Patent and Trademark Office registered U.S. patent attorney who (1) shall have had at least 15 years of experience in practicing patent law; (2) shall have litigated inter partes review proceedings before the PTAB or district court patent litigation at least through the summary judgment stage, and (3) shall have a technical educational background or industry experience relating to the subject matter of the Licensed Patents; or (ii) he or she shall be a former federal district judge or magistrate judge who has presided over at least 25 patent cases through summary judgment or trial or has served as a Federal Circuit Judge.

(d) The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

14.3 Legal Compliance. LICENSEE shall comply with all laws and regulations relating to its manufacture, processing, producing, use, selling, importing, or distributing of Licensed Products or Licensed Services. LICENSEE shall not take any action that would cause NMC or LICENSEE to violate any laws and regulations.

14.4 Independent Contractor. LICENSEE's relationship to NMC shall be that of a licensee only. LICENSEE shall not be the agent of NMC and shall have no authority to act for or on behalf of NMC in any matter. Persons retained by LICENSEE as employees or agents shall not by reason thereof be deemed to be employees or agents of NMC.

14.5 Patent Marking. LICENSEE shall mark, and shall require all Commercial Sublicensees to mark, Licensed Products sold in the United States with United States patent numbers. LICENSEE shall mark, and shall require all Commercial Sublicensees to mark, Licensed Products manufactured or sold in other countries in compliance with the intellectual property laws in force in such foreign countries.

14.6 Use of Names. LICENSEE shall obtain the prior written approval of NMC, its University Members, or the Inventors prior to making use of their names for any commercial purpose, except as required by law. As an exception to the foregoing, both LICENSEE and NMC shall have the right to publicize the existence of this Agreement; however, neither LICENSEE nor NMC shall disclose the terms and conditions of this Agreement without the other Party's consent, except as required by law.

14.7 Place of Execution. This Agreement and any subsequent modifications or amendments hereto shall be deemed to have been executed in the State of New Mexico, U.S.A.

14.8 Governing Law. This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the parties hereunder, shall be construed under and governed by the laws of the State of New Mexico and the United States of America.

The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

14.9 Sovereign Immunity. Nothing in the Agreement shall be deemed or treated as any waiver of sovereign immunity by the State of New Mexico or NMC.

14.10 Entire Agreement. This Agreement constitutes the entire agreement between NMC and LICENSEE with respect to the subject matter hereof and shall not be modified, amended or terminated except as herein provided or except by another agreement in writing executed by the parties hereto.

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

14.11 Severability. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision that will implement the commercial purpose of the illegal, invalid or unenforceable provision. In the event that any provision essential to the commercial purpose of this Agreement is held to be illegal, invalid or unenforceable and cannot be replaced by a valid provision that will implement the commercial purpose of this Agreement, this Agreement and the rights granted herein shall terminate.

14.12 Force Majeure. Any delays in, or failure of, performance of any party to this Agreement shall not constitute default hereunder, or give rise to any claim for damages, if and to the extent caused by occurrences beyond the control of the party affected, including, but not limited to, acts of God, strikes or other work stoppages; civil disturbances, fires, floods, explosions, riots, war, rebellion, sabotage, acts of governmental authority or failure of governmental authority to issue licenses or approvals that may be required. Any nonperformance or delay of LICENSEE subject to this Section 14.12 that is in excess of one hundred eighty (180) days will constitute a material breach of this Agreement under Section 12.3.

ARTICLE XV
NOTICES

All notices and other communications shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail, postage prepaid, return receipt requested, and addressed to the party to receive such notice or other communication at the address given below, or such other address as may hereafter be designated by notice in writing:

If to NMC:

Chief Executive Officer
NMC, INC.
4200 W. Jemez Rd., Suite 301

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

Los Alamos, New Mexico 87544

If to LICENSEE:

Such notices or other communications shall be effective upon receipt by an employee, agent or representative of the receiving party authorized to receive notices or other communications sent or delivered in the manner set forth above.

IN WITNESS WHEREOF, NMC and LICENSEE have caused this Agreement to be signed by their duly authorized representatives, under seal, as of the day and year indicated above.

NMC, INC.,
a New Mexico nonprofit
research park corporation

[COMPANY]

By: _____
Printed Name
Chief Executive Officer

By: _____

Printed Name: _____

Title: _____

Date: _____

Date: _____

NMC, INC.
AMENDED AND RESTATED INTELLECTUAL PROPERTY POLICY

EXHIBIT A
LICENSED PATENTS AND LICENSED TECHNOLOGY