

**PROGRAM ADMINISTRATION AND SUPPORT AGREEMENT**

**THIS AGREEMENT** is between **RURAL MUNICIPALITIES OF ALBERTA**, a corporation incorporated pursuant to the laws of Alberta (“RMA”) and:

Vendor Legal Name UAP Inc. dba NAPA Auto Parts  
Vendor Corporate Jurisdiction 7025 Ontario Street East, Montreal QC, H1N 2B3  
(the “Vendor”), as of  
Date of Agreement November 12, 2020 regarding  
RFP No RMA-2020-003  
RFP Title Automotive Parts Program  
(the “RFP”).

**BACKGROUND**

- A. RMA is a public agency serving as a national municipal contracting agency for its Members, and in that capacity issued the RFP for the purchase of goods and/or services.
- B. The Vendor is engaged in the business of selling some or all of those goods and/or services, and responded to the RFP.
- C. RMA wishes to enter into an agreement with the Vendor for the purchase of goods and/or services by Members, pursuant to a purchase program administered by RMA.
- D. The Parties wish to set out the terms and conditions upon which those purchases will occur, and under which the purchase program will be administered.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein contained and of other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each Party), the Parties hereby agree as follows:

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## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement the following terms have the corresponding meanings.

**“Administrative Fee”** means the fee paid by the Vendor to RMA as described in Schedule A (Program Details).

**“Agreement”** means this Program Administration and Support Agreement and all schedules attached hereto, as the same may be supplemented, amended, restated or replaced from time to time in writing in accordance with its terms.

**“Business Day”** means Monday to Friday between the hours of 9:00 a.m. to 4:30 p.m. local time in Nisku, Alberta, except when such a day is a public holiday, as defined in the *Employment Standards Code*, R.S.A. 2000, Chapter E-9, or as otherwise agreed to by the parties in writing.

**“Change Request Form”** means the form set out in Schedule E (Change Request Form).

**“Confidential Information”** means all tangible and intangible information and materials, in any form or medium, received (directly or indirectly) by the Receiving Party from the Disclosing Party, or collected by the Receiving Party on behalf of the Disclosing Party, in connection with the Program that is:

- (a) related to the Disclosing Party’s, or any of its affiliates’, finances, assets, pricing, purchases, products, sales, business or operational plans, strategies, forecasts or forecast assumptions, operations, stakeholders, clients and personnel (including, without limitation, the Personal Information of officers, directors, employees, agents and other individuals), trade secrets, intellectual property, technology, data or other information that reveal the research, technology, processes, methodologies, know how, or other systems or controls by which the Disclosing Party’s existing or future products, services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
- (b) designated as confidential in writing by the Disclosing Party, whether by letter or an appropriate stamp or legend, prior to or at the time such information is disclosed by the Disclosing Party to the Receiving Party; and/or
- (c) apparent to a reasonable person, familiar with the Disclosing Party’s operations, business and the sector in which it operates, to be of a confidential nature.

and without regard to whether that information and materials are owned by a Party or by a third party. Confidential Information does not include:

- (d) information that is in the public domain or has come into the public domain other than by reason of a breach of this Agreement; or

- (e) information that has been, or is hereafter, received by that Receiving Party other than from or at the request of the Disclosing Party, and other than during or as a result of carrying out the Program.

**“Confidential Material”** means any notes or other documents relating to the Confidential Information.

**“Conflict of Interest”** means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Vendor (including its directors, officers, employees, agents or subcontractors) other commitments, relationships or financial interests could or could be seen to (i) exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement.

**“Disclosing Party”** means, in connection with particular Confidential Information, the Party that disclosed (directly or indirectly) the Confidential Information to the other Party, or the Party on whose behalf the other Party collected or generated the Confidential Information.

**“Effective Date”** means the date of this Agreement first noted above.

**“Event of Force Majeure”** means any cause beyond the reasonable control of a Party, including any act of God, outbreak, or epidemic of any kind, communicable and virulent disease, strike, flood, fire, embargo, boycott, act of terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental order, unavoidable accident, or shortage of labour or raw materials.

