



### **GUIDELINES FOR NMSDC CERTIFICATION AS A MINORITY CONTROLLED COMPANY (“MCC”) THROUGH THE GROWTH INITIATIVE PROGRAM**

The NMSDC Growth Initiative Certification Program (“Program”) allows certain businesses to be certified by NMSDC as a Minority Controlled Company (“MCC”) when such business has engaged in a past or pending 3<sup>rd</sup> party equity financing that reduces ownership by ethnic minority individual to below 51%.

#### **ELIGIBLE APPLICANTS**

To be eligible to apply for certification under the Program (an “Eligible Applicant”), a Company must:

1. Be a for-profit entity based in the United States or its territories,
2. Have raised or will raise equity financing from a Qualified Program Investor or a Public Offering, and
3. Have Ethnic Minority Investors own a minimum of 25% of the Company’s current outstanding Equity.

#### **CERTIFICATION REQUIREMENTS**

An Eligible Applicant may be certified under the Program if it satisfies the following requirements:

1. Ethnic Minority Investors own or will own a minimum of 25%, but less than 51%, of the Eligible Applicant’s current outstanding Equity. However, Ethnic Minority Investors may own more than 51% of the Eligible Applicant’s current outstanding Equity if Ethnic Minority Group Members own less than 51% of such Equity.
2. Ethnic Minority Investors would receive a minimum of 25% of the Equity Proceeds upon a Hypothetical Sale of the Eligible Applicant.
3. Ethnic-Minority Group Members maintain day-to-day management and control of the operations consistent with NMSDC-certified MBE requirements.
4. Ethnic Minority Investors have the voting power to elect or appoint the majority of the Eligible Applicant’s Board of Directors.
5. The Eligible Applicant’s Board of Directors must meet the Board Requirements, subject to the Affiliation Exclusions below:
  - A. Board Requirements
    1. Has a chairperson that is an Ethnic-Minority Group Member
    2. Has a minimum of 25% of its entire Board of Directors consist of Ethnic-Minority Group Members that are not Affiliates of the Qualified Program Investor(s) Ethnic-Minority Group Members
    3. Must consist of a majority of (a) Ethnic-Minority Group Members that are not Affiliates of the Qualified Program Investor(s) and/or (b) Independent Directors.
  - B. Affiliation Exclusions

1. The non-affiliation requirements in 5.A.1. and 5.A.2 will not apply if the Qualified Program Investor is either: (a) a Certified Investment Fund that owns or will own a majority of the Eligible Applicant's current outstanding Equity or (b) the Eligible Applicant is undertaking a Public Offering.
2. Independent Directors of an Eligible Applicant that is undertaking a Public Offering or is currently a publicly traded company must meet the requirements of an independent director as set forth by the applicable rules of the stock exchange where the Eligible Applicant's stock is or will be traded.

*The NMSDC has the sole authority to make all determinations under these Guidelines, reserves the right to request any information, and may deny any applicant certification under the Program in its sole and absolute discretion.*

### **INVESTMENTS BY CERTIFIED INVESTMENT FUNDS**

When a Certified Investment Fund is or will be an investor in an Eligible Applicant, 100% of the Certified Investment Fund's Equity will be deemed to be ethnic minority owned Equity for purposes of Program certification.

### **GROWTH INITIATIVE APPLICATION**

1. Applications for certification under the Program are submitted via the NMSDC Hub upon completion of a pre-qualification questionnaire.
2. Program applicants must submit all information and documentation required in the application or requested by NMSDC in connection with the certification process, and pay all Program fees.
3. Applicants that are denied certification may appeal such decision upon filing a written request with the NMSDC National Office within 30 days of notice of the denial. Any new information will not be considered and all decisions may only be appealed on the following grounds:
  - A. A Procedural Error in the review process, or
  - B. The decision is based on a Factual Error
4. Companies certified under the Program must recertify at intervals required by NMSDC.

### **COMPLIANCE**

NMSDC reserves the right to review the status of NMSDC-certified companies and can suspend or terminate the certification for good cause at any time. NMSDC will determine the length of any suspension, and under what circumstance a company, or its owners, officers and/or affiliates can be permanently banned or can reapply for certification.

The suspension or termination of certification, for good cause, may be necessary under several circumstances including, but not limited to, if the certified company:

1. No longer meets the certification requirements as set forth in these Guidelines.
2. Fails or refuses to provide NMSDC representatives access and/or the opportunity to inspect its place of business.
3. Ceases or intends to cease its business operations.

4. Withholds or fail to provide notice to NMSDC within thirty (30) days of any change that results in the company no longer meeting all the certification requirements.
5. Submits false or misleading information to the NMSDC.
6. The company, directors, or officers are charged or convicted of involvement in illegal activity.
7. Fails to apply for renewal of Program certification along with required documentation and fee(s) within the timeframe designated by NMSDC.

## DEFINITIONS

***“Accredited Investors”*** has the meaning as defined in Regulation D under the Securities Act of 1933.

***“Affiliate”*** means any person (i) who, directly or indirectly, owns 25% of the Equity or has voting control over such other Person, (ii) that is an officer, director, partner, member or employee of such other Person, or (iii) either directly or indirectly, controls, is controlled by or under common control with such other Person.

***“AUM”*** means assets under management which shall equal the total market value of the securities that a Person owns or manages, plus cash, plus the amount of firm commitments to invest in an Investment Fund, Angel Investment Group, or Independent Sponsor.

