

## SAPA TRANSMISSION GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 "SAPA Transmission" (SAPA) is the entity specified on the Purchase Order (PO).
- 1.2 "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these terms and conditions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- 1.3 "Customer(s)" means any higher tier contractor and/or the U.S. Government
- 1.4 "Party" means SAPA or Seller.
- 1.5 "Parties" means SAPA and Seller.
- 1.6 "SAPA Transmission Procurement Representative or Authorized Representative" means a person authorized by SAPA's cognizant procurement organization to administer and/or execute this Contract.
- 1.7 "Seller" means the party identified on the face of this Contract with whom SAPA is contracting. For the purposes of "Customer Communication" and "Independent Contractor Relationship" provisions only, "Seller" shall also include Seller's agents, representatives, subcontractors, and suppliers at any tier.
- 1.8 "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract means all deliverables, materials, and related labor necessary under the Contract.

### 2. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIOS

- 2.1 Seller's acknowledgment, commencement of performance or acceptance of any payment shall constitute Seller's unqualified acceptance of the Contract.
- 2.2 This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.
- 2.3 Unless expressly accepted in writing by SAPA, additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by SAPA and have no effect.
- 2.4 The headings used in this Contract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

### 3. APPLICABLE LAWS

- 3.1 This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Michigan applicable to agreements entered into and to be performed wholly in Michigan. The Parties hereby consent to the exclusive jurisdiction of the State of Michigan, Courts of Macomb County, Michigan or the United States District Court for the Eastern District, Southern Division, Michigan, and the Parties waive any objection thereto on the basis of personal jurisdiction or venue.
- 3.2 Seller shall comply with all applicable laws, orders, rules, regulations, and ordinances, in particular the FAR/DFARS if applicable. Seller shall procure all licenses and permits and pay all fees and other required charges necessary to conduct its business, all at Seller's expense.
- 3.3 Seller shall be responsible for compliance with all requirements and obligations relating to its employees under all applicable local, state, and federal statutes, ordinances, rules, and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment, labor, or benefits related laws.
- 3.4 Seller certifies compliance that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
- 3.5 Seller represents that each chemical substance constituting or contained in Work sold or otherwise transferred to SAPA hereunder is, as applicable, on the Toxic Substances Control Act (TSCA) Chemical Substances inventory compiled by the United States the Environmental Protection Agency pursuant to TSCA (15 U.S.C. Sec. 2607(b)) as amended and implemented in 40 CFR Part 710; and is designated as "active" pursuant to the TSCA Inventory Notification Rule (codified by amendments to 40 CFR Part 710 effective August 11, 2017).

3.6 Seller shall make available to SAPA all Safety Data Sheets for any material provided to SAPA or brought or delivered to SAPA or its customer's premises in the performance of this Contract as required by applicable law, such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

3.7 Seller represents and warrants that none of its officers, directors, employees, agents, contractors, lower-tier subcontractors, or other related entities will provide to SAPA any information, which the disclosure or receipt of would violate the Procurement Integrity Act, 41 U.S.C. § 423, as currently amended. This includes third party bid or proposal information and source selection information, as defined by the Procurement Integrity Act and the FAR. Additionally, SELLER agrees to put in place effective controls that will ensure information that would violate the Procurement Integrity Act is not shared with SAPA.

3.8 Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act: Seller represents that in accordance with 22 C.F.R. 130, neither Seller nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work which are to be provided to SAPA under any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.

#### **4. ASSIGNMENT**

Any assignment of Seller's contract rights or delegation of duties shall be void unless prior written consent is given by SAPA. A change of control of Seller shall constitute an impermissible assignment. However, Seller may assign rights to be paid amounts due, or to become due, to a financing institution if SAPA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned to an assignee shall be subject to setoffs or recoupment for any present or future claims of SAPA against Seller. SAPA shall have the right to make settlements and/or adjustments in price without notice to the assignee. SAPA may freely assign this contract.

#### **5. CHANGE IN CONTROL OF SELLER**

Prior to a potential change in control of Seller and at least ninety (90) days prior to the proposed effectiveness of such change in control, Seller will promptly notify SAPA in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as SAPA may request, consistent with applicable law and confidentiality restrictions.