**“FOIPPA”** means the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, Chapter F-25, as amended or superseded.

**“Goods/Services”** means the goods and/or services identified in Schedule A (Program Details).

**“Governmental Authority”** means any government, regulatory authority, commission, bureau, official, minister, court, board, tribunal, or dispute settlement panel or other law, rule, or regulation-making organization or entity having or purporting to have jurisdiction to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power.

**“Member”** means any current and future members of RMA during the Term, and any RMA-represented associations and their current and future members during the Term. RMA may also be considered a Member in its capacity as a purchaser of Goods/Services. In addition, to be a Member for the purposes of this Agreement, the Member must operate within the Territory during the Term. See <https://rmaalberta.com/wp-content/uploads/2020/06/Provincial-Associations-Public-Sector-Agencies-2020-1.xlsx> for a general list of Members.

**“Parties”** means both RMA and Vendor collectively, and **“Party”** means either one of them.

**“Person”** shall be broadly interpreted and includes any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, corporation, with or without share capital, unincorporated association, trust, trustee, or other legal representative, Governmental Authority and any entity recognized by law.

**“Personal Information”** has the meaning ascribed to it in FOIPPA.

**“Program”** means the discounted price program designed by the Vendor for the purchase of Goods/Services by Members.

**“Program Pricing”** means the discounted pricing offered to Members as set out in the Proposal, unless other pricing is specifically agreed to by RMA prior to the execution of this Agreement, or unless that pricing is amended via a Change Order Form submitted by the Vendor and approved by RMA according to this Agreement.

**“Purchase Agreement”** means the agreement between Vendor and a Member for the purchase of Goods/Services in accordance with this Agreement.

**“Receiving Party”** means, in connection with particular Confidential Information, the Party that received (directly or indirectly) the Confidential Information from the other Party, or the Party that collected or generated the Confidential Information on behalf of the other Party.

**“Term”** means the term of this Agreement, as set out in Section 8.1.

**“Territory”** means the provinces or regions identified in the Goods/Services Schedule A (Program Details).

**“Trade-marks”** means the trade-marks, logos, designs and other indicia used to identify and distinguish a Party and its goods or services in Canada and elsewhere, whether these are registered or not, which are set out in Schedule D (Trade-marks).

## **1.2 Rules of Interpretation**

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning.

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- (b) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (c) The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (d) "Hereof", "hereto" and "hereunder" and similar expressions mean and refer to this Agreement and not to any particular section or paragraph. References herein to "Article", "Section", or "Schedule" refer to the applicable article, section or schedule of this Agreement.
- (e) If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

### **1.3 Schedules**

The following Schedules are incorporated by reference into and form part of this Agreement:

Schedule A	Program Details
Schedule B	Proposal
Schedule C	RFP
Schedule D	Trade-marks
Schedule E	Change Request Form

### **1.4 Order of Priority**

In the event of any conflict or inconsistency between any of the Articles of this Agreement and the Schedules to this Agreement, that conflict or inconsistency shall be resolved in the following (descending) order of priority:

- (a) Article 1 to Article 11 of this Agreement, including Exhibits A & B;
- (b) Schedule A (Program Details);
- (c) Schedule C (RFP); and
- (d) Schedule B (Proposal);

provided that Schedule A (Program Details) will supersede Article 1 to Article 11 of this Agreement if it expressly references the specific section or Article of this Agreement that it intends to supersede.

**ARTICLE 2**  
**PROGRAM ADMINISTRATION AND SUPPORT**

**2.1 Program Details**

- (a) The Parties agree that RMA administers the Automotive Parts Program as set out in this Agreement. Through the Program, Members have the option to purchase from the Vendor, and Vendor agrees to supply to Members, the Goods/Services at Program Pricing.
- (b) Members who wish to purchase Goods/Services as part of the Program will be required to enter into a separate Purchase Agreement with the Vendor. The terms of that Purchase Agreement shall not conflict with any provision of this Agreement.
- (c) The Parties agree that Vendor is an independent supplier and is not the agent or partner of RMA. Nothing contained in this Agreement shall create or be deemed to create the relationship of joint venture, partnership, or agency between the Parties. Neither Party shall represent itself as the joint venture, partner or agent of the other. The Vendor has no authority to bind RMA and will not represent itself as having that authority.