***“Certified Investment Fund”*** means an investment fund certified by NMSDC

***“Company”*** means a corporation, partnership, limited liability company and any other business entities certified by NMSDC.

***“Equity”*** means ownership in an entity that gives the owner a residual claim on the entity’s assets.

***“Equity Proceeds”*** means the amount of cash generated from the Hypothetical Sale of a Company after accounting for any conversion rights, liquidation preferences, dividend payments, vested options and warrants, etc.

***“Ethnic-Minority Investors”*** means collectively Ethnic-Minority Group Member(s) and Certified Investment Fund(s).

***“Ethnic-Minority Group Member”*** means an individual who is a U.S. citizen and at least 25% of the following: Asian Indian, Asian Pacific, Black or African American, , Hispanic or Latino, and Native American or Alaskan Native, or Native Hawaiian or Other Pacific Islander, as determined by NMSDC. Green card holders/resident aliens/legal permanent residents are not eligible for certification. Documentation to support a claim of ethnicity will be required from the Eligible Applicant.

***“Factual Error”*** means there is compelling evidence the NSMDC based its decision not to certify an Eligible Applicant based on a conclusion which is contrary to information clearly stated in the application.

**"Hypothetical Sale"** means a hypothetical sale or liquidation of the Eligible Applicant at its current fair market value.

**"Independent Director"** means an individual that is not an Affiliate of the Eligible Applicant or its Qualified Program Investor(s) or has any relationships with another individual which may interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this provision, "Family Member" means a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone who shares such person's home. The following persons shall not be considered independent:

1. A director who is, or at any time during the past three years was, employed by the Eligible Applicant or its Qualified Program Investor(s);
2. A director who accepted or who has a Family Member who accepted any compensation from the Eligible Applicant more than \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:
  - A. Compensation for board or board committee service,
  - B. Compensation paid to a Family Member who is an employee (other than an officer) of the Eligible Applicant,
  - C. Benefits under a tax-qualified retirement plan, or non-discretionary compensation.
3. A director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Eligible Applicant or its Qualified Program Investor as an officer;
4. A director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an officer of, any organization to which the Eligible Applicant made, or from which the Eligible Applicant received, payments for property or services in the current or any of the past three fiscal years that exceed 10% of its' consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:
  - A. payments arising solely from investments in the Eligible Applicant's securities
  - B. payments under non-discretionary charitable contribution matching programs
5. A director who is, or has a Family Member who is, a current partner of the Eligible Applicant's outside auditor, or was a partner or employee of the Eligible Applicant's outside auditor who worked on its audit at any time during any of the past three years.

**"Minority Controlled Company"** means a MBE certified under the Program

**"Person"** means a natural person or company.

**"Procedural Error"** means any departure from NMSDC policy, regarding undeclared or unawareness of conflict of interest or a failure to provide such information to the Growth Initiative Committee.

**"Program"** means the NMSDC Growth Initiative Certification Program

**"Public Offering"** means where the public will acquire shares in the Eligible Applicant as a result of the Eligible Applicant's public offering of equity securities and such equity securities are listed on a national exchange or when the Eligible Applicant acquires or merges with a publicly traded company and the Eligible Applicant is the surviving company.

**“Qualified Program Investor”** shall include each of the following types of investors that meet the specified requirements set forth below and are approved by NMSDC:

1. **Angel Investment Group:** an entity that invests in early-stage companies that is: (i) comprised entirely of Accredited Investors (minimum 3 members), (ii) has a demonstrable track record of investing in privately held companies or a member that has such an investing track record, and (iii) has a minimum of \$10 million of AUM.
2. **Certified Investment Fund:** see definition above.
3. **Independent Sponsor:** an entity that invests in or acquires companies and raises funds for its transactions on a deal-by-deal basis instead of a pool of committed capital that: (i) has a demonstrable track record of making and exiting investments in privately held companies, and (ii) has a minimum of \$25 million of AUM.
4. **Investment Fund:** an entity that: (i) is in the business of making equity investments (not managing businesses), (ii) has a minimum of \$25 million of AUM, (iii) has at least 30% of its capital owned and controlled by three (3) persons unaffiliated with the fund’s management and unaffiliated with each other, and (iv) has a general partner that consists of at least 2 individuals, or a corporation, partnership, LLC or a combination thereof.
5. **Family Office:** an entity that: (i) provides wealth management and concierge services directly to a family, (ii) has a limited number of families for which it provides wealth management services, (iii) does not hold itself out to the public as an investment advisor, (iv) has a demonstrable track record of making and exiting investments in privately held companies, and (v) has a minimum of \$10 million of AUM for each family for which it provides wealth management services.
6. **Foreign Operating Company:** an entity that (i) is organized outside of the U.S., (ii) is headquartered, generates at least 75% of its revenue outside the U.S., (iii) has revenue of at least \$250 million (U.S.) and (iv) either:
  - A. Is not in the same industry as the Eligible Applicant, or
  - B. If it is in the same industry as the Eligible Applicant, it meets the following criteria:
    - i. The Foreign Operating Company does not have substantial revenues and operations in the same products and services, and
    - ii. The Foreign Operating Company does not have substantial sales in the same geographic markets as the Eligible Applicant.
7. **NMSDC Corporate Member Investment Subsidiary:** an entity that is a subsidiary of a national NMSDC corporate member that primarily invests in companies and has a track record of investing in companies and divesting of such portfolio companies.