#### **6. CONFIDENTIALITY**

6.1 Seller shall protect and keep confidential SAPA's proprietary information, including but not limited to specifications, drawings, computer programs, designs, and other technical information which SAPA protects from public disclosure. SAPA's advance written consent is required prior to Seller's disclosure, public release, or any comment on SAPA's proprietary information, the Contract or its existence generally, or the contents of any terms and conditions in the Contract. The terms of the Contract does not alter any valid nondisclosure or proprietary information agreement between the Parties, which shall apply to any exchange of proprietary or confidential information made under the Contract.

6.2 Seller shall not communicate with SAPA's customer with respect to the Contract unless and to the extent required by law or as specifically directed by SAPA.

#### **7. CONTRACT DIRECTION/CHANGES**

7.1 SAPA Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

7.2 If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, SAPA shall make an equitable adjustment in the Contract price and/or delivery schedule and modify this Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

7.3 Seller must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from SAPA. If Seller's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, SAPA shall have the right to prescribe the manner of disposition of the property.

7.4 Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this clause shall excuse Seller from proceeding without delay in the performance of this Contract as changed.

7.5 Only the SAPA Procurement Representative has authority on behalf of SAPA to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

7.6 SAPA engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under this Contract Direction/Changes clause of this Contract and shall not be the basis for equitable adjustment.

7.7 Except as otherwise provided herein, all notices to be furnished by Seller shall be in writing and sent to the SAPA Procurement Representative.

## 8. COUNTERFEIT WORK

8.1 The following definitions apply to this clause:

"Counterfeit Work" means Work that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used Work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

"Suspect Counterfeit Work" means Work for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Work part is authentic.

8.2 The Seller represents and warrants that only new and authentic materials, and or materials are used in products required to be delivered to SAPA Transmission and that the Work delivered contains no Counterfeit Parts.

8.3 The Seller shall only purchase products to be delivered or incorporated as Work to SAPA directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain, no other material, materiel, part, or component other than a new and authentic part shall be used. Seller may use another source only if (i) the foregoing sources are unavailable, (ii) Seller's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Work, and (iii) Seller obtains the advance written approval of SAPA.

8.4 Seller shall maintain counterfeit risk mitigation processes in accordance with AS5553 and/or AS6174 as a minimum in addition to industry recognized standards and with any other specific requirements identified in this Contract.

8.5 The seller must make available to SAPA Transmission upon request OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM.

8.6 Seller shall immediately notify SAPA with the pertinent facts if Seller becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by SAPA, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM. The seller, at its expense, shall provide reasonable cooperation to SAPA in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.

8.7 If the Seller is providing electronic components/devices only, the following Certification of Origin of Product applies: Acceptance of this Contract constitutes confirmation by the Seller that it is the OEM/OCM, or a franchised or authorized distributor of the OEM/OCM for the product herein procured.

8.8 This clause applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flow down (FAR/DFARS), or other provision included in this Contract addressing the authenticity of Work.

8.9 In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, Seller shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation SAPA's costs of removing Counterfeit Work, of installing replacement Work, Rework costs, Corrective Action process's and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been replaced. The remedies contained in this paragraph are in addition to any remedies SAPA may have at law, equity or under other provisions of this Contract.

8.10 The Seller shall flow the requirements of this Exhibit to its subcontractors and suppliers at any tier for the performance of this Contract. Seller shall notify SAPA Transmission as soon as possible but not later than 7 days of discovery of a Counterfeit Part or Suspect Counterfeit Part that, by any means, has been delivered to SAPA, or acquired for this Contract whether or not it was delivered to SAPA.

## 9. CUSTOMER COMMUNICATION

SAPA shall be solely responsible for all liaison and coordination with the Customer, any higher tier contractor(s), or the U. S. Government, as it affects any applicable prime contract, this Contract, and any related contract. Except as required by law, Seller shall not communicate with the Customer, any higher tier contractor(s), or the U. S. Government, with respect to the applicable prime contract, this Contract, and/or any related contract without prior written approval from the SAPA Procurement Representative. Seller shall promptly notify the SAPA Procurement Representative of any communications initiated by the Customer, any higher tier contractor(s), or the U. S. Government, that affects the applicable Prime Contract, this Contract, and/or any related contract.

