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., 2nd Floor
Cambridge, MA 02139
617.871.~~8940~~
8033

CITY OF LINCOLN, NEBRASKA,
CONTRACT AGREEMENT

THIS CONTRACT, made and entered into by and between **Novartis Vaccines and Diagnostics, Inc., 350 Massachusetts Ave., 2nd 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: Joan E Ross

City Clerk

CITY OF LINCOLN · FOUNDED JULY 29, 1867 · SEAL · INCORPORATED APRIL 7, 1869 · LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN, NEBRASKA

Mayor

Approved by:

Resolution No. A-86819

Dated 5-14-12

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Novartis Vaccines and Diagnostics
Name of Corporation
330 Massachusetts Ave
Cambridge MA 02139
(Address)

ATTEST:

_____(SEAL)
Secretary

By: _____, Christopher Filkey, 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 Section16C.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.
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
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 lyophillized 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' 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 offitness 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 so 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.

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) 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

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 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: _____

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: _____

Title: SPA-P

Date: 9/26/2011

3. COMMISSIONER OF ADMINISTRATION

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

By: _____

Title: _____

Date: Sept. 26, 2011

Minnesota Multistate Contracting Alliance for Pharmacy

Contract Items search

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

Page 1 of 1

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/PF 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/PF 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 (PCEC)/PF 2.5 UNIT KIT	1EA x 1	185.980		10/1/2011	6/30/2015

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CITY OF LINCOLN
ACCESS TO RECORDS

Access to Records. The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the grantee or a subgrantee in accordance with Federal Requirements, the Contractor agrees to provide the Purchaser, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to Federal Requirements to provide the appropriate Federal agency access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the Recipient or a subgrantee of the Recipient in accordance with Federal Requirements, Contractor agrees to provide the Purchaser and the appropriate Federal agency access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the Recipient or a subgrantee of the Recipient in accordance with Federal Requirements, Contractor agrees to provide the Purchaser, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the Recipient or a subgrantee of the Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

CITY OF LINCOLN
31 U.S.C. 1352
45 CFR PART 74
APPENDIX A

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] -

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.]*

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

APPENDIX A, 45 CFR PART 74--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq* .)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(1)
BREACHES AND DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(12)
CLEAN AIR ACT
CLEAN WATER ACT

Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.
(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance.

Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.
(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(6)
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(4) and (5)
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be

classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis- Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all

or part of the wages required by the contract, the City may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the City for transmission to the appropriate Federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly

from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the appropriate Federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the

registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in

29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

CITY OF LINCOLN

Debarment and Suspension

Awards that exceed the small purchase threshold fixed at 41 U.S.C. 403(11), are considered covered transactions for purposes of 45 CFR. As such, no contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Order No. 12549 and 12689, Debarment and Suspension. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order No. 12549.

Contractors with awards that exceed the small purchase threshold fixed at 41 U.S.C. 403(11), must provide the required certification regarding its exclusion status and that of its principal employees.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The signed and submitted bid or proposal contains material representations of fact relied upon by **City of Lincoln**. If it is later determined that the bidder or proposer knowingly rendered an erroneous representation of its debarment or suspension status, in addition to remedies available to **City of Lincoln**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 45 CFR. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(9)
COPYRIGHTS AND RIGHTS IN DATA

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance.

(c) When Federal assistance is awarded for experimental, developmental, or research work, the general intention is to increase knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit the Federal agency involved to make available to the public, either the Federal agency's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(13)
ENERGY POLICY AND CONSERVATION ACT

Contractor will comply with mandatory standards and policies relating to energy efficiency which are contained in the Nebraska state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94– 163, 89 Stat. 871.) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(7)
REPORTING REQUIREMENT AND REGULATIONS

Contractor agrees to provide the City, upon request, full and complete reports and/or other information as to the Contractor's operations and conduct under the Contract.

Bid Protests; Definitions; Appeals Board; Fees.

Definitions.

(1) **Interested party** shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the City to another party, or by the failure of the City to award a contract to such actual or prospective bidder.

