

1 (6) Past Conduct Outside of Iron Mountain Mine Property Unrelated
2 to a Release or Disposal of Waste Material: claims arising from past conduct by a Released
3 Party (before the Effective Date of this Consent Decree) at locations outside the Iron Mountain
4 Mine Property that is unrelated to the disposal, release, or threat of release of Waste Material;

5 (7) Future Conduct At the Site Unrelated to a Release or Disposal of
6 Waste Material: claims arising from future conduct by a Released Party (after the Effective
7 Date of this Consent Decree) at the Site, or outside the Site, that is unrelated to the disposal,
8 release, or threat of release of Waste Material;

9 (8) Assertion of Exclusive Right to Use or Ownership: claims
10 arising from an assertion by a Released Party of an exclusive right to use or ownership of any
11 interest in the bed of any stream, river, reservoir or other water body within the Site; and

12 (9) Water Rights: claims arising from a past violation (before the
13 Effective Date of this Consent Decree) of any permit or license held by a Released Party to
14 divert and use water at locations outside the Iron Mountain Mine Property; claims arising from
15 a future violation (after the Effective Date of this Consent Decree) of any permit or license
16 held by a Released Party to divert and use water at or outside the Site; or claims or orders,
17 administrative or judicial, to require a Released Party to cease diverting and using water
18 without a permit or license at or outside the Site.

19 73. The United States' Covenants Not to Sue the Site Operator, IT Parties, Trust I,
20 Trust II, or the Trustee. In consideration of the Work that will be performed by the Site
21 Operator (or by IT to the extent IT becomes the Site Operator under this Consent Decree) as a
22 RAC, the Site Operator, IT Parties, Trust I, Trust II, and the Trustee shall not be liable under
23 Sections 101 through 126 of CERCLA, 42 U.S.C. §§ 9601-9626, or under any other federal
24 law, to any person for injuries, costs, damages, expenses, or other liability (including but not
25 limited to claims for indemnification or contribution and claims by third parties for death,
26 personal injury, illness or loss of or damage to property or economic loss) resulting from any

1 release or threatened release of a hazardous substance, pollutant, or contaminant (1) arising
2 from the Site Operator's performance of the Work, or from the Site Operator's or Trust II's
3 operation, or Trust I's ownership, of facilities at the Site in connection with the Work, or (2)
4 arising, prior to the Effective Date of this Consent Decree, from any ownership or operation
5 of the Site by any of the Released Parties or by any other third party, or from any arrangement
6 for disposal of any hazardous substances, pollutants, or contaminants at or from the Site by
7 any of the Released Parties or by any other third party. The protections afforded in this
8 Paragraph shall not apply in the case of a release that is caused or contributed to by conduct of
9 the Site Operator not in connection with the Work, or to a release arising from conduct of the
10 Site Operator in connection with the Work that is negligent, grossly negligent, or that
11 constitutes intentional misconduct. The protections afforded in this Paragraph shall take effect
12 upon the initiation of the Work by the Site Operator or the Effective Date of this Consent
13 Decree, whichever is later, and shall continue throughout the Performance Period, provided,
14 however, that the protections afforded in this Paragraph shall not apply during and to the
15 extent of any deficiencies in performance of the Work by the Site Operator that is negligent,
16 grossly negligent, or that constitutes intentional misconduct. Except as provided in Paragraph
17 3 (Transferability), the protections afforded in this Paragraph extend only to the Site Operator,
18 the IT Parties, Trust I, Trust II, and the Trustee, and do not extend to any other person. In
19 accordance with Section 8.1.4 of the SOW, the Site Operator makes no express or implied
20 warranty as to its ability to meet the Performance Standards set forth in the SOW.

21 74. United States' General Reservations of Rights as to the Site Operator, the IT
22 Parties, Trust I, Trust II, and the Trustee. The United States reserves, and this Consent
23 Decree is without prejudice to, all rights against the Site Operator, the IT Parties, Trust I,
24 Trust II, and the Trustee with respect to all other matters, including but not limited to, the
25 following:

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1 Clean Water Act sections), Section 25360 of the California Health and Safety Code (the
2 California Hazardous Substance Account Act), Sections 25181, 25187, 25187.1, 25187.5 and
3 25189.2(b) and (c) of the California Health and Safety Code (the California Hazardous Waste
4 Control Act), Sections 13350, 13301, 13304 and 13385 of the California Water Code, and
5 Sections 2014, 12015 and 12016 of the California Fish and Game Code, arising from the
6 performance of the Work, operation of facilities at the Iron Mountain Mine Property in
7 connection with the Work, or ownership of facilities at the Iron Mountain Mine Property in
8 connection with the Work, by the Site Operator, the IT Parties, Trust I, Trust II, or the
9 Trustee. These covenants not to sue shall not apply during and only to the extent the
10 performance of any Work, operation of facilities at the Iron Mountain Mine Property, or
11 ownership of facilities at the Iron Mountain Mine Property, that is negligent, grossly
12 negligent, or constitutes intentional misconduct.

