

**CONTRACT DOCUMENTS**

**CITY OF LINCOLN, NEBRASKA**

**Annual Supply  
of  
Vaccines  
Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP)  
Contract No. MMS11098**

**Contractor:  
Novartis Vaccines and Diagnostics, Inc.  
350 Massachusetts Ave., 2<sup>nd</sup> Floor  
Cambridge, MA 02139  
617.871.8840**

8033

**CITY OF LINCOLN, NEBRASKA,  
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into by and between Novartis Vaccines and Diagnostics, Inc., 350 Massachusetts Ave., 2<sup>nd</sup> Floor, Cambridge, MA 02139 hereinafter called Contractor, and the City of Lincoln, Nebraska, a political subdivision, hereinafter called the Owner.

WHEREAS, Neb. Rev. Stat. § 23-3109(1)(d)(iii) allows for waiver of bidding requirements when the price has been established by a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity; and

WHEREAS, the Owner through local inter-governmental cooperative purchasing have chosen to participate in the contract between the MMCAP and Novartis Vaccines and Diagnostics, Inc., Contract Number MMS11098, dated September 28, 2011, which was prepared in accordance with the MMCAP's usual and customary laws, procedures and policies, and has approved and adopted said documents connected with said, Work, to-wit:

for all materials and equipment necessary to supply and deliver Vaccines to the Owner's various departments as the Owners may determine in compliance with the prices as established via the MMCAP Contract Number MMS11098; and

WHEREAS, the Contractor, in response to the Owner's request to participate in said agreement, has submitted to the Owner, an offer approving Owners participation under the same pricing structure, terms and conditions as the MMCAP Contract Number MMS11098, dated September 28, 2011 for Vaccines, with only those exceptions stated herein; and

WHEREAS, the MMCAP, in the manner usual and customary to their laws, policies and procedures has opened, read, examined, and canvassed the Proposals submitted in response to the proposal request, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the MMCAP Contract Number 11098; dated September 28, 2011, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the Owner hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities necessary to provide Vaccines for the Owner's various departments as the Owners may determine.
2. Term of the Contract. The initial term of this contract is for a period beginning October 1, 2011 through June 30, 2015.
3. Pricing. Pricing of items will be pursuant to MMCAP Contract Number MMS11098, dated September 28, 2011.
  - 3.1 Terms of payment shall be *net* thirty (30) days for all services meeting Owner's Specifications and approval. Each location will have a separate account number and billing address. The Owner may choose to pay the vendor using an Electronic Funds Transfer. If this option is used, any discounts available to the MMCAP shall be made available to the Owner.

4. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owner and employees of the Owner shall not be deemed to be employees of the Contractor. The Contractor and the Owner shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owner's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
5. Indemnification. The Contractor shall indemnify and hold harmless the Owner (City of Lincoln), their agents, principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the Contractor to the extent such arise out of or result from its principals, officers, agents, or employees in the performance of this contract. Except for an intellectual property infringement claim, which is covered in Article 9 Infringement Indemnity of the License Agreement, liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this contract that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, Contractor shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this contract shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.
6. Equal Employment Opportunity. In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
7. Owner Inclusion. It is understood and agreed by all parties that "Owner/s" shall include City of Lincoln, Nebraska. Whenever in the Contract documents, including the instructions to bidders, specifications, insurance requirements, bonds, and terms and conditions of any other documents which are a part of the Contract, a singular entity is referenced (i.e., "the City") it shall mean the "Owner" encompassing the City of Lincoln, Nebraska.

8. Termination. This Contract may be terminated by the following:
- 8.1 Termination for Convenience. Either party may terminate this Contract upon fourteen (14) days written notice to the other party for any reason without penalty.
  - 8.2 Termination for Cause. The Owner may terminate the Contract for cause if the Contractor:
    - 8.2.1 Refuses or fails to supply the proper labor, materials and equipment necessary to provide and deliver vaccines.
    - 8.2.2 Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
    - 8.2.3 Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owner will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
9. The parties agree that the terms and conditions of this Contract shall prevail and govern in the case of any such inconsistent or additional terms in the Agreement between the MMCAP and Novartis Vaccines and Diagnostics, Inc., Contract Number MMS11098, dated September 28, 2011.

The Contract Documents comprise the Contract, and consist of the following:

- 1. Contract Agreement
- 2. Minnesota Multistate Contraction Alliance for Pharmacy (MMCAP), Contract No. MMS11098, dated September 28, 2011
- 3. Federal Forms
- 4. Nebraska Resale or exempt Sale Certificate (Form 13)

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract, and are a part of the Contract as if hereto attached.

The Contractor and the Owner hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the Owner do hereby execute this contract.

**EXECUTION BY THE CITY OF LINCOLN**

ATTEST:  
City Clerk

*Jean E. Ross*



CITY OF LINCOLN, NEBRASKA

*Chris B...*  
Mayor

**Approved by:**

Resolution No. A-86819

Dated 5-14-12

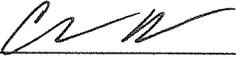
**EXECUTION BY CONTRACTOR**

**IF A CORPORATION:**

NOVARTIS VACCINES and DIAGNOSTICS  
Name of Corporation  
350 Massachusetts Ave  
Cambridge MA 02139  
(Address)

ATTEST:

\_\_\_\_\_  
Secretary (SEAL)

By: , CHRISTOPHER FILMY, MD  
Duly Authorized Official

VP, US MARKETING  
Legal Title of Official

**IF OTHER TYPE OF ORGANIZATION:**

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Type of Organization

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
Member

By: \_\_\_\_\_  
Member

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY**

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy (“MMCAP”) and **Novartis Vaccines and Diagnostics, Inc.**, 350 Massachusetts Avenue, Cambridge, MA 02139 (“Vendor”).