**2.2 Responsibilities of the Vendor**

- (a) The Vendor will facilitate and administer the marketing and sales aspects of the Program as outlined in this Agreement – including Schedule A (Program Details), the Proposal and the RFP.
- (b) The Vendor will execute the marketing plan set out in Schedule A (Program Details) and its Proposal and will refine that plan over the course of the Term, and as reasonably requested by RMA.
- (c) The Vendor will provide prompt cooperation to RMA and its representatives to ensure that the Program is effective and responsive to Members.
- (d) The Vendor will manage the transition of Members into the Program and will take commercially reasonable efforts to ensure a prompt and seamless transition.
- (e) During the Term, the Vendor will continually provide Members with the Program Pricing for all Goods/Services.
- (f) The Vendor will ensure that its Program Pricing is uploaded in the e-commerce system PROLink for Member access.
- (g) The Vendor will communicate directly with Members regarding low stock levels, major discounts, and other time sensitive subject matter.
- (h) The Vendor will inform RMA of important developments within the industry that affect the Program or the Goods/Services.

- (i) The Vendor will maintain the insurance required under Schedule A (Program Details) at all times during the Term.

### **2.3 Responsibilities of RMA**

- (a) RMA will facilitate and administer the financial and payment aspects of the Automotive Parts Program as outlined in this Agreement – including Schedule A (Program Details), the Proposal and the RFP.
- (b) RMA will act as a liaison between the Vendor and the Members, to help facilitate obtaining any information required in relation to the Program. RMA will support the Vendor's Program marketing efforts by making information about the Program available to its Members.

### **2.4 Program Leads**

- (a) RMA and Vendor will each designate a representative from its organization with the authority and competence to coordinate and manage its contributions to the Program on such Party's behalf (each a "Program Lead").
- (b) Once each quarter, or as otherwise reasonably requested by either Party, the Program Leads shall formally review the progress of the Program including any problems, concerns, results and any other information material to the progress and success of the Program. Such review shall occur by teleconference at a time mutually agreeable to the Program Leads.

### **2.5 No Guaranteed Volumes**

RMA makes no guarantee of the value or volume of purchases of Goods/Services by Members under the Program.

### **2.6 Exclusivity**

RMA makes no assurances that Members will exclusively purchase Goods/Services from the Vendor. Members are not bound to purchase Goods/Services through the Program and may contract with others for the same or similar goods or services.

### **2.7 Conflict of Interest**

- (a) The Vendor shall take reasonable measures to ensure that its directors and officers involved in the Program promptly disclose to it any actual or reasonably suspected Conflict of Interest in connection with the Program. The Parties shall cooperate in determining whether a Conflict of Interest exists and how it will be addressed or avoided, and provided that if the Conflict of Interest cannot be resolved to RMA's satisfaction, acting reasonably, RMA may deem the Conflict of Interest to be a material breach of this Agreement by the Vendor.

**ARTICLE 3  
FINANCIAL MATTERS**

**3.1 Pricing Commitment and Adjustment**

- (a) Generally, Program Pricing and discounts are fixed for the Term. However, if the Vendor wishes to adjust Program Pricing and discounts, the Vendor must provide RMA with at least 30 days prior written notice to request any increase or decrease in program pricing using the Change Request Form. To ensure timely consideration of the request, the Vendor must comply with the instructions set out in the Change Request Form.
- (b) RMA shall consider all duly completed Change Request Forms and shall notify the Vendor of whether the Program Pricing (or other change) is acceptable or not within 20 days of receipt of the Change Request Form. RMA shall not unreasonably withhold its approval to any requested change – provided that RMA may refuse any change in Program Pricing prior to the first anniversary of the Effective Date for any reason or without giving any reason.
- (c) Vendor pricing and discount commitment offers a discount range between 0.25% and 73.42% for Members available through the Automotive Parts Program where a discount applies, per the table found in *Exhibit A - NAPA Auto Parts (UAP Inc.) Product and Discount Offering*.