## 10. DISPUTES

10.1 All disputes arising from or related to this Contract, which are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity in accordance with subparagraph 11.2 of this provision. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract.

10.2 SAPA and Seller agree to timely notify each other of any claim, dispute or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute or cause of action. To the extent that such negotiations fail, SAPA and Seller

agree that any lawsuit or cause of action that arises from or is related to this contract shall be filed with and litigated only in a court of competent jurisdiction within the State of Michigan; and SAPA and Seller each hereby consent and agree to the personal jurisdiction and venue of any State or Federal Court of competent jurisdiction located within the State of Michigan with respect to any such claim, dispute or cause of action and waive any defense or objection to the exercise of personal jurisdiction and/or venue by any such court.

10.3 To the extent permitted by applicable laws, SAPA and Seller each waive any rights which either may have to trial before a jury of any dispute arising from, or related to, this contract. The Seller and SAPA further stipulate and consent that any such litigation before a court of competent jurisdiction shall be non-jury.

10.4 Seller agrees that, unless otherwise agreed in writing by SAPA and the U.S. Government, and except as may be otherwise provided by law, Seller shall have no recourse directly with the U.S. Government on any dispute, claim, lawsuit or cause of action that arises from or is related to this contract.

## **11. EXPORT CONTROL**

11.1 Seller shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations.

11.2 Seller shall immediately send written notification to SAPA any export classification or limitations that would hinder the use, sale, import, or export, of work, tasks, or deliverables under this Contract due to restrictions imposed by any export control laws or regulations. Seller represents and certifies that it has properly determined the relevant export classification of the deliverable.

11.3 Seller shall not export, re-export, transfer, disclose or otherwise provide or make accessible SAPA's technical data and/or hardware controlled by Trade Control Laws ("Export Controlled Information") to any persons, or entities not authorized to receive or have access to the data, services and/or hardware.

11.4 Seller hereby represents that neither Seller nor any parent, subsidiary, affiliate, employee, or sublicensee or lower tier supplier of Seller (i) are included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists.").

11.5 Seller further represents that it shall immediately notify the SAPA Procurement Representative if Seller's status changes with respect to any of the foregoing.

11.6 In the event of an anticipated change in control of Seller involving a non-U.S. person or entity, Seller shall provide SAPA with notice at least 90 days prior to the effectiveness of such change of control consistent with applicable law and confidentiality restrictions.

11.7 Seller shall flow down export compliance requirements by contract to its suppliers, vendors and subcontractors who support SAPA contracts and orders.

11.8 Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense arising from any act or omission of Seller, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

## **12. HAZARDOUS MATERIALS**

SAPA requires that all items procured through the Contract to be free of the following materials, unless otherwise specified on SAPA's controlled Drawings:

- (1) Asbestos,
- (2) Beryllium,
- (3) Cadmium,
- (4) Class I and Class II Ozone Depleting Substances,
- (5) Hexavalent chromium,
- (6) Lead,
- (7) Mercury,
- (8) Radioactive materials, and
- (9) Group 1 Agents classified as carcinogenic to humans by the International Agency for Research on Cancer (IARC) Monographs shall not be present on any newly designed materials, required for the operation and sustainment of the system, or used in final system manufacture and assembly processes.

## **13. FURNISHED/ADQUIRED/FABRICATED PROPERTY**

13.1 SAPA may provide Seller with property owned by either SAPA or its Customer (Furnished Property) or require Seller to acquire (Acquired Property) and/or to fabricate property (Fabricated Property) specifically for Work under this Contract (collectively All Property). SAPA authorizes Seller to use All Property only for the performance of this Contract, unless authorized in advance, in writing, by the SAPA Procurement Representative.