Under Minnesota Statutes Section 16C.03, the Commissioner of Administration on behalf of MMCAP is empowered to engage such assistance as deemed necessary.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members’ use. Participation in MMCAP is limited to facilities within member states that are specifically permitted by the member state’s statutes to purchase goods from the member state’s contracts. Participation is generally available to facilities run by state agencies, counties, cities, townships, and school districts.

The Vendor wishes to contract with MMCAP to supply products to MMCAP Member Facilities.

**1 Term of Contract**

**1.1 Effective date:** October 1, 2011, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

**1.2 Expiration date:** June 30, 2015, or as cancelled pursuant to clause 19.

**1.3 Survival of Terms.** The following clauses survive the expiration or cancellation of this Contract: Sections C, I-M, P-R, and T-V of Section 2.2.7.1; 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

**2 Contracted Pharmaceuticals**

**2.1 Products**

2.1.1 The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP Participating Facilities via MMCAP’s Authorized Wholesalers. The MMCAP Authorized Wholesalers hereunder are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC. In the event MMCAP chooses to add H.D. Smith or another entity to whom Vendor supplies Product as an Authorized Wholesaler, Vendor will receive 30 calendar days’ advanced written notice and will include H.D. Smith or such other entity as an Authorized Wholesaler for the remainder of this Contract.

2.1.2 MMCAP reserves the right during the term of the Contract to award or dual award products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by MMCAP Authorized Wholesalers due to “pedigree law” requirements, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by MMCAP Participating Facilities, recall situations, product shortages, failure to supply situations, and in situations that are in the best interest of the MMCAP Participating Facilities.

**2.2 Product Availability**

2.2.1 It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the needs of the MMCAP Participating Facilities. Notwithstanding the foregoing or anything herein to the contrary, (a) Vendor’s obligation to supply any Product shall at all times be subject to the condition that it or its affiliate is able to manufacture a sufficient supply of such Product to accommodate all commitments for purchase of such Product (from MMCAP Participating Facilities and Vendor’s other customers) together with requests from governmental authorities, (b) in the event of an epidemic or pandemic Vendor may not manufacture a Product and shall be relieved (without incurring any liability) of all obligation to supply or deliver such Product hereunder and (c) in the

event of a short supply of a Product, Vendor shall allocate such Product as determined by it in its discretion.

2.2.2 Vendor must establish and maintain chargeback agreement(s) with MMCAP's Authorized Wholesalers. Vendor must monitor sales of the Products and shall work in good faith with the Authorized Wholesalers to make available to them sufficient quantities to meet the inventory needs of the MMCAP Participating Facilities based on usage data provided on Attachment A.

2.2.3 MMCAP agrees that Vendor may accept and fulfill direct orders from any MMCAP Participating Facility for the term of this contract. All indirect sales must be through MMCAP's Authorized Wholesalers.

2.2.4 Vendor must provide written notice of all Product backorders to MMCAP within 24 hours of the knowledge of any backorder situation. Notices must include the reason(s) for and the expected duration of the backorder situation. Backorder notices must be sent to: [MMCAP.Contracts@state.mn.us](mailto:MMCAP.Contracts@state.mn.us).

2.2.5 Vendor must notify MMCAP immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect Product availability. Notices must be sent to:

[MMCAP.Contracts@state.mn.us](mailto:MMCAP.Contracts@state.mn.us)

2.2.6 If the Vendor assigns, discontinues, or deletes a Product during the term of this Contract, Vendor must provide written notice to MMCAP at least 30 days prior to the assignment, discontinuance, or deletion. If the Vendor discontinues or deletes a Product during the term of this Contract, Vendor will honor contract pricing until the inventory of the Product is depleted from MMCAP's Authorized Wholesalers' stock. If inventory is depleted prior to the end of the 30 day period, Vendor agrees to pay Failure to Supply claims as set forth in Article 2.5.

**2.2.7 Direct Orders, Payment, and Delivery.**

MMCAP Participating Facilities may access Products by purchasing them directly from Vendor via NovartisVaccinesDirect.com or Vendor's Customer Service at 1-877-NVDIRECT (877-683-4732). Terms and conditions for direct purchases of vaccines are specified below.