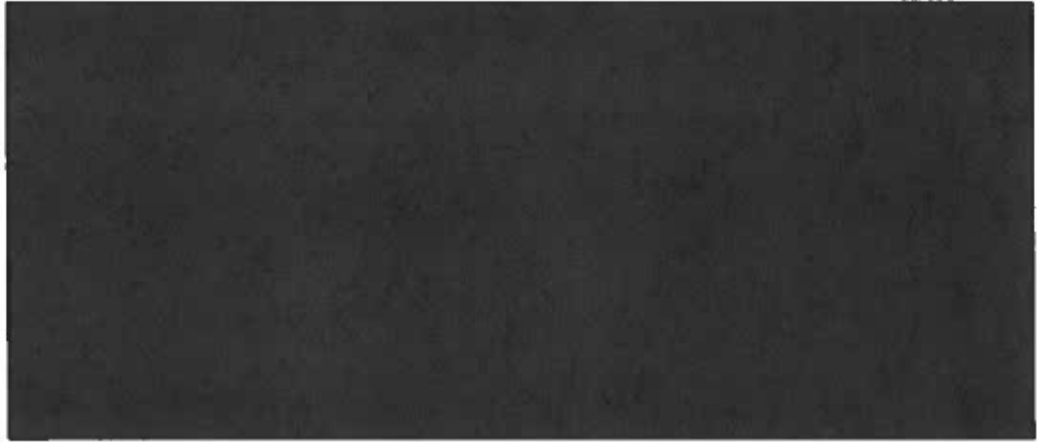
**3.2 Administrative Fees**

- (a) In consideration of RMA’s contributions to the Program, the Vendor agrees to pay to RMA the Administrative Fee.
- (b) The Administrative Fee will be paid to RMA by the Vendor as set out in Schedule A (Program Details) – provided that any Member purchases of Goods/Services that deviate from the approach set out in that Schedule will not release the Vendor from paying the corresponding Administrative Fee for such purchases (for example, if the Administrative Fee is to be paid on sales billed to RMA, the Vendor will still pay the Administrative Fee for any sales paid directly to the Vendor by the Member).

(c) 

(d) 





(c)



(f)



(g)



**3.3 Vendor Expenses**

- (a) If previously agreed to in writing by RMA, RMA will reimburse the Vendor for legitimate and reasonable business expenses, upon invoice with proper proof of the expense having been incurred by the Vendor in performance of its activities under the Program.

**3.4 Billings and Payment**

- (a) All invoices regarding Member purchases of Goods/Services and all payments to Vendor in satisfaction of those invoices are processed through the Vendor.
- (b) All invoices must include:

- (i) a 'Bill To' section to the Member's address;
- (ii) a 'Ship To' section that includes the Member name, address, and Member number; and
- (iii) for each type of Goods/Services purchased by the Member:
  - (A) detailed description of what was purchased;
  - (B) quantities, unit price, and extended price (these prices shall include any Administrative Fee based on Section 3.2(a)); and
  - (C) GST, PST, and/or HST number (stated separately).
- (c) Invoices should not include:
  - (i) any statement of an Administrative Fee, commission or discount rate; or
  - (ii) any statement that indicates a reduced amount for paying an invoice within a certain time frame.
- (d) To the extent RMA or any Member requests reasonable supporting documentation regarding invoiced amounts, the Vendor shall promptly provide it and the period to pay that invoice shall be extended by the time period between the Vendor's receipt of that request and the delivery of the relevant supporting documentation to RMA.
- (e) The Vendor shall ensure that any person ordering on behalf of a Member provides the Vendor with that Member's RMA member number for electronic entry on the invoice.

### **3.5 Financial Reporting and Record-keeping**

- (a) The Vendor shall provide the reports described in Schedule A (Program Details).
- (b) The Vendor shall keep and maintain sufficient records in connection with the Program to substantiate that it has performed its obligations hereunder, including as they relate to the payment of the Administrative Fee.
- (c) In addition to Vendor reporting for the Automotive Parts Program as a collective, the Vendor must be able to provide segmented reporting based on individual provinces and their respective associations.
- (d) RMA, its authorized representatives or an independent auditor identified by RMA may, at RMA's expense, upon reasonable prior notice to the Vendor, review or audit the Vendor's records regarding the Vendor's performance of its obligations hereunder. The Vendor shall provide reasonable cooperation in connection with the foregoing, and shall disclose or grant reasonable access to any information requested by RMA, its authorized representatives or an independent auditor in connection with the Program or this Agreement.