13.2 Title to All Property shall remain in SAPA or its Customer (as applicable).

13.3 SAPA and Customer Furnished Property is provided in "as-is" condition unless otherwise set forth in this Contract. Except for reasonable wear and tear, Seller shall be responsible for maintaining, managing, preserving, and insuring All Property in accordance with good commercial practice. Seller shall notify SAPA promptly, but within not more than 30 days of any loss or damage to this property. Seller shall support all SAPA or Customer investigations relative to the Loss, Damage or Destruction of this property. At SAPA' sole option, Seller shall immediately replace, reimburse, repair, and/or provide consideration to SAPA for such loss or damage.

13.4 At SAPA's request, and/or upon completion of this Contract, Seller shall submit, in an acceptable form, inventory lists of Furnished/Acquired/Fabricated Property and shall deliver or make such other disposal as may be directed by SAPA.

#### **14. INDEMNITY**

Seller shall defend, indemnify, and hold harmless SAPA, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

#### **15. INDEPENDENT CONTRACTOR RELATIONSHIP**

15.1 Seller's relationship to SAPA shall be that of an independent contractor and this Contract does not create an agency, partnership, or joint venture relationship between SAPA and Seller or SAPA and Seller personnel. Seller personnel engaged in performing Work under this Contract shall be deemed employees of Seller and shall not for any purposes be considered employees or agents of SAPA. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under this Contract. SAPA assumes no liability for Seller personnel.

15.2 Nothing contained in this Contract shall be construed as granting to Seller or any Seller's personnel rights under any SAPA benefit plan. Seller shall provide and maintain all insurance and benefits required by law.

#### **16. INFORMATION**

16.1 Information provided by SAPA to Seller remains the property of SAPA. Seller shall comply with the terms of any proprietary information agreement with SAPA and comply with all proprietary information markings and restrictive legends applied by SAPA to anything provided hereunder to Seller. Seller shall not use any SAPA provided information for any purpose except to perform this Contract and shall not disclose such information to third parties without the prior written consent of SAPA. Seller shall maintain data protection processes and systems sufficient to adequately protect SAPA provided information and comply with any law or regulation applicable to such information.

16.2 If Seller becomes aware of any compromise of information used in the performance of this Contract or provided by SAPA to Seller, its officers, employees, agents, suppliers, or subcontractors (an "Incident"), Seller shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification within seventy-two (72) hours to SAPA after learning of the Incident. As used in this clause, "compromise" means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. Seller shall provide reasonable cooperation to SAPA in conducting any investigation regarding the nature and scope of any Incident.

16.3 Seller will employ appropriate tools and practices to protect SAPA' provided data and advise SAPA within 2 days if a cyber-attack has been detected which may have compromised SAPA' data. Where DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting applies, Seller shall additionally rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and SAPA; this includes providing the incident report number, automatically assigned by DoD, to SAPA as soon as practicable. Seller represents and warrants that it has and will maintain a current (within the past three (3) years) cybersecurity assessment that is compliant with DFARS 252.204-7012, 7019 and 7020 (or 7021 if applicable to the Contract) for any information system that stores, processes, and/or transmits covered defense information. If Seller is unable to make and comply with the above representations, Seller shall not store, process, and/or transmit any covered defense information, and shall notify SAPA immediately.

#### **17. INSPECTION AND ACCEPTANCE**

17.1 SAPA and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

17.2 No such inspection shall relieve Seller of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. SAPA's final inspection and acceptance shall be at destination.

17.3 If Seller delivers non-conforming Work, SAPA may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; (iii) require Seller, at Seller's cost, to make repairs, modifications, or replacements at the direction of SAPA necessary to enable such Work to comply in all respects with Contract requirements.

17.4 Seller shall not re-tender rejected Work without disclosing the corrective action taken.

## 18. INSURANCE

18.1 Seller and its subcontractors shall maintain for the performance of this Contract the following insurances:

- (a) Workmen's Compensation to cover Seller's and subcontractor(s') legal liability on account of accidents to their employees where Work will be performed and Employees' Liability Insurance.
- (b) Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering accidents to their employees.
- (c) Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering legal liability of Seller and the subcontractor(s) on account of accidents arising out of the operations of Seller or the subcontractor(s) and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property.