**2.2.7.1 Terms for Direct Purchases of Product from Vendor**

- A. The terms and conditions set forth in this Section shall govern the direct purchase of Product from Vendor by MMCAP Participating Facilities. The following customers are not eligible to purchase Product under these terms and conditions: (i) any person or entity that purchases Product from Vendor pursuant to a written agreement other than these terms and conditions and Product orders submitted pursuant hereto, and (ii) for Ixiaro® only, any armed forces or military personnel or any person or entity that procures pharmaceutical or vaccine products on behalf of, or for the benefit of, or for the resale of supply to, the armed forces or military. Orders submitted by MMCAP Participating Facilities that are party to (or who may participate under) any such other written agreement with Vendor relating to the sale or purchase of Product are subject to the terms and conditions, including, without limitation, pricing, payment and delivery terms, set forth in such written agreement. No MMCAP Participating Facility may market, promote, administer or use Product for the benefit of persons or entities located outside the United States, or where it ought reasonably to be aware that the ultimate destination for Product is outside the United States.
- B. *Product Ordering; Delivery.* MMCAP Participating Facilities may order Product by creating a direct purchase account online at NovartisVaccinesDirect.com or by calling Vendor Customer Service at 877-NV-DIRECT (877-683-4732). A purchase order is not required to purchase Product hereunder.
  - 1. All Ixiaro® purchased hereunder shall be in pre-filled syringes as supplied by the manufacturer to Novartis Vaccines. There shall be one dose of Ixiaro® in each pre-filled syringe and each dose of Ixiaro® shall consist of the quantity of vaccine suggested for basic immunization in accordance with US Biologics License Application number 125280, and any other license or authorization required to market the Ixiaro® lawfully in the United States, each as amended, modified or replaced, as determined by the manufacturer of the Ixiaro® and supplied to Novartis Vaccines. There is no minimum number of Ixiaro® that may be purchased hereunder.
  - 2. Menveo® purchased hereunder shall consist of packets containing five doses of Menveo (each dose is comprised of one vial of lyophilized Men-A-CRM conjugate component and one vial of liquid Men-C-W-Y-CRM conjugate component). There is a 5-dose minimum number of Menveo® that may be purchased hereunder.
  - 3. Rabavert® purchased hereunder shall consist of a Rabies Vaccine Kit (which contains one vial containing 0.5 mL of lyophilized vaccine, one vial containing 1.0 mL of sterile water and one

syringe with two needles). There is no minimum number of Rabavert® kits that may be purchased hereunder.

Each order submitted by a customer is subject to Vendor's confirmation of the MMCAP Participating Facility's valid state license number and authorizations and the MMCAP Participating Facility's creditworthiness.

Vendor will use reasonable commercial efforts to deliver Product ordered by a MMCAP Participating Facility to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account. Each Product price stated herein includes all costs of shipment of Product imposed by Vendor (and such costs will be included in the amount invoiced to the MMCAP Participating Facility). Vendor assumes no obligation to comply with any special shipping requests made by a MMCAP Participating Facility, including, without limitation, any request to deliver Product by a specified date. Vendor is responsible for obtaining all export and import licenses required to deliver Product to the specified destination.

- C. *Payment Terms and Instructions.* MMCAP Participating Facilities shall be obligated to pay for Product purchased hereunder by, at Vendor' discretion, (i) credit card processed at the time of shipment of the purchased Product from Vendor' distributor or designated freight forwarder to the first carrier, or (ii) within sixty (60) days of delivery of such Product. MMCAP Participating Facilities will receive a prompt payment discount of 2% off the applicable price of Product (exclusive of current federal excise taxes or other taxes levied on vaccine products) for payments received by Vendor on or before the applicable due date. Interest will be charged on overdue amounts (applied effective on the business day immediately following the applicable payment due date) at a rate equal to the London Interbank Offered Rate (LIBOR) (three months), as reported in *The Wall Street Journal* (Eastern Edition) Money Rates column, print edition, on the business day immediately following the applicable payment due date, plus 5% per annum, or, if less, the maximum amount permitted by applicable law, until the date payment is received by Vendor.
- D. *Product Price.* The price per Product is set forth in Attachment A attached hereto and excludes excise or other taxes or assessments. The price of Product shall be increased by Vendor in its sole discretion to reflect any taxes or assessments levied upon vaccine products.
- E. *Inspection of Product by MMCAP Participating Facilities; Right to Return Product.* MMCAP Participating Facilities must, within 72 hours after delivery of Product, conduct a physical inspection of the packaged Product and notify Vendor in writing of any issue or physical damage that is apparent from such inspection. If a MMCAP Participating Facility fails to give such notice, then the MMCAP Participating Facility will be conclusively presumed to have accepted the shipment and Vendor will have no liability to the MMCAP Participating Facility for any defects that could have been identified by such inspection or for any discrepancies between the shipment received and the amount of Product ordered by the MMCAP Participating Facility. Any defect or damage to the Product that is not identifiable from a physical inspection will remain grounds for rejection of Product if the MMCAP Participating Facility notifies Vendor in writing within 72 hours following discovery of the defect or damage. Upon receipt of such notice from a MMCAP Participating Facility, Vendor will conduct an investigation and if Vendor agrees with the MMCAP Participating Facility's determination, (i) Vendor will use reasonable commercial efforts to supply replacement Product to the MMCAP Participating Facility, or if no replacement Product can be supplied, Vendor will issue a credit note or refund to the MMCAP Participating Facility for the rejected Product, and (ii) the MMCAP Participating Facility must ship the defective or damaged Product in accordance with instructions provided by Vendor. If Vendor, in its sole discretion, determines that no defect or damage to Product exists, then the MMCAP Participating Facility must accept delivery of such Product and pay the invoiced price for such Product (in which event Vendor will not be deemed to be in breach of these terms and conditions or have any further liability to the MMCAP Participating Facility with respect to the alleged defect or damage). In the event a MMCAP Participating Facility has not used or administered Menveo as of its expiration date, the MMCAP Participating Facility shall be entitled to receive replacement Menveo, on the following terms. The MMCAP Participating Facility shall be obligated to (i) not have opened the packet containing the five (5) doses of Menveo in such packet and to deliver to Vendor or its agent for exchange all such five (5) doses of Menveo, (ii) notify Vendor of such expiration by calling Vendor Customer Service at 877-NV-DIRECT (877-

683-4732) within thirty (30) days of such expiration date, and (iii) ship the unused, expired Menveo in accordance with instructions provided by Vendor. Upon its receipt of the applicable unused, expired Menveo in accordance with this paragraph, Vendor will ship replacement Menveo to the MMCAP Participating Facility (at Vendor's sole cost and expense). The foregoing right of exchange shall apply to Menveo only and not to any other Product. Other than as set forth in in this Section, MMCAP Participating Facilities purchasing Product may not return Product or have any right to replacement Product.