## **ARTICLE 4 TRADE-MARKS**

### **4.1 Trade-mark License and Branding**

Each Party acknowledges that certain aspects of the Program may be co-branded, such that the name and certain trade-marks of both Parties are used by both Parties in materials prepared in connection with the Program. Each Party agrees that:

- (a) it is the sole owner of all right, title, and interest in and to its Trade-marks;
- (b) any use of the other Party's Trade-marks enures solely to the benefit of that Party and neither Party acquires any rights in the other Party's Trade-marks as a result of such use;
- (c) it shall maintain and exercise control over the character and quality of the use of its Trade-marks as used in association with the Program; and
- (d) whenever it uses the other Party's Trade-marks in accordance with this Agreement, it shall (i) use such Trade-marks strictly in accordance with that other Party's standards of quality and specifications for appearance and style as may be supplied by that Party from time to time; (ii) use such Trade-marks only in the manner and form approved by that Party; (iii) clearly identify the use of the Trade-marks as a licenced use and identify the other Party as the owner of the Trade-marks, in any manner specified by the other Party from time to time; and (iv) not alter, modify, dilute or otherwise misuse the Trade-marks.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

### **5.1 Representations by Each Party**

Each Party represents and warrants to the other that:

- (a) it has the authority to enter into this Agreement and carry out its obligations hereunder, and doing so will not result in a violation by it of any law or any rule, judgment, order, decree or similar act of any Governmental Authority;
- (b) this Agreement has been duly executed by it; and
- (c) it has not granted and shall not grant any rights or licenses and has not entered into and shall not enter into any agreement, either written or oral, that would conflict with this Agreement or the Program.

### **5.2 Representations by the Vendor**

Vendor represents and warrants that:

- (a) it is properly qualified, licensed, equipped, and financed to provide the Program and perform its obligations under this Agreement and any Purchase Agreement;
- (b) if the Vendor is a manufacturer or wholesale distributor, Vendor has a documented relationship with a suitable dealer network where that dealer network is informed of, and authorized to accept, purchase orders pursuant to any Purchase Agreement on behalf of the Vendor – and any such dealer will be considered a subcontractor of the Vendor for the purposes of this Agreement;
- (c) it shall comply with all applicable standards and requirements referred to in this Agreement or as may be required by law;
- (d) all of its obligations will be carried out by qualified personnel and all work will be performed in a professional manner;
- (e) it is not aware of any proceeding in progress or pending or threatened that might be expected to have a materially adverse effect on the Program or impact its ability to meet its obligations under this Agreement; and
- (f) excluding its NAPA associate stores, it is not aware of any circumstances which do or might cause a Conflict of Interest in respect of its participation in the Program.

## **ARTICLE 6 CONFIDENTIAL INFORMATION**

### **6.1 Use and Non-Disclosure of Confidential Information**

The Receiving Party agrees not to:

- (a) use Confidential Information for any purpose except to carry out the Program; or
- (b) grant access or disclose Confidential Information to any person except to those agents, directors, officers, employees and contractors of the Receiving Party who are required to have access to the information in order to carry out the Program, and who are bound by obligations to protect the Confidential Information that are substantially similar to those set out in this Agreement (provided that the Receiving Party remains liable for any breach of confidence cause by such persons).

### **6.2 Protection**

The Receiving Party agrees that it will take all reasonable measures to protect the Confidential Information from loss, theft or any use or disclosure not permitted under this Agreement, which measures shall include:

- (a) taking reasonable measures to ensure that only those agents, directors, officers, employees and contractors of the Receiving Party who are required to have access to the Confidential Information in order to carry out the Program have access to such limited Confidential Information as may be necessary for their duties; and
- (b) taking the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, but no less than a reasonable degree of care, given the nature of the Confidential Information.

### **6.3 Mandatory Disclosure**

Notwithstanding Section 6.2(b), the Disclosing Party acknowledges and agrees that the Receiving Party may be required by law or a Governmental Authority to disclose Confidential Information. If the Receiving Party believes that the disclosure of Confidential Information is or is about to be required by law or Governmental Authority, it will notify the Disclosing Party of the circumstances and scope of the disclosure – with an oral notice provided as soon as reasonably possible and as much in advance of the impending disclosure as possible, and such oral notice confirmed in writing promptly thereafter – and will provide reasonable assistance in resisting such disclosure.