18.2 At SAPA's request, Seller shall furnish to SAPA certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) business days' prior written notice of cancellation of the coverage.

## 19. INTELLECTUAL PROPERTY

"Intellectual Property" means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Goods, whether oral or recorded in any form or medium and whether or not subject to copyright; this includes but is not limited to any inventions, designs, methods, processes, techniques, know-how, show-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, manuals and any other documents, software, and firmware.

19.1 Intellectual Property developed or otherwise acquired by SAPA or Seller prior to or outside the scope of this contract ("Background Intellectual Property"), shall be owned by the Party that developed or otherwise acquired the Background Intellectual Property and associated rights. Seller agrees that SAPA is the sole owner of any Intellectual Property developed under the scope of this Contract ("Foreground Intellectual Property"), and that Seller shall have no rights except as specifically authorized by SAPA in writing.

19.2 Seller warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the U.S. or any foreign country and is free and clear of all liens, licenses, claims, and encumbrances.

19.3 If an injunction is obtained against SAPA' use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, Seller shall either (i) procure for SAPA and Customer the right to continue using the Work or (ii) replace or modify the Work so it becomes non-infringing. The indemnity and hold harmless provision of this Contract shall not be considered an allowable cost under any provisions of this Contract except with regard to allowable insurance costs.

19.4 In addition to the Government's rights in data and inventions, Seller grants and agrees that SAPA shall have a nonexclusive, worldwide, sub-licensable, irrevocable, paid-up, royalty-free license and right, to enable SAPA to satisfy its contractual obligations to its Customer, to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, publish, distribute, copy, prepare derivatives or compilations, and authorize others to do any, some or all of the foregoing, with respect to any and all, inventions, discoveries, improvements, technology, designs, works of authorship, mask works, patents, copyrights, technical information, data, databases, Software, business information and other information, conceived, developed, generated or delivered in performance of this Contract.

19.5 Seller agrees that any technical data furnished to SAPA as a required deliverable under this Contract shall be free from confidential, proprietary or restrictive markings ("Nonconforming Markings") that are either (i) not expressly permitted by applicable FAR or DFARS clauses incorporated herein or (ii) are violative in rights in ownership of any technical data or computer software owned by SAPA.

19.6 Seller agrees that parts manufactured based on SAPA's drawings and/or specifications may not be used for Seller's own use or sold to third parties without Buyer's express written authorization.

## 20. LIABILITY/INDEMNIFICATION

20.1 Seller shall be liable for all of SAPA' losses, including but not limited to costs, penalties, damages, liabilities, fees, and expenses arising out of or related to Seller's (including its directors, officers, employees, suppliers and subcontractors at any tier) Work and performance of the Contract (Losses).

20.2 Seller's liability for Losses shall be capped at three times the value of any PO that includes the Work related to which the liability arose, except that no cap shall apply to Seller's liability resulting from Seller's violation of law, Seller's infringement, violation or misappropriation of the rights of any third party, a security breach of Seller resulting in SAPA' data being compromised, Seller's provision of counterfeit or inauthentic Work, Seller's provision of Work containing malicious technology, or Third Party Claims (defined below) arising out of or related to the Contract. Seller shall indemnify SAPA, its directors, officers, employees, and agents from and against any and all Losses, resulting from claims, causes of action, settlements and/or litigations (Third Party Claims), regardless of cause, arising out of or related to the Contract. SAPA' rights and remedies in the Contract are cumulative and in addition to any other rights and remedies in law or equity.

20.3 SAPA shall have no liability for any matter arising under or related to the Contract, other than for breach of its payment obligations. In no event shall SAPA, its employees, agents or representatives be liable for any special, incidental, indirect, punitive, or consequential

damages of any kind, or any lost or anticipated profits or unabsorbed indirect costs or overhead, whether such remedy is sought in contract, tort, or otherwise.

## **21. MAINTENANCE OF RECORDS**

21.1 Unless a longer period is specified in this Contract or by law or regulation, Seller shall retain all records related to this Contract for five (5) years from the date of final payment received by Seller. Records related to this Contract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, quality processes and procedures, shipping and export, certifications, and receipt records.