- F. *Passage of Title; Risk of Loss.* All orders for Product are shipped F.O.B. Destination. Title to Product and risk of loss of each shipment of Product will pass to the MMCAP Participating Facility upon delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account.
- G. *Limitations on Marketing.* MMCAP Participating Facilities may not sell, promote or market Product in a manner that is, or engage in activities or efforts that are, disparaging or otherwise damaging to Vendor or the RabAvert®, Menveo®, or Ixiaro® brands. MMCAP Participating Facilities may not hold themselves out as representatives or agents of Vendor or otherwise as being entitled to bind Vendor in any way, and MMCAP Participating Facilities must make clear in all dealings with other persons or entities that they are not acting as agents of Vendor.
- H. *Covenants of MMCAP Participating Facilities.* By ordering Product from Vendor, each MMCAP Participating Facility agrees that it will:
- obtain and maintain all licenses and approvals that may be necessary for the use, administration, storage and marketing of Product, as applicable to such MMCAP Participating Facility, in the United States;
  - not make any representation to any person or entity nor give any warranties other than those printed on Product packaging, including the package insert for Product, or included within promotional material or other Product information provided by Vendor;
  - not administer or use Product for indications not approved by a governmental authority or listed on Product packaging, including the package insert for Product;
  - observe and comply with such storage, handling, stock control and operational practices and procedures of Vendor in effect from time to time or as required by any governmental authority or applicable law;
  - observe and comply with procedures for Adverse Event and Pharmaceutical Technical Complaint Reporting and provision of medical information of Vendor in effect from time to time;
  - execute any recall or withdrawal of Product from the market in accordance with procedures of Vendor in effect from time to time; and
  - comply with applicable law or any other applicable requirements imposed by a governmental authority relating to Product.
- I. *Disclaimer of Warranties; Withdrawal of Product Approval.* Vendor makes no representation or warranty and gives no undertakings in relation to the grant (by any date or at all) of the licenses or authorizations required to market, manufacture or release for export Product lawfully in the United States, or the maintenance of such licenses and authorizations, and MMCAP Participating Facilities will have no claim against Vendor arising out of any failure to obtain the grant or renewal of, or otherwise maintain, such licenses and authorizations. Vendor will promptly notify MMCAP Participating Facilities in writing of any withdrawal of Product's United States Food and Drug Administration approval or of Product's material noncompliance with United States Food and Drug Administration standards. At the request of Vendor, MMCAP Participating Facilities will return any allegedly defective Product to Vendor.
- J. *Modification of Product.* Subject to compliance with applicable laws and regulations, Vendor may, in its sole discretion, at any time and from time to time, modify the Product as it deems appropriate or necessary or as may be required by any governmental authority, including changes in design, production or packaging of Product or withdrawal of Product in response to a governmental authority action, without liability to MMCAP Participating Facilities of any kind.

- K. *Use of Trademarks.* MMCAP Participating Facilities may not use the registered trademarks RabAvert®, Menveo®, or Ixiaro® for any purpose other than as expressly necessary to exercise their rights and perform their obligations under these terms and conditions. MMCAP Participating Facilities may not use any other trade name or trademark of Vendor, other than the RabAvert®, Menveo®, or Ixiaro® trademarks to the extent permitted in the foregoing sentence. MMCAP Participating Facilities must ensure that each reference to and use of the RabAvert®, Menveo®, or Ixiaro® trademarks is accompanied by an acknowledgement that the same is a registered trademark of Vendor. Vendor may request copies of examples of a MMCAP Participating Facility's use of the RabAvert®, Menveo®, or Ixiaro® trademarks or any other trademark of Vendor in order to assess compliance with this Section. MMCAP Participating Facilities will not acquire any rights in respect of any trade names or trademarks of Vendor (including the RabAvert®, Menveo®, or Ixiaro® trademarks) or of the goodwill associated therewith and all such rights and goodwill are, and will at all times remain, vested in Vendor. Other than as is set forth in these terms and conditions, no license, express or implied, is granted to MMCAP Participating Facilities by Vendor under any intellectual property rights, including those of Vendor's affiliates.
- L. *Limitations on Use of Intellectual Property.* MMCAP Participating Facilities may not: (a) make any modification to Product or its packaging; (b) alter, obscure, remove or tamper with any trademarks, markings, numbers, labels, indication of the source of origin, or other means of identification used on, or in relation to, Product; (c) use the RabAvert®, Menveo®, or Ixiaro® trademarks in any way which might materially prejudice its distinctiveness or validity or the goodwill of Vendor therein; (d) use any trademarks other than the RabAvert®, Menveo®, or Ixiaro® trademarks in relation to Product; or (e) use or make any application for registration in the United States of any trademarks or trade names so resembling any trademark or trade name of Vendor as to be likely to cause confusion or deception.
- M. *Government Payment Programs.* By ordering Product, each MMCAP Participating Facility represents and warrants to Vendor that neither it, nor any individual employed by it, is currently included in the Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities or in the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Each MMCAP Participating Facility must notify Vendor immediately and in writing if the MMCAP Participating Facility or any individual employed by it is excluded or becomes reasonably subject to exclusion from a Federal Healthcare Program as defined by 42 U.S.C. 1320a-7b(f). If a MMCAP Participating Facility or any individual employed by a MMCAP Participating Facility is excluded or becomes reasonably subject to such exclusion from a Federal Healthcare Program, Vendor will have the right to immediately terminate any outstanding order submitted by such MMCAP Participating Facility and to refuse acceptance of any further orders from such MMCAP Participating Facility.
- N. *Force Majeure.* Vendor will not be under any liability to MMCAP Participating Facilities for failure or delay in the performance of any obligation hereunder or part thereof to the extent and for the period that such performance is prevented by reason of Force Majeure if Vendor gives written notice of an event of Force Majeure to the affected MMCAP Participating Facility within 30 business days of the occurrence of such event of Force Majeure. If the performance by Vendor of these terms and conditions or any order submitted by a MMCAP Participating Facility is prevented for a period exceeding 90 days from the date of such notice, the affected MMCAP Participating Facility may terminate all outstanding orders submitted by such MMCAP Participating Facility (which, for the avoidance of doubt, will not affect such MMCAP Participating Facility's obligations to pay amounts invoiced for Product previously delivered) by providing written notice to Vendor, and thereafter (as well as during the period from the occurrence of the Force Majeure through and after such termination) Vendor will have no liability to such MMCAP Participating Facility under these terms and conditions or the cancelled order(s). "Force Majeure" means any cause preventing or hindering the performance of these terms and conditions or any orders arising from or attributable to acts, events or circumstances beyond the reasonable control of Vendor, including epidemics or pandemics of disease, acts of God, shortage of materials, war (declared or undeclared), labor disputes, accidents, acts of terrorism, fire, breakdown of machinery, government requisition or impoundment or other acts of any governmental authority, riot or civil commotion and any other acts, events or circumstances beyond Vendor's reasonable control whether or not similar to the above causes.