### **6.4 Notice of Unauthorized Use or Disclosure**

The Receiving Party agrees to notify the Disclosing Party of any actual or reasonably suspected loss, theft or unauthorized use or disclosure of Confidential Information that may come to its attention – with an oral notice provided immediately, and confirmed in writing promptly thereafter.

### **6.5 No Proprietary Right**

The Receiving Party agrees that it acquires no right, title or interest to the Confidential Information, except a limited right to use that Confidential Information in connection with the Program. All Confidential Information shall remain the property of the Disclosing Party (to the extent possible) and no licence or other right, title or interest in the Confidential Information is granted hereby.

### **6.6 Return / Non-Use of Confidential Information and Other Related Materials**

On receipt of a written demand from the Disclosing Party, and in any event within 20 days after the expiry or termination of this Agreement, the Receiving Party shall immediately return all Confidential Information, including any related Confidential Material, to the Disclosing Party, or, if instructed by the Disclosing Party to destroy any Confidential Information, shall securely destroy that Confidential Information and related Confidential Material and provide a written certificate to the Disclosing Party certifying the destruction of such Confidential Information and Confidential Material. This Section 6.6 shall not apply to routinely made back-up copies of Confidential Information in electronic form, or to archival copies required to be retained under the applicable law, provided that the Receiving Party shall comply with this Agreement in respect of such copies.

## **6.7 Freedom of Information Laws**

- (a) The Vendor acknowledges that RMA is subject to FOIPPA and that any information provided to RMA in connection with the Program or otherwise in connection with this Agreement, or held on RMA's behalf, may be subject to disclosure in accordance with FOIPPA. The Vendor also acknowledges that Members may be subject to other freedom of information legislation, which may similarly require them to disclose any information provided to them or held on their behalf in connection with the Program or any Purchase Agreement.
- (b) To support RMA's compliance with FOIPPA, the Vendor will:
  - (i) provide RMA-related records to the RMA within 7 days of being directed to do so by the RMA;
  - (ii) promptly refer to RMA all requests made to the Vendor by third parties referencing FOIPPA or other public sector freedom of information laws;
  - (iii) not access any Personal Information on RMA's behalf unless the RMA determines, in its sole discretion, that access is permitted under FOIPPA and is necessary in order to provide the Program and/or Goods/Services to Members under the Program;
  - (iv) keep RMA Confidential Information physically or logically separate from other information held by the Vendor;
  - (v) not destroy any information related to Program Administration until 7 years after the termination of this Agreement unless authorized in writing by RMA to destroy it sooner;
  - (vi) implement other specific security measures requested by RMA that in the reasonable opinion of the RMA would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of RMA Confidential Information (including, for greater certainty, information about or provided by any Member).

## **ARTICLE 7 INDEMNITY AND LIABILITY**

### **7.1 Liability for Representatives**

Each Party shall be responsible for any breach of this Agreement by its directors, officers, and employees – provided that RMA shall not be responsible for the decisions, actions or omissions of any Member, including for the performance by any Member of its obligations under a Purchase Agreement.

## 7.2 Indemnity

- (a) Subject to the limitation of liability set out in Section 7.3 (and in the case of RMA, subject to Section 7.1), each Party (an “**Indemnifying Party**”) shall indemnify, defend (at its expense) and hold the other Party (the “**Indemnified Party**”) and its directors, officers, employees, contractors and agents (collectively, the “**Indemnitees**”) harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis), whether or not well-founded, (“**Losses**”) brought against or suffered by the Indemnitees arising out of or related to:
- (i) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;
  - (ii) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property; or
  - (iii) any breach of the Indemnifying Party’s obligations, representations or warranties in the Agreement;

except to the extent that such Losses were not caused by the Indemnifying Party or any person for whom it was responsible. The foregoing indemnity shall be conditional upon the Indemnified Party notifying the Indemnifying Party as soon as is reasonably practicable in the circumstances of any Losses in respect of which this indemnity may apply and of which the Indemnified Party has knowledge, and the Indemnitee cooperating with the Indemnifying Party in the defence of any such claim or action. No such claim or action shall be settled or compromised by the Indemnifying Party without the Indemnified Party’s prior written consent.

- (b) The indemnity obligations hereunder will be enforceable without right of set-off or counterclaim as against the Indemnitee. The Indemnifying Party will, upon payment of an indemnity in full under this Agreement, be subrogated to all rights of the Indemnitee with respect to the claims and defences to which such indemnification relates.