21.2 SAPA and its customer / U.S. Government shall have access to such records, and any other records Seller is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for as long as such records are required to be retained.

## **22. NEW MATERIALS**

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

## **23. PACKING AND SHIPMENT**

23.1 All parts shall be thoroughly inspected for cleanliness prior to packing. Parts requiring washing or cleaning shall undergo the necessary procedures to meet industry standards and customer specifications. After cleaning, parts shall be adequately dried to prevent moisture-related damage during transit. Parts susceptible to corrosion shall be adequately protected using Vapor Corrosion Inhibitor (VCI) paper or equivalent corrosion-resistant materials. Desiccant packs shall be included where necessary to control moisture levels within packaging and prevent moisture-related damage during storage and transit. The type and quantity of VCI paper and desiccant packs utilized shall be determined based on the nature of the parts, duration of transit, and environmental conditions.

23.2 A complete packing list shall be enclosed with all shipments. Seller shall mark containers or packages with necessary lifting, loading, and shipping information, including the SAPA Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

23.3 Unless otherwise specified, delivery shall be in accordance with INCOTERMS 2020 DAP at the place of SAPA identified in the order.

## **24. PAYMENTS, TAXES, AND DUTIES**

24.1 Unless otherwise provided, terms of payment shall be net thirty (30) days from latest of the following: (1) SAPA's receipt of Seller's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work at the final destination.

24.2 Each payment made shall be subject to reduction to the extent of amounts which are found by SAPA or Seller not to have been properly payable and shall also be subject to reduction for overpayments. Seller shall promptly notify SAPA of any such overpayments and remit the amount of the overpayment except as otherwise directed by SAPA.

24.3 SAPA shall have a right of setoff against payments due or at issue under this Contract or any other Contract between the parties.

24.4 Payment shall be deemed to have been made as of the date of mailing SAPA's payment or electronic funds transfer.

24.5 Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

24.6 Seller will provide SAPA with a W-9 Form (Request for Taxpayer Identification Number and Certification) in accordance with IRS regulations. An updated form is required for any Name or address change. If Seller fails to provide a complete and proper W-9 Form, SAPA is required to subject payments to Backup Withholdings.

## **25. PRECEDENCE**

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Mandatory FAR/DFARS flow down clauses as applicable to this Contract, and as modified within the Contract for the purposes of implementation at the Subcontract tier, (2) face of the Purchase Order, release document or schedule, (which shall include continuation sheets), as applicable, to include any special provisions; (3) any master-type agreement (such as corporate, operating group, or blanket agreements); (4) representations and certifications; (5) these terms and conditions; (6) statement of work; and (7) specifications or drawings.

## **26. PRIORITY RATING**

If so identified, this Contract is a "rated order" certified for national defense use, emergency preparedness, and energy program use, and the SELLER shall follow all the requirements of the Defense Priorities and Allocation System (DPAS) Regulation (15 C.F.R. Part 700).

**27. QUALITY CONTROL SYSTEM**

27.1 Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

27.2 Records of all quality control inspection work by Seller shall be kept complete and available to SAPA and its customers.

**28. RELEASE OF INFORMATION**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller or its subcontractors without the prior written approval of SAPA. Seller shall not use "SAPA" "SAPA Transmission, Inc." or any other trademark or logo owned by SAPA, in whatever shape or form, without the prior written consent of SAPA.

**29. STOP WORK ORDER**

29.1 Seller shall stop Work in accordance with the terms of any written notice received from SAPA and Seller shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

29.2 After the issuance of a Stop Work Order, SAPA shall either terminate or continue the Work by written order to Seller. In the event of a continuation, Seller may request an equitable adjustment within twenty (20) days after such continuation, and in accordance with the above "Contract Direction/Changes" provision.

**30. SUPPLEMENTAL TERMS AND CONDITIONS**

The following supplemental terms and conditions are hereby incorporated by reference and shall also apply to this Contract: SAPA TRANSMISSION FAR & DFARS FLOWDOWN PROVISIONS FOR SUBCONTRACTS OR PURCHASE ORDERS UNDER A US DEPARTMENT OF DEFENSE PRIME CONTRACT.