- O. *Warranties of Vendor.* Vendor makes the following warranties with respect to Product ordered by MMCAP Participating Facilities under these terms and conditions: at the time of delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account, (a) all Product will materially conform to the quality, identity, and strength standards of Product as described in the applicable Product's US Biologics License Application number, as amended, modified or replaced; (b) no Product bearing Vendor's name will be adulterated or misbranded (within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act, as such Act is effective at the time of delivery) and no Product will be prohibited from being introduced into interstate commerce; and (c) all Product will have been manufactured in substantial compliance with current good manufacturing practices, as specified in the United States Code of Federal Regulations (21 CFR Part 210 & Part 211), and any other applicable laws or regulations. This Section sets forth Vendor's sole and limited warranties with respect to Product supplied to MMCAP Participating Facilities. To the maximum extent allowed by law, except as unambiguously and expressly set forth in this Section, Vendor specifically disclaims, and, by ordering Product, each MMCAP Participating Facility is expressly waiving and releasing Vendor from, all other warranties, conditions and terms regarding or relating to Product (whether used alone or with other substances or materials) that may have been provided to a MMCAP Participating Facility or otherwise that might have effect between a MMCAP Participating Facility and Vendor or be implied into these terms and conditions, a Product order, or any other collateral contract, whether by statute, common law or otherwise and whether express, implied or otherwise, including all implied warranties, conditions or terms of fitness for a particular purpose and non-infringement.
- P. *Limitation on Warranties of Vendor.* Vendor will not be liable to any MMCAP Participating Facility, and, by ordering Product, each MMCAP Participating Facility is expressly waiving and releasing Vendor from any liability, with respect to Product (an "Uncovered Product") that (a) has been tampered with or in any way altered or modified after delivery to the MMCAP Participating Facility's designated destination; (b) has been subject to misuse, negligence or accident after delivery to the MMCAP Participating Facility's designated destination; (c) has been stored, handled, maintained, administered or used in a manner contrary to regulatory requirements, the labeling of Product or Vendor's instructions, or otherwise not as originally intended, after delivery to the MMCAP Participating Facility's designated destination; or (d) has passed its expiration date. The warranties contained in Section O will not apply to any such Uncovered Product.
- Q. *Limitation on Damages.* To the maximum extent allowed by law, in no event will Vendor be liable for any indirect, special, punitive or consequential damages, or other damages relating to loss of use, income or profit, or loss or damage to person or property, arising out of or in connection with the marketing, sale or use of Product, including damages resulting from any negligence or breach of any obligation imposed on any MMCAP Participating Facility. The exclusive remedy of a MMCAP Participating Facility ordering Product from Vendor for claims with respect to these terms and conditions or any orders submitted by such MMCAP Participating Facility will be pursuant to the indemnification provisions set forth in Section R below.
- R. *Indemnification by Vendor.* Vendor will defend, indemnify and hold harmless each MMCAP Participating Facility ordering Product and such MMCAP Participating Facility's respective directors, officers, employees and agents (each such person, an "Indemnitee"), from and against any and all claims, demands, actions, losses, expenses, damages, liabilities, costs (including interest, penalties and reasonable attorneys' fees) and judgments ("Damages") directly arising out of any material breach of any representation or warranty set forth in Section O (as limited by Sections P and Q) or any material default by Vendor under these terms and conditions, provided that Vendor will not, in any case, be obligated to defend, indemnify or hold harmless any Indemnitee from any such Damage which results from the misconduct or negligence of an Indemnitee (including, for the avoidance of doubt, any Damage that results in Product becoming an Uncovered Product).
- S. *Termination.* In addition to all other rights of termination specified herein, Vendor may terminate any orders submitted by a MMCAP Participating Facility by notice to the MMCAP Participating Facility, having immediate effect, if (a) the MMCAP Participating Facility commits a material breach of any of the provisions of these terms and conditions or such order, and in the case of a material breach capable of remedy, the MMCAP Participating Facility fails to remedy the breach within 30 days of receipt of a notice giving particulars of the breach and requiring it to be remedied; (b) the MMCAP Participating Facility commences a voluntary proceeding in bankruptcy or an involuntary proceeding in bankruptcy is commenced against the