## 7.3 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, BE LIABLE TO THE OTHER PARTY FOR ANY CLAIM FOR PUNITIVE, EXEMPLARY, AGGRAVATED, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR REVENUE, OR FAILURE TO REALIZE EXPECTED SAVINGS, HOWSOEVER DERIVED. THE FOREGOING SHALL NOT SUPERSEDE THE TERMS OF ANY PURCHASE AGREEMENT WHICH PROVIDE OTHERWISE.

#### **7.4 Equitable Relief**

Each Party acknowledges and agrees that, in the event of any breach or anticipated breach of the provisions of this Agreement relating to Confidential Information or privacy, damages alone would not be an adequate remedy, and agree that the non-breaching Party shall be entitled to equitable relief in respect of that breach, such as an injunction, in addition to or in lieu of damages and without being required to prove that it has suffered or is likely to suffer damages.

### **ARTICLE 8 TERM AND TERMINATION**

#### **8.1 Term**

This Agreement comes into effect on the Effective Date and shall continue in force for an initial term of 3 years, unless terminated in accordance with its provisions. That initial term may be extended once by a further period of 2 years between RMA and Vendor by mutual agreement of the Parties in writing.

#### **8.2 Reduction in Scope**

RMA may, on 30 days prior written notice to the Vendor, reduce the scope of the Goods/Services provided under the Program by identifying specific Goods/Services that will no longer be part of the Program.

#### **8.3 Termination by Either Party**

A Party may, without liability, cost or penalty, terminate the Agreement on written notice to the other where such other Party fails to perform or observe any material term or obligation of the Agreement and such failure has not been cured within 15 days of written notice of such failure being provided to that Party.

#### **8.4 Termination by RMA**

RMA shall be entitled to terminate the Agreement, without liability, cost, or penalty:

- (a) on written notice to Vendor where Vendor: (i) commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or equivalent legislation; (ii) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (iii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business;
- (b) on 30 days' written notice to Vendor, following the occurrence of any material change in RMA's requirements which results from regulatory or funding changes or recommendations issued by any Governmental Authority; or



- (c) on written notice to Vendor if Vendor breaches in any material respect any of its obligations or covenants hereunder with respect to Confidential Information or privacy.

#### **8.5 Termination by Vendor**

Vendor shall be entitled to terminate the Agreement, without liability, cost, or penalty on written notice to RMA where RMA ceases to carry on operations.

#### **8.6 Orderly Termination**

In the event of termination or expiry of the Agreement, each Party shall cooperate to effect an orderly wind-up of the Program. Within 30 days of termination or expiry, each Party shall pay to the other any amounts owed to that other Party under this Agreement.

In the event of a termination of this Agreement by RMA pursuant to Section 8.3, the Vendor shall be liable to RMA for any corresponding Administrative Fees to the date of the termination as a result of the notice of default and termination of this agreement.

#### **8.7 No Limitation of Remedies**

Any termination of the Agreement shall not limit any Party's rights or remedies either in law or in equity.

#### **8.8 Survival**

In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding Confidential Information, privacy, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

### **ARTICLE 9 FORCE MAJEURE**

#### **9.1 General**

Except as expressly provided otherwise in the Agreement, dates and times by which a Party is required to render performance under this Agreement shall be postponed to the extent and for the period of time that such Party is prevented from meeting such dates and times by an Event of Force Majeure.

#### **9.2 Notice and Performance**

Where an Event of Force Majeure occurs, the Party that is delayed or fails to perform shall give prompt notice to the other Party, and shall use reasonable efforts to render performance in a timely manner.

### **9.3 Right to Terminate**

In the event that a Party's inability to perform due to an Event of Force Majeure continues for longer than 45 days, the Party that received (or which was entitled to receive) notice pursuant to this Article may terminate this Agreement by written notice to the other Party without further liability, expense, or cost of any kind.

