
NON-DISCLOSURE AGREEMENT

BETWEEN

SAPA Transmission Inc., having an office and place of business at 51901 Shelby Parkway, Shelby Township, MI 48315, hereinafter called "SAPA".

AND

COMPANY NAME, a company incorporated under the laws of **STATE - COUNTRY** whose registered office is situated at **ADDRESS**, hereinafter called "**COMPANY SHORT NAME**".

The companies above being referred to in this Agreement individually as "Party" and collectively as "Parties".

WHEREAS

- A. The Parties wish to disclose and receive from the other party, certain competition-sensitive information of a proprietary and confidential nature for the purpose of developing a possible collaboration between them relating to (**PROJECT/S NAME**) (the "Project").
- B. The Parties may, in the course of their discussions, disclose proprietary and/or confidential information.
- C. The Parties wish to establish rules governing the disclosure, use and protection of such information.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1. **Proprietary Information.** As used in this Agreement, "Proprietary Information" shall mean any and all information and data, samples, manufacturing processes, formula(s), methods, know-how, test results, trade secrets, software, business information, manufacturing specifications, sketches, designs, drawings and any other documents, ideas or reports (or copies, extracts, or translations thereof) whether oral, written, or stored in electronic or other recordable media or which can be obtained by examination, testing, visual inspection or analysis of any material, equipment, product, spare part, hardware or component part thereof as well as machine or human readable code.

For avoidance of doubt "Proprietary Information" also includes analyses, compilations, studies and other material prepared by or in the possession or control of the Recipient (as defined below) which contain or otherwise reflect or are generated from any such information as is specified in this definition.

- "Discloser" means the Party who discloses Proprietary Information.
- "Recipient" means the Party who receives and/or obtains Proprietary Information.

2. **Relationship of Parties:** Nothing in this Agreement may be construed as compelling either Party hereto to disclose or make available any Proprietary Information to the other Party, or to enter into any further contractual relationships.

3. **Protection and Handling of Proprietary Information.** The Recipient hereby undertakes that the Proprietary Information received from the Discloser shall:

- i) be protected and kept in strict confidence by Recipient which must use the same degree of care as it uses to protect its own Proprietary Information of like importance, but in no case any less than a reasonable degree of care;
- ii) be only disclosed to and used by those persons within the Recipient's organization who have a specific need to know the Proprietary Information, yet party(ies) agree to not use directly or indirectly, any of the disclosing Party Proprietary Information for the Receiving Party benefit for any other person or entity except for the mutual benefit of the parties hereto in furtherance of this purpose;
- iii) not be used in whole or in part for any purpose other than the Project without the prior written consent of the Discloser;
- iv) neither be disclosed nor caused to be disclosed whether directly or indirectly to any third party or persons other than those agreed by the Parties;
- v) neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorized in writing by the Discloser. Receiving Party shall not reverse engineer, reverse assemble or decompile the Disclosing Party's

Proprietary Information or any tangible items that incorporate the Disclosing Party's Proprietary Information;

The Recipient agrees to assume responsibility for the actions of such of its executives and employees who may have access to Proprietary Information, and agrees to make known to such of its executives and employees to whom Proprietary Information may be disclosed, the conditions of this Agreement and to procure that they undertake to be bound thereby.

4. **Return or Destroy.** Any Proprietary Information and copies thereof disclosed by either Party to the other Party shall, subject to any third parties' rights, remain the property of the Discloser and shall be returned or destroyed (including all copies, documents, memoranda, notes and other materials of the Recipient which contain Proprietary Information) by the Recipient immediately upon request. In the case of destruction, the Recipient shall provide a written certificate to the Discloser that such destruction has taken place, if the Discloser so requests.
5. **Exceptions to Duty.** The restrictions contained in article 4 above shall not apply with respect to any Proprietary Information which the Recipient may prove that it:
 - i) has come into the public domain prior to or after the disclosure thereof and in such case through no fault of the Recipient; or
 - ii) is already known to the Recipient, as evidenced by written documentation in the files of the Recipient; or
 - iii) has been received from a third party without fault by that third party; or
 - iv) is independently developed in good faith by employees of the Recipient who did not have access to the Proprietary Information;
 - v) its disclosure has been approved by written authorization of the Discloser; or
 - vi) information was required to be released pursuant to applicable law, governmental regulation, legal order, notice, subpoena, investigative demand or similar directive provided that the Recipient first, to the extent permitted by law, gives the Discloser sufficient notice to provide it with a reasonable opportunity to seek injunctive or other similar equitable relief to prevent disclosure or to obtain a protective order to govern such disclosure.
 - vii) The fact that individual elements of a Disclosing Party's Proprietary Information may be in the public domain shall not relieve the Receiving Party of its obligations under this Agreement unless the specific combination or combinations of elements as disclosed in the Proprietary Information is available to the public.
6. **Restrictions on Export.** The Proprietary Data, in whatever form or medium disclosed, may contain technical data or articles controlled by U.S. Export Regulations (the International Traffic in Arms Regulations (ITAR), 22 C.F.R. parts 120 - 130 and the Export Administration Regulations (EAR), 15 C.F.R. parts 730 – 774). All such data are subject to the export controls of the U.S. Government; and may not be

further transferred by any means to a foreign person [a non-U.S. Person], whether in or outside of the U.S., without an export license, exemption, license exception or other prior written authorization from the applicable U.S. Government agency.