MMCAP Participating Facility; (c) the MMCAP Participating Facility makes any arrangements with creditors, whether voluntary or in compliance with an administrative order or similar event; (d) the MMCAP Participating Facility goes into involuntary liquidation or otherwise ceases or threatens to cease to carry on business or takes or suffers any similar action in consequence of debt; or (e) as a result of any action taken by a governmental authority, it becomes commercially impracticable or impossible for Vendor (as determined in its discretion) to supply any Product ordered by the MMCAP Participating Facility.

- T. *Consequences of Termination.* Upon the termination or expiration, for any reason, of an outstanding order submitted by a MMCAP Participating Facility and/or these terms and conditions, (a) the MMCAP Participating Facility will have no claim against Vendor for compensation for loss of rights to use, administer, market or promote Product, loss of goodwill or any similar loss; (b) Sections C, I-M, P-R, and T-V will continue in full force in accordance with their terms for a period of 3 years from the date of termination (or such longer period as may be specified in such sections); and (c) all outstanding unpaid invoices will become immediately due and payable and Vendor will have no further obligation to deliver Product. Termination or expiration of an outstanding order will be without prejudice to any rights that have accrued to the benefit of a party prior to such termination or expiration.
- U. *Notice.* All notices, requests, demands and other communications which are required or may be given hereunder must be in written or electronic form, and will be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment (if confirmed by delivery in a method described in clause (a) within 2 business days after its delivery by facsimile or other electronic transmission). All such communications by Vendor to a MMCAP Participating Facility will be to the contact person listed at the "Ship To" address in the direct purchase account established by such MMCAP Participating Facility. All such communications by a MMCAP Participating Facility to Vendor must be to Head of Vaccines, USA, Vendor and Diagnostics, Inc., 350 Massachusetts Avenue, Cambridge, MA 02139.
- V. *UN Convention.* The provisions of the U.N. Convention on the International Sale of Goods will not apply to the interpretation, construction or application of these terms and conditions or to the resolution of any dispute arising between a MMCAP Participating Facility and Vendor.
- W. *Entire Agreement.* These direct terms and conditions and each order for Product submitted by a MMCAP Participating Facility contain all the terms which Vendor and such MMCAP Participating Facility have agreed to in relation to the purchase of Product. By submitting an order for Product, each MMCAP Participating Facility agrees that it is not relying on, and will have no remedy in respect of, any statement, representation, warranty, collateral contract or other assurance (whether negligently or innocently made) of any person or entity other than those expressly set out as a warranty in these terms and conditions and the applicable order, and that, except as otherwise provided herein, the only remedy available to it for breach of the warranties set forth herein is for breach of contract under these terms and conditions.
- X. *Non-Assignment.* MMCAP Participating Facilities may not assign or delegate these terms and conditions or any of the rights or duties arising hereunder without the prior written consent of Vendor and any attempt to assign or delegate will be void and of no effect. Vendor may, without the prior written consent of a MMCAP Participating Facility, assign or delegate these terms and conditions, together with any applicable order, and its rights and obligations hereunder and thereunder. Vendor may perform any and all obligations under these terms and conditions and all applicable orders through any affiliate.
- Y. *Modification to Terms and Conditions.* Except as otherwise provided herein, Vendor and a MMCAP Participating Facility may supplement, delete, modify, amend or otherwise change these terms and conditions with respect to such MMCAP Participating Facility's purchase of Product at any time only upon mutual written agreement of Vendor and such MMCAP Participating Facility.

**2.3 FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application or Abbreviated New Drug Application or Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish no Product

under this Contract that is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.

**2.4 Pricing.**

*2.4.1 Non-Fixed, 30 Day Notice:*

All Products are Non-Fixed, 30 Day Notice and require notice of price increases be submitted to the MMCAP Authorized Representative at least 30 working days before the requested price increase may take effect. Notwithstanding this provision, no price increases can become effective until 120 calendar days after the effective date of the Contract; unless a force majeure condition can be established and is approved by the MMCAP Authorized Representative. In the event of any price reduction, the Vendor will advise MMCAP in writing as set forth in Article 2.7. Vendor must notify MMCAP's Authorized Wholesalers of approved price changes within 2 business days of notifying MMCAP.

2.4.2 [Deleted in its entirety]

2.4.3 In the event of any price increase, MMCAP reserves the right to obtain quotes from other vendors and reserves the right to dual award the product to the vendor offering the best value.

2.4.4 [Deleted in its entirety]

*2.4.5 Wholesale Acquisition Cost (WAC) Minus Percentage:*

If specifically noted on Attachment A that the prices are a percentage off WAC, the price may be changed by providing MMCAP with 30 days' prior written notice of the date the proposed change is to take effect and with the new WAC. In the event Vendor does not give MMCAP a minimum of five (5) business days' notice after a price increase, Vendor must honor Authorized Wholesalers' chargebacks for the pricing until such time as MMCAP receives notice of the price change.

2.4.6 Vendor must notify MMCAP's Authorized Wholesalers of approved price changes within 2 business days of notifying MMCAP.