13 (2) The Site Operator shall further be entitled to the protections
14 provided by Sections 107(d) and 119 of CERCLA, 42 U.S.C. §§ 9607(d) and 9619, in
15 connection with its performance of the Work.

16 (3) The State agencies further covenant not to sue or to take
17 administrative action against the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee,
18 for response costs, Natural Resource Damages, contribution, civil penalties, civil liabilities or
19 other relief, under Sections 107, 113 and 310 of CERCLA, 42 U.S.C. §§ 9607, 9613, 9659,
20 Section 7002 of RCRA, 42 U.S.C. § 6972, Sections 301, 311 and 505 of the Clean Water Act,
21 33 U.S.C. §§ 1311, 1321, 1365 (to the extent that the State agencies have a right of action
22 under these Clean Water Act sections), Section 25360 of the California Health and Safety
23 Code (the California Hazardous Substance Account Act), Sections 25181, 25187, 25187.1,
24 25187.5 and 25189.2(b) and (c) of the California Health and Safety Code (the California
25 Hazardous Waste Control Act), Sections 13350, 13301, 13304 and 13385 of the California
26 Water Code, and Sections 2014, 12015 and 12016 of the California Fish and Game Code.

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1 arising from past, present or future disposal, release or threat of release of Waste Material that
2 originated at or on, or at or from, the Iron Mountain Mine Property, occurring other than in
3 connection with performance of the Work, operation of facilities at the Iron Mountain Mine
4 Property other than in connection with the Work, or ownership of facilities at the Iron
5 Mountain Mine Property other than in connection with the Work, by the Site Operator, the IT
6 Parties, Trust I, Trust II, or the Trustee, and that was not caused or contributed to by the Site
7 Operator, the IT Parties, Trust I, Trust II, or the Trustee.

8 B. Effective Date. The covenants not to sue in this Paragraph shall take
9 effect upon the initiation of the Work by the Site Operator or the Effective Date of this
10 Consent Decree, whichever is later, and shall continue throughout the Performance Period.

11 C. Extends Only to the Site Operator, the IT Parties, Trust I, Trust II, the
12 Trustee and Approved Transferee. The covenants not to sue provided in this Paragraph extend
13 only to the Site Operator, the IT Parties, Trust I, Trust II, and the Trustee, and do not extend
14 to any other person; provided, however, that if the State agencies are in accord with the
15 United States, as the Oversight Agency, with respect to the approval of an assignment,
16 delegation, or transfer of the Site Operator's duties and obligations under this Consent Decree
17 and SOW to a transferee as provided in Paragraph 3, then the State agencies' covenants not to
18 sue, together with the reservations, provided for in this Paragraph, shall extend to the
19 approved transferee.

20 D. General Reservations of Rights. The covenants not to sue set forth
21 above do not pertain to any matters other than those expressly specified in Paragraph 75.
22 With respect to all other matters, except those in Paragraph 75.D.(1), the State agencies
23 reserve their rights to bring enforcement actions in State judicial or administrative fora.
24 Further, the State agencies reserve, and this Consent Decree is without prejudice to, all rights
25 against the Site Operator, the IT Parties, Trust I, Trust II, and the Trustee with respect to all
26 other matters, including but not limited to, the following:

1 (1) Non-compliance with Consent Decree: claims arising from a
2 failure by the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee to meet a
3 requirement of this Consent Decree for which they are obligated;

4 (2) Release or Disposal in Connection with the Work, Operation or
5 Ownership: claims for liability arising from, and to the extent of, a disposal, release or threat
6 of release of Waste Material in connection with performance of the Work, operation of
7 facilities at the Iron Mountain Mine Property in connection with the Work, or ownership of
8 facilities at the Iron Mountain Mine Property in connection with the Work, that is negligent,
9 grossly negligent, or constitutes intentional misconduct.