(2) **Protest** shall mean a written objection by an interested party on any phase of the bidding process, including specification preparation, bid solicitation, and intent to award, for the acquisition of supplies or services.

(3) **Protester** shall mean an interested party who has filed a protest pursuant to subsection (b).

(4) **Procurement Appeals Board** shall mean an independent panel of five disinterested individuals appointed by the Mayor, which individuals shall have a thorough knowledge of the purchasing process and practices, and laws applicable thereto. Members of such board shall be appointed for three-year, staggered terms; provided, however, two of the members first appointed shall serve for a period of one year, two shall serve for a period of two years, and one for a period of three years, with each appointee thereafter, except for appointees filling a vacancy, serving for a period of three years.

(b) Right to Protest. An interested party may protest to the City Purchasing Agent, which protest shall be submitted in writing on company letterhead. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening. In all other cases, the protest must be filed within five working days following the bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest." The written protest shall include as a minimum the following:

(1) The name and address of the interested party;

(2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;

(3) A statement of reasons for the protest;

(4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated. Upon timely receipt of a protest, the City shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract until the Mayor has made a decision on the protest.

(c) Authority to Resolve Protests. Prior to the commencement of an appeal to the Procurement Appeals Board concerning any protest, the Purchasing Agent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review as provided by the Procurement Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately

to the protester and all other bidders. If not satisfied with the decision of the Purchasing Agent, any protester may appeal to the Procurement Appeals Board, but the decision shall be final unless the protester files a timely appeal with the Procurement Appeals Board.

(d) Appeals Board Procedures. Any protester, within five working days of receipt of a decision of the Purchasing Agent, may file with the Finance Director a written notice of appeal for a hearing before the Procurement Appeals Board. The Notice of Appeal shall be accompanied by a deposit of $500.00 to defray the cost of processing such appeal, which deposit shall be returned if the Mayor decides in favor of the protester filing the appeal. The Notice of Appeal must clearly state the action protested and the basis of appeal.

Upon receipt of an appeal from an protester, the Finance Director shall convene the Board within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Board shall decide whether the solicitation being appealed was in accordance with all applicable laws and regulations and the terms and conditions of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the City.

Within ten working days of hearing such appeal, the Board shall submit its findings and recommendations to the Mayor. If all five members are present, an affirmative vote of three shall be required to pass the recommendation on to the Mayor. If only three members are present, only an affirmative vote of two shall be required to pass the recommendation on to the Mayor. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the Mayor without Procurement Appeals Board action.

No determination by the Board concerning an issue of law or fact shall be final or binding on the City.

(e) Finality of Decision. The Mayor shall consider the recommendations of the Purchasing Agent, the Procurement Appeals Board, and the Department Head or agency for which the solicitation was made and shall make the final decision on the protest. The Mayor's decision shall be final and binding upon the City. (Ord. 18495 §1; January 31, 2005: prior Ord. 16442 §1; August 9, 1993).

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(3)
Executive Order 11246
EQUAL EMPLOYMENT OPPORTUNITY

Civil Rights, Equal Employment Opportunity The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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 forms of compensation; and selection for training, including apprenticeship.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(8)
PATENT RIGHTS

Patent Rights - These following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the necessary parties are notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(11)
RETENTION OF RECORDS

Contractor agrees to retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

CITY OF LINCOLN
45 CFR PART 74
APPENDIX A
37 CFR PART 401

Rights to Inventions Made Under a Contract or Agreement

Contractor agrees to comply with 37 CFR Part 401, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts or Cooperative Agreements, and any implementing regulations issued by City of Lincoln. This contract provides for the rights of the Federal Government and City of Lincoln with regard to the performance of experimental, developmental, or research work in any resulting invention as specified under 37 CFR Part 401.

CITY OF LINCOLN
45 CFR PART 92
SECTION 92.36(i)(2)
TERMINATION PROVISIONS

Termination. This Contract may be terminated by the following:

Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.

Termination for Cause. The City may terminate the Contractor for cause if the Contractor:

1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide the services outlined in the Contract

2) Disregards Federal, State or local laws, ordinances, regulations, resolution or orders

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 City 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.