**31. TERMINATION FOR CONVENIENCE**

30.1 SAPA reserves the right to terminate this Contract, or any part hereof, for its convenience. SAPA shall terminate by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, Seller shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges Seller can demonstrate to the satisfaction of SAPA using its standard record keeping system have resulted from the termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

30.2 In no event shall SAPA be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

30.3 If SAPA notifies Seller in writing that the termination of this Contract pursuant to this section was directed by the U.S. Government or that SAPA's prime contract with the U.S. Government has been terminated, termination of this Contract will be in accordance the procedures set forth in FAR 52.249-2 (or FAR 52.249-6 for Cost Reimbursable Work only), which clause is incorporated herein by this reference. Furthermore, "Government" means "SAPA and the Government" and "Contracting Officer" means "SAPA or the "Contracting Officer." (In paragraph (c) "120 days" is changed to "60 days." In paragraph (d) "15 days" is changed to "30 days," and "45 days" is changed to "60 days." In paragraph (e) "1 year" is changed to "6 months." In paragraph (l) "90 days" is changed to "45 days."). Settlements and payments under this clause may be subject to the approval of the Contracting Officer. In the event that SAPA terminates this Contract pursuant to Government direction, SELLER's recovery of termination costs shall be limited to the extent that SAPA is able to recover such costs from the Government.

30.4 Seller shall continue all Work not terminated.

**32. TERMINATION FOR DEFAULT**

32.1 SAPA, by written notice, may terminate this Contract for default, in whole or in part, if Seller (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. Seller shall have ten (10) days (or such longer period as SAPA may authorize in writing) to cure any such failure after receipt of notice from SAPA. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

32.2 Following a termination for default of this Contract, Seller shall be compensated only for Work actually delivered and accepted. SAPA may require Seller to deliver to SAPA any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. Payment for completed Goods delivered to and accepted



by Buyer shall be at the Contract price. Payment for partially completed Goods, work in progress, or Manufacturing Materials delivered to and accepted by Buyer shall be in an amount agreed to by Buyer and Seller.

32.3 Upon the occurrence and during the continuation of a default, SAPA may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that Seller was not in default, such termination shall be deemed a termination for convenience.

32.4 If SAPA notifies Seller in writing that the termination of this Contract pursuant to this section was directed by the U.S. Government or that SAPA's prime contract with the U.S. Government has been terminated, termination of this Contract will be in accordance with applicable provisions of FAR Part 49 including Subpart 49.4, which shall be incorporated herein by reference.

32.5 Seller shall continue all Work not terminated or cancelled.

### **33. TIMELY PERFORMANCE. LIQUIDATED DAMAGES**

33.1 Seller's timely performance is a critical element of this Contract.

33.2 Unless advance shipment has been authorized in writing by SAPA, SAPA may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

33.3 Seller shall provide SAPA status of performance of this Contract when requested. In addition, if Seller becomes aware of an impending labor dispute involving Seller or any lower tier subcontractor, or any other difficulty in performing the Work, Seller shall timely notify SAPA, in writing, giving pertinent details. These notifications shall not change any delivery schedule.

33.4 Should Seller fail to make delivery of any Work in accordance with the delivery schedule, then SAPA shall be entitled to receive, and Seller shall pay, compensation in the form of liquidated damages and not as a penalty. Seller shall pay liquidated damages accruing at the rate of one and one percent (1%) of the price of the Work subject to delay for each day of delay beginning on the tenth day after the scheduled delivery date. The liquidated damages charged shall not exceed twenty percent (20%) of the price of the late Work.

33.5 In no event shall failure to assess liquidated damages be considered a waiver of SAPA's rights in this or any other articles or clauses. Except for the non-performance of subcontractors at any tier, Seller shall not be liable for liquidated damages if the failure to deliver Work on time arises from causes beyond the control and without the fault or negligence of Seller.