**2.5 Failure to Supply Contracted Pharmaceuticals.**

2.5.1 If Vendor fails to maintain sufficient inventory to meet the anticipated needs of MMCAP Participating Facilities for any Products, the ordering MMCAP Participating Facility may purchase an alternate equivalent generic product on the open market for the period in which the Vendor is unable to provide the Product.

2.5.2 If Vendor cannot supply in sufficient quantities, MMCAP may at its discretion add an additional vendor(s) as needed to meet the needs of its members.

2.5.3 Vendor must notify MMCAP in writing within 24 hours of Vendor's knowledge of its inability to supply any Products. Notices must be sent to: [MMCAP.Contracts@state.mn.us](mailto:MMCAP.Contracts@state.mn.us).

2.5.4 [Deleted in its entirety]

2.5.5 [Deleted in its entirety]

2.5.6 [Deleted in its entirety]

2.5.7 [Deleted in its entirety]

2.5.8 [Deleted in its entirety]

2.5.9 [Deleted in its entirety]

2.5.10 [Deleted in its entirety]

**2.6 First DataBank, Inc.** All contracted prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc., unless such designation is expressly waived by an MMCAP Authorized Representative. If NDC codes are not applicable (e.g., OTC products), Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]). If the Product does not have an NDC number or a UPC code, Vendor must use its product number with leading zeroes (e.g., product #90024 = 00000-0900-24). Vendor must report contract status to MMCAP's Authorized Wholesalers using only these approved formats.

**2.7 Contract Changes.**

*2.7.1 Product Offers and Amendments.* Vendor-generated product offers and notifications may be used as amendments to Attachment A by submitting to MMCAP a letter on Vendor's letterhead with the following elements:

- Offer Date
- MMCAP Contract Number
- Action (e.g., addition, deletion, price change, NDC conversion)

- NDC Number
- Product Description
- Packaging
- Contract Price
- Pricing Type (fixed, non-fixed, floating WAC)
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's offer

If the product offer is accepted by MMCAP and is executed by Vendor as well as the authorized State of Minnesota representatives, the product offer letter will automatically amend Attachment A of this Contract. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP will draft all amendments.

2.7.2 Vendor must send confirmation of fully executed Contract amendments to the MMCAP Authorized Wholesalers within 5 business days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Authorized Wholesalers do not receive Contract amendment notification(s), Vendor agrees to honor all chargebacks at the contract price from the date indicated on the fully executed Contract amendment.

## **2.8 MMCAP Participating Facilities.**

2.8.1 The Vendor must allow new MMCAP Participating Facilities joining MMCAP to be added to the MMCAP Membership List (password protected and published online at [www.mmcap.org](http://www.mmcap.org)) and to access contract prices throughout the term of this Contract. As new MMCAP Participating Facilities are added to MMCAP, the Vendor will be given 7 days from date of notification to implement contract pricing. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Membership List has been posted online.

2.8.2 MMCAP reserves the right to add and delete MMCAP Participating Facilities during the term of this Contract.

2.8.3 If Vendor maintains class of trade restrictions, eligibility criteria must be listed in this Article 2.8, if applicable. If Vendor maintains class of trade restrictions which are not present or expressly defined in this Contract, MMCAP reserves the right to cancel this Contract and to reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceuticals and related products.

2.8.4 If Vendor maintains class of trade restrictions, monthly electronic eligibility lists must be sent to MMCAP at the following e-mail address: [MMCAP.Contracts@state.mn.us](mailto:MMCAP.Contracts@state.mn.us)

2.8.5 Certification, eligibility, or GPO declaration forms maintained by Vendor must be attached and incorporated into this Contract, if applicable.

**2.9 Administrative Fee.** In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases (minus any credits) made through the MMCAP Authorized Wholesalers or directly with the Vendor. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for the amount listed on Attachment A of MMCAP Participating Facilities' purchases for all Products. The administrative fee must be paid as soon as is reasonable after the end of each month, but no later than 30 calendar days after the end of the month. MMCAP reserves the right to collect interest on payments 30 calendar days past due at a rate of 18% annually, consistent with Minnesota Statutes Section 16A.124. The vendor must submit a monthly Administrative Fee Data Report that includes both direct (sales made direct from vendor to MMCAP facility) and indirect purchases (sales made through an MMCAP Authorized Wholesaler). The monthly Administrative Fee Data Report must contain the fields detailed below. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to: [Mn.MMCAP@state.mn.us](mailto:Mn.MMCAP@state.mn.us) at the end of each month, but no later than 30 days after the end of the month. Failure to comply with this provision may constitute breach of this Contract.

Administrative Fee Data Report fields:

- MMCAP Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)
- MMCAP Assigned Manufacturer Number
- Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
- Invoice Date (Point of Sale Date)
- Invoice Number
- MMCAP Participating Facility Name

- Vendor's Account Number for the MMCAP Facility
- MMCAP Participating Facility DEA Number, if applicable
- MMCAP Participating Facility HIN Number, if applicable
- MMCAP Participating Facility Address
- MMCAP Participating Facility City
- MMCAP Participating Facility State
- Product's NDC (Use all 11 digits (00076888888))
- Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- Credit Indicator (C = credit)
- Contracted Units (The number of units purchased on contract.)
- MMCAP Contracted Unit Price
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- Vendor Contracted Sales (Contracted Units \* Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal Percentage \* Vendor Contracted Sales. Report in dollars.)