10 (3) Release or Disposal not in Connection with the Work, Operation
11 or Ownership: claims for liability arising from any disposal, release or threat of release of
12 Waste Material at or from the Site by the Site Operator, the IT Parties, Trust I, Trust II, or the
13 Trustee, other than in connection with the Work, operation of facilities at the Iron Mountain
14 Mine Property other than in connection with the Work, or ownership of facilities at the Iron
15 Mountain Mine Property other than in connection with the Work, to the extent that any such
16 disposal, release or threat of release is caused or contributed to by the Site Operator, the IT
17 Parties, Trust I, Trust II, or the Trustee.

18 (4) Future Violations of Other Laws: claims for liability arising
19 from violations of federal or state law not coming within the scope of these Covenants as set
20 forth in Paragraph 75; and

21 (5) Criminal Liability: claims for criminal liability.

22 76. Work Takeover. The Oversight Agency may assume the performance of all or
23 any portions of Site activities otherwise to be performed by the Site Operator under this
24 Consent Decree and the SOW, as set forth in the SOW. In the event of work takeover,
25 AISLIC shall pay SOW Response Costs as set forth in the Policy, except to the extent such
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1 costs are not covered by the Policy. As set forth in the SOW, the Site Operator shall be
2 responsible for SOW Response Costs that are not covered by the Policy.

3 XXII. COVENANTS NOT TO SUE BY THE RELEASED PARTIES, THE SITE
4 OPERATOR, THE IT PARTIES, THE TRUSTS, AND THE TRUSTEE;

5 INTERGOVERNMENTAL COVENANTS

6 77. Covenants Not to Sue by the Released Parties

7 A. Covenant Not to Sue the United States. In consideration of the
8 foregoing covenant not to sue by the United States, and subject to Paragraph 78, the Released
9 Parties hereby covenant not to sue and agree not to assert any claims or causes of action
10 against the United States with respect to the Site or this Consent Decree, including, but not
11 limited to:

12 (1) any direct or indirect claim for reimbursement from the
13 Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26
14 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§
15 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

16 (2) any claims against the United States, including any department,
17 agency or instrumentality of the United States, under Sections 107 or 113 of CERCLA, 42
18 U.S.C. §§ 9607, 9613, related to the Site;

19 (3) any claims arising out of response activities at the Site, including
20 claims based on EPA's or the State's selection of response actions, oversight or support of
21 response activities, approval of plans for such activities, or implementation or operation and
22 maintenance of such activities;

23 (4) any claims based on alleged ownership, operation, oversight of
24 operation, or participation or cooperation in operation, of dams, reservoirs or power plants on
25 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring
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1 Creek Debris Dam, Reservoir, and power plant. Keswick Dam, Reservoir, and power plant;
2 and Trinity Dam and Reservoir; and

3 (5) any claims based on alleged ownership of any beds of streams,
4 rivers, reservoirs, or other water bodies or interest in any state waters or waters of the United
5 States.

6 B. Covenant Not to Sue the State Agencies. In consideration of the
7 foregoing covenant not to sue by the State agencies and the payments referred to in Paragraph
8 7 this Consent Decree, and subject to Paragraph 78, the Released Parties hereby covenant not
9 to sue and agree not to assert any claims or causes of action, known or unknown, suspected or
10 unsuspected, which the Released Parties have now or may have in the future against the State
11 agencies under any federal, state or common law, with respect to the Site or this Consent
12 Decree, including, but not limited to:

13 (1) any claims under Sections 107 or 113 of CERCLA, 42 U.S.C. §§
14 9607, 9613;

15 (2) any claims based on alleged ownership, operation, oversight of
16 operation, or participation or cooperation in operation, of dams, reservoirs or power plants on
17 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring
18 Creek Debris Dam, Reservoir and power plant; Keswick Dam, Reservoir, and power plant;
19 and Trinity Dam and Reservoir;

20 (3) any claims based on alleged ownership by the State of California
21 of any beds of streams, rivers, reservoirs, or other water bodies, or any interest in state waters
22 or waters of the United States;

23 (4) any claims based on alleged failure to discharge public trust
24 duties or supervise appropriated water; and

25 (5) any claims arising out of response activities at the Site, including
26 but not limited to claims based on EPA's or the State's selection of response actions, oversight
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1 or support of response activities, approval of plans for such activities, or implementation or
2 operation and maintenance of such activities.

3 (6) The Released Parties relinquish, to the fullest extent permitted by
4 law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which
5 provides:

6 A general release does not extend to claims which the creditor does not know or
7 suspect to exist in his favor at the time of executing the release, which if known
8 by him must have materially affected his settlement with the debtor.

