



Terms and Conditions

Services Purchase Order (East Coast Canada)

1.	Definitions	1
2.	Interpretation.....	3
3.	Scope of Undertakings	3
4.	Scope of Services.....	3
5.	Canada – Newfoundland and Labrador Benefits	4
6.	Material, Equipment and Supplies.....	4
7.	Changes	5
8.	Independent Contractor.....	5
9.	Other Contractors	5
10.	Clean Up.....	5
11.	Ownership of Documents	5
12.	Representations.....	5
13.	Warranty	6
14.	Quality Assurance and Environment, Health and Safety.	6
15.	Insurance	6
16.	Workers’ Compensation.	7
17.	Liability and Indemnification	8
18.	Limitation of Liability	8
19.	Third Party Claims	8
20.	Consequential Loss	8
21.	Force Majeure.....	8
22.	Payment.....	9
23.	Set-Off	9
24.	Suspension or Termination.....	9
25.	Confidentiality	9
26.	Publicity	10
27.	Intellectual Property.....	10
28.	Compliance with Laws and Supplier Code of Conduct	10
29.	Business Ethics	10
30.	Liens	11
31.	Taxes	11
32.	Health and Safety	12
33.	Security.....	12
34.	Hazardous Waste Handling.....	12
35.	Audit.....	12
36.	Notices.....	12



Terms and Conditions

Services Purchase Order (East Coast Canada)

37.	Survival	13
38.	Governing Law.....	13
39.	General Matters	13

1. Definitions

1.1 Unless the context requires otherwise, the following capitalized terms mean:

- (a) **"Affiliate"** means any Person which controls, or is controlled by, or which is controlled by an entity which controls, another Person. In this Paragraph, "control" means (i) the ownership directly or indirectly of fifty (50%) percent or more of the voting rights in a Person, or (ii) the direct or indirect possession of the power to direct or cause direction of management and policies through ownership of voting securities, contract, voting trust or otherwise. The foregoing shall apply, *mutatis mutandis*, to partnerships, limited liability partnerships, limited partnerships, firms, trusts, bodies corporate, governments, governmental bodies, agencies or instrumentalities, unincorporated bodies of persons or associations.
- (b) **"Claim"** or **"Claims"** shall, unless specifically provided otherwise, mean all losses, damages, costs, expenses, disbursements, penalties, fines, claims, demands, actions and causes of action of any kind (including, without limitation, actions *in rem* or *in personam*), proceedings, liens (whether builders', mechanic's, construction or any other type of lien), encumbrances, statutory obligations, liabilities, suits, judgments, awards