## **ARTICLE 10 DISPUTE RESOLUTION**

### **10.1 General**

- (a) Subject to Section 7.4, in the event of any dispute concerning this Agreement, the Parties agree to address the dispute through arbitration. Before pursuing arbitration, the Parties shall have first escalated the dispute to the highest level of management within their respective organization and given at least 7 days for resolution of the matter by such persons. Subject to the provisions of the Agreement, each Party shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.
- (b) This Article 10 shall not:
  - (i) apply to claims by third parties; or
  - (ii) prevent either Party from seeking an injunction or other equitable relief pursuant to Section 7.4.

### **10.2 Election**

If elected by a Party, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the *Arbitration Act*, R.S.A. 2000, Chapter A-43 and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **10.3 Arbitration Site and Arbitrator**

The arbitration shall be held at the City of Edmonton or at such other site mutually determined by the Parties. Where the Parties are unable to agree upon an arbitrator who is willing to serve within 7 days of receipt of a demand to arbitrate by a Party, then either Party may apply to the Court of Queen's Bench for the appointment of an arbitrator willing to serve.

### **10.4 Procedure**

The arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each Party and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement. The proceedings shall be confidential, and the arbitrator shall issue appropriate protective orders to safeguard both Parties' Confidential

Information. The arbitrator shall have the right, but not the obligation, to order that the unsuccessful Party pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate an unsuccessful Party or does not order the unsuccessful Party to pay all such fees, the arbitrator shall so state, and the fees shall be split equally between the Parties.

## **ARTICLE 11 GENERAL**

### **11.1 Notices**

Any notice, demand or other communication to be given or made under this Agreement (a "Notice") shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person (including by commercial courier) during a Business Day and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;
- (b) sent by registered mail to the applicable address set forth below; or
- (c) sent by any electronic means of sending messages which produces a paper record (an "Electronic Transmission") on a Business Day charges prepaid.

The Parties respective addresses and contact persons are set out in Schedule A (Program Details). Each Notice sent in accordance with this Section shall be deemed to have been received:

- (i) if delivered in person, on the day it was delivered;
- (ii) on the third Business Day after it was mailed (excluding each Business Day during which there existed any general or rotating interruption of postal services due to strike, lockout or other cause); or
- (iii) on the first Business Day after it was sent by Electronic Transmission.

The Parties may change their address for Notice by giving Notice to the other in accordance with this Section.

### **11.2 Public Announcements**

The Vendor shall not make any public statement or issue any press release concerning the Program except with the prior approval of RMA or as may be necessary, in the opinion of counsel to the Vendor to comply with the requirements of applicable law. When seeking the prior approval of RMA, the Parties will use all reasonable efforts, acting in good faith, to agree upon a text for such statement or press release which is satisfactory to both Parties.

### **11.3 Governing Law and Forum**

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein (excluding

any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction). Each Party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta for all matters relating to the subject matter of this Agreement.

#### **11.4 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, which induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement.

#### **11.5 Amendment and Waiver**

This Agreement may be amended, modified or supplemented only by a written agreement signed by both Parties. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

#### **11.6 Severability**

If any part of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable or invalid, it will, be severed from the rest of this Agreement, which shall continue in full force and effect, so long as the economic or legal substance of the matters contemplated hereby is not affected in any manner materially adverse to either Party.

#### **11.7 Assignment**

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

#### **11.8 Time of Essence**

Time shall be of the essence in this Agreement.

#### **11.9 Further Assurances**

Each Party will take all necessary actions, obtain all necessary consents, file all necessary registrations and execute and deliver all necessary documents reasonably required to give effect to this Agreement.

#### **11.10 Counterparts**

This Agreement may be executed in any number of counterparts. Either Party may send a copy of its executed counterpart to the other Party by Electronic Transmission instead of

delivering a signed original of that counterpart. Each executed counterpart (including each copy sent by Electronic Transmission) will be deemed to be an original; all executed counterparts taken together will constitute one agreement.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.


*Remainder of page intentionally left blank*

**RURAL MUNICIPALITIES OF ALBERTA**

By:   
Name: Dave Dextraze, CET  
Title: Manager of Vendor Relations

By:   
Name: Nigel Gamester, BComm  
Title: Vendor Administration Manager

Vendor Legal Name UAP Inc. dba NAPA Auto Parts

By:   
Name: Alain Masse  
Title: President

By:   
Name: Frank Pipito  
Title: CFO

By:   
Name: Roy Moussa  
Title: Vice President, Major Accounts