33.6 In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by SAPA.

### **34. WARRANTY OF WORK**

Seller warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, Seller, at SAPA's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and reperformance of Work shall be at Seller's expense. If repair, or replacement, or reperformance of Work is not timely, SAPA may elect to return, reperform, repair, replace, or reprocur the non-conforming Work at Seller's expense. All warranties shall run to SAPA and its customers.

### **35. WORK ON SAPA AND THIRD-PARTY PREMISES**

"Premises" as used in this clause means premises of SAPA, its customers, or other third parties where Work is being performed.

35.1 Seller shall ensure that Seller personnel working on Premises comply with all on-premises policies and conduct requirements and: (i) do not possess hazardous materials of any kind on Premises without SAPA's authorization; (ii) remain in authorized areas only; (iii) do not conduct any non-SAPA related business activities (iv) follow instruction from SAPA in the event of a security, safety or environmental hazard on Premises.

35.2 All persons, property, and vehicles entering or leaving Premises are subject to search.

35.3 Seller shall promptly notify SAPA and provide a report of any accidents or security incidents involving loss of or misuse or damage to SAPA, customer, or third party intellectual or physical assets, and all physical altercations, assaults, or harassment.

35.4 Prior to entry on Premises, Seller shall coordinate with SAPA Security Department to gain access. Seller shall provide information reasonably required by SAPA to ensure proper identification of personnel.

35.5 Seller shall ensure that Seller personnel: (i) do not remove SAPA, customer, or third-party assets from Premises without SAPA authorization; (ii) use SAPA, customer, or third party assets only for purposes of this Contract; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines authorized by SAPA; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. SAPA may periodically audit Seller's data residing on SAPA, customer, or third-party assets on Premises.

35.6 SAPA may, at its sole discretion, have Seller remove any specified employee of Seller from Premises and require that such employee not be reassigned to any Premises under this Contract.

35.7 Violation of this clause may result in termination of this Contract in addition to any other remedy available to SAPA at law or in equity. Seller shall reimburse SAPA, customer, or third party for any unauthorized use of SAPA, customer, or third-party assets.

35.8 Seller shall advise the SAPA Procurement Representative of any unauthorized direction or course of conduct.

35.9 Seller shall immediately report to SAPA all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) affecting the Work.

### **36. FINAL GENERAL CLAUSES**

36.1 Gratuities/Kickbacks: No gratuities (in the form of entertainment, gifts or otherwise) or kickbacks shall be offered or given by Seller, or anyone acting on Seller's behalf, to any employee of SAPA with a view toward securing favorable treatment as a supplier.

36.2 Entire Agreement: The Contract is the entire agreement of the Parties and supersedes all other discussions or agreements on this subject. SAPA expressly rejects any additional or different terms proposed by Seller. Amendments or changes to the Contract shall be in writing and must reference the Contract and be signed by each Party's Procurement Representative. Nothing in these Terms and Conditions amends or supersedes any master agreement, long term supply agreement, proprietary information agreement or indemnity agreement between the Parties.

36.5 Severability: In the event any provision or clause of the Contract conflicts with governing law or is held invalid by a court of competent jurisdiction, the provision or clause shall be deemed to be modified to reflect as nearly as possible the Parties' intent. The remainder of the Contract shall remain in full force and effect.

36.6 Survival: If the Contract expires or is terminated, Seller shall not be relieved of the obligations contained in (1) U.S. Government Flow Downs (Supplemental Terms and Conditions); (2) the following Sections: Definitions, Counterfeit work, Independent contractor relationship, Disputes, Export Control, Information, Intellectual property, Maintenance of records, Warranty of Work, Confidentiality, Liability/Indemnification, Insurance and General Clauses; (3) any obligation arising out of termination or expiration; and (4) any Exhibits attached hereto.

36.7 Waiver: failure by either party to enforce any provision(s) of the Contract or applicable law shall not be construed as a waiver of the requirement or a waiver of the right to enforce each and every such provision(s) or law.

36.8 Place of Performance: If Seller intends to change the place of performance of Work under this Contract from the place(s) identified in Seller's proposal, Seller shall provide written notice to SAPA. Notification of changes to the place of performance from within the United States to a location outside the United States shall be provided by Seller to SAPA at least six (6) months in advance.