In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and to reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

**2.10 Returned Goods/Credits.** The Vendor will supply a copy of its returned goods/credit policy to MMCAP's Authorized Wholesalers upon request.

**2.11 Value-Added Programs.** [Deleted in its entirety.]

**2.12 DEA Number and HIN Numbers.** Unless the MMCAP Participating Facility purchases controlled substances, the Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from MMCAP Participating Facilities.

**2.13 Own Use.** All items acquired by MMCAP Participating Facilities under this Contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

**2.14 Product Dating.** All Products supplied to MMCAP's Authorized Wholesalers or directly to MMCAP Participating Facilities must have an expiration date of at least six months later than the delivery date unless the unique stability characteristics of the product require a shorter dating period. However, all Products supplied must still be usable on the date received by the MMCAP Participating Facility.

**2.15 Direct Marketing, Advertising, and Offers with Member Facilities.** Any direct advertising, marketing, or direct offers with MMCAP Participating Facilities for on- or off- contact products must be approved by MMCAP. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

**3 Authorized Representatives.** MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155. The Vendor's Authorized Representative is Cash Link.

#### **4 Assignment, Amendments, Waiver, and Contract Complete**

**4.1 Assignment.** Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement.

**4.2 Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office. Vendor agrees to use the amendment process set forth in Article 2.7 above.

**4.3 Waiver.** If MMCAP fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

**4.4 Contract Complete.** This Contract contains all negotiations and agreements between MMCAP and the Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

**5 Liability.** The Vendor must indemnify, save, and hold MMCAP, its agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the performance of this Contract by the Vendor or the Vendor's agents or employees; or injury or death to person(s) or property, alleged to have been caused by some defect in Products under this Contract, when the Product has been supplied by and dispensed strictly in accordance with federal, state, and local regulations and the applicable provisions of the package insert. This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify the Vendor.

**6 State Audits.** Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

### **7 Government Data Practices and Intellectual Property**

**7.1. Government Data Practices.** The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this Article, the Vendor must immediately notify MMCAP, and consult with the agency as to how the Vendor should respond to the request. The Vendor's response to the request will comply with applicable law.

**7.2. Intellectual Property Indemnification.** The Vendor warrants that any materials or products provided or produced by the Vendor or utilized in the performance of this Contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify the Vendor.

If such a claim of infringement has occurred, or in the Vendor's opinion is likely to occur, the Vendor must either procure for MMCAP the right to continue using the material or product or replace or modify materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor, and at the Vendor's expense.

### **8 Publicity and Endorsement**

**8.1 Publicity.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

**8.2 Endorsement.** The Vendor must not claim that MMCAP endorses its products or services.

**9 Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota. Except to the extent that the provisions of this Contract are clearly inconsistent therewith, this Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this Contract entails delivery or performance of services, such services will be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

**10 Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations that arise under

the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

**11 Force Majeure.** Neither party to this Contract will be held responsible for delay or default caused by acts, events or circumstances beyond the reasonable control of the party affected, including fire, riot or civil commotion, acts of God and/or war, raw material shortage, epidemic or pandemic of disease, labor disputes, accidents, acts of terrorism, breakdown of machinery, government requisition or impoundment or other acts of any governmental authority.

**12 Severability.** If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

**13 Default and Remedies.** Either of the following constitutes cause to declare the Contract or any order under this Contract in default:

- (a) Nonperformance of contractual requirements, or
- (b) A material breach of any term or condition of this Contract.

Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.

If the default remains after the opportunity for cure, the nondefaulting party may:

- (a) Exercise any remedy provided by law or equity; or
- (b) Terminate the Contract or any portion thereof, including any orders issued against the Contract.

**14 Certification.** Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act.

**15 Data Disclosure.** In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

**16 Insurance Requirements.** Vendor will comply with the insurance requirements of MMCAP's Authorized Wholesalers.

**17 Minnesota Statutes Section 181.59.** The vendor will comply with the provisions of Minnesota Statutes Section 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction will contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, will, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

18 Employee Status. Deleted in its entirety

19 Cancellation. MMCAP or the Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment, determined in a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date.

1. NOVARTIS VACCINES AND DIAGNOSTICS, INC.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature] FKM  
Title: Marketing  
Date: 9/28/2011

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: [Signature]  
Title: SPA-P  
Date: 9/26/2011

3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: [Signature]  
Title: \_\_\_\_\_  
Date: Sept. 26, 2011

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Click on the **GENERIC DESCRIPTION** for product details  
 (Product details includes pricing history, AHFS equivalents and generic equivalents)

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		Products Currently On Contract with NOVARTIS VACCINES AND DIAGNOSTICS, INC.					
NDC	TRADE DESCRIPTION	GENERIC DESCRIPTION	PACKAGING	PRICE	REMARKS	Date Start	Date End
42515000101	IXIARO 6 MCG/0.5 ML SYRINGE	JAPANESE ENCEPHALITIS VACC/PE 6MCG/0.5ML DISP SYRIN	.5ML x 1	216.300	WAC -0%	10/1/2011	6/30/2015
46028020801	MENVEO A-C-Y-W-135-DIP VIAL	MENING VAC A.C.Y.W-135 DIP/PE 10-5/0.5ML KIT	5EA x 1	498.620	\$494.87+\$3.75=\$498.62; WAC-10%	10/1/2011	6/30/2015
63851050101	RABAVERT RABIES VACCINE KIT	RABIES VACCINE (PCEQ)/PE 2.5 UNIT KIT	1EA x 1	185.980		10/1/2011	6/30/2015

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