7. **No Rights or License.** No right in, or license under any present, or future idea, invention, patent, trade secret, Proprietary Information, copyright, mask work, trade name or trademark is either offered or granted under this Agreement, nor may any such right or license be implied by the disclosure or receipt of any information or data herein.
8. **Term and Termination.** This Agreement may be terminated at any time by either Party on thirty (30) days prior written notice to the other Party. In any event, this Agreement shall expire five (5) years from the date of its signature by the Parties hereto.
9. **Period of Protection.** The obligations of confidentiality contained in article 4 above shall survive for a period of ten (10) years from the date of signature of this Agreement.
10. **No Warranty or Liability.** To the extent permitted by law, the Parties make no representation, warranty or condition and accept no liability in respect of the accuracy or completeness of any or all of the Proprietary Data and shall have no liability for the receiving Party's use of the Proprietary Data or for any claims of third parties howsoever arising from the receiving Party's use or possession of any Proprietary Data or as a result of the receiving Party's reliance on any Proprietary Data as disclosed or modified by the disclosing Party. THERE ARE NO OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE OR USE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE, WHICH ARE EXPRESSLY DISCLAIMED.
11. **Entirety.** This Agreement contains the entire agreement relative to the matters provided herein and supersedes any prior or collateral understandings between the Parties. If any provision of this Agreement is held to be invalid or unenforceable, such finding shall not affect the validity or enforceability of the remaining provisions. No modification to any provision of this Agreement shall be effective unless it is in writing and signed by all Parties.
12. **Cybersecurity:** Each Party represents and agrees that it (i) complies with Defense Federal Acquisition Regulation Supplement (DFARS) 252.204-7012, "Safeguarding Covered Defense Information and Cyber Incident Reporting", Federal Acquisition Regulation (FAR) 52.204-21, "Basic Safeguarding of Covered Contractor Information Systems", and DFARS 252.204-7020 "NIST SP 800-171 DoD Assessment Requirements; and shall: (ii) continue to comply with DFARS 252.204-7012, FAR 52.204-21, and DFARS 252.204-7020 (hereinafter, "DFARS" or "FAR", respectively); (iii) report any cyber incident discovered as required by the DFARS; and (iv) notify the other Party immediately in the event that it is not compliant with either the DFARS or FAR. Additionally, each Party agrees that all Covered Defense Information (CDI) as defined by the DFARS, received from the other Party shall be returned, at its expense, immediately via

first-class mail upon the Recipient becoming non-compliant with either the DFARS or FAR. Notwithstanding early termination of this Agreement due to the Recipient becoming non-compliant with the DFARS or FAR, or the return of CDI, the obligations to protect and not disclose received Proprietary Information/Data and CDI continues through the Period of Protection for all Parties. The Parties acknowledge and agree that the return of CDI required under this Section 15 does not apply to an electronic backup tape copy of CDI that is created by a Supplier Party's standard technology backup processes.

13. **Fees or Expenses**: Nothing in this Agreement requires the payment of fees nor reimbursement of expenses. If such payment and/or reimbursement is required for any activity, the terms and conditions thereof shall be mutually agreed upon between the Parties at the time by a separate written agreement.
14. **Controlling Law & Venue**: This Agreement and all disputes between the Parties shall be governed by and interpreted in accordance with the internal laws of Michigan. For all litigation of disputes or controversies which may arise between the Parties, the Parties consent to the exclusive jurisdiction of the courts of Detroit, and agree that any and all such disputes and controversies shall be determined exclusively by one of such courts.
15. **Assignment**: Neither Party shall have the right to assign or transfer any or all of its rights and obligations under this Agreement to any third party without the prior written agreement of the other Party.
16. **Waiver**: No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
17. **Remedies**: The Parties agree that in the event that either Party breaches any provision hereof such breach may cause the other Party irreparable harm and the innocent Party may be entitled to seek injunctive and/or other equitable relief before any court with proper jurisdiction.
18. **Notice**: Notices shall be sent to the attention of the signatories hereof at the above-mentioned addresses, which may be changed by written notice.

[Signature page to follow]

MADE IN DUPLICATE ON (...)

SAPA TRANSMISSION, INC.

By: _____ Date: mm/dd/yyyy
NAME and TITLE

COMPANY NAME

By: _____ Date: mm/dd/yyyy
NAME and TITLE