9 C. For the purposes of this Paragraph 77 and Paragraph 78, only,
10 "Released Parties" includes only Stauffer Management Company, Atkemix Thirty-Seven Inc.,
11 Aventis CropScience USA Inc., Aventis CropScience USA, LP, Rhodia, Inc., Imperial
12 Chemical Industries PLC, ICI International Investments, Inc., and Zeneca Holdings, Inc.,
13 together with any of their predecessor or successor entities, and direct or indirect parents or
14 subsidiaries, to the extent that any such predecessor, successor, or direct or indirect parents or
15 subsidiaries would be derivatively liable for any liabilities of the companies specifically named
16 in this Paragraph. If, notwithstanding the Covenants set forth in this Paragraph 77, any
17 Released Party enumerated in this Subparagraph brings an action precluded by the Covenants
18 and not authorized by Paragraph 78, the United States and the State agencies reserve the right
19 to bring claims against such Released Party pursuant to the reservations contained in
20 Paragraphs 71.A and 72.B.(1) of this Consent Decree.

21 78. Released Parties' Reservations. The Released Parties reserve any defenses to
22 any order or claim brought by the United States or the State agencies pursuant to the
23 reservations contained in Paragraphs 71 and 72.B. In addition, the Released Parties reserve
24 any cross-claims, counterclaims, or third-party claims against the United States or the State
25 agencies in response to any claims brought by the United States or State agencies against the
26 Released Parties pursuant to the reservations contained in Paragraphs 71 and 72.B. However,

1 the Released Parties may not assert any such counter-, cross-, or third-party claims covered by
2 the terms of Paragraphs 77.A and 77.B except to the extent that such claims are based on
3 future conduct by the United States or the State agencies after the Effective Date of this
4 Consent Decree and occurring outside the Iron Mountain Mine Property and not related to any
5 disposal, release, or threat of release of Waste Material at or from the Site that has migrated
6 directly or indirectly from the Iron Mountain Mine Property. The covenants by the Released
7 Parties set forth in Paragraphs 77.A and 77.B do not include claims based upon a failure by
8 the United States or the State agencies to comply with the provisions of this Consent Decree,
9 but only to the extent that any such failure relates to a duty or obligation owed to the Released
10 Parties.

11 79. Nothing in this Consent Decree shall be deemed to constitute preauthorization
12 of a claim by the Released Parties within the meaning of Section 111 of CERCLA, 42 U.S.C.
13 § 9611, or 40 C.F.R. § 300.700(d).

14 80. Covenants Not to Sue by the Site Operator, the IT Parties, Trust I, Trust II, and
15 the Trustee.

16 A. Covenant Not to Sue the United States. In consideration of the
17 foregoing covenant not to sue by the United States, the Site Operator, the IT Parties, Trust I,
18 Trust II, and the Trustee hereby covenant not to sue and agree not to assert any claims or
19 causes of action against the United States with respect to the Site or this Consent Decree,
20 including, but not limited to:

21 (1) any direct or indirect claim for reimbursement from the Hazardous
22 Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C.
23 § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C.
24 §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

1 Creek Debris Dam, Reservoir, and power plant, Keswick Dam, Reservoir, and power plant:
2 and Trinity Dam and Reservoir:

3 (3) any claims based on alleged ownership by the State of California
4 of any beds of streams, rivers, reservoirs, or other water bodies, or any interest in state waters
5 or waters of the United States:

6 (4) any claims based on alleged failure to discharge public trust
7 duties or supervise appropriated water; and

8 (5) any claims arising out of response activities at the Site, including
9 but not limited to claims based on EPA's or the State's selection of response actions, oversight
10 or support of response activities, approval of plans for such activities, or implementation or
11 operation and maintenance of such activities.

12 C. Claims not Included.

13 (1) The covenants by the Site Operator, the IT Parties, Trust I, Trust
14 II, and the Trustee set forth in this Paragraph 80 do not include claims for nonpayment for
15 work required by the Oversight Agency under Section 4.2.1 of the SOW to the extent not paid
16 for, or claims for reimbursement of costs incurred in defending or indemnifying the State or
17 federal government under Section 5.3.2 of the SOW to the extent such costs are found by a
18 court of competent jurisdiction to have arisen out of a claim, liability, loss, or damage caused
19 by the sole negligence or willful misconduct of the State or federal government. No act or
20 omission constituting the sole negligence or willful misconduct of the State shall be imputed or
21 attributed to the federal government, and no act or omission constituting the sole negligence or
22 willful misconduct of the federal government shall be imputed or attributed to the State.

23 (2) The covenants by the Site Operator, the IT Parties, Trust I, Trust
24 II, and the Trustee set forth in this Paragraph 80 do not include claims against the United
25 States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for
26 money damages for injury or loss of property or personal injury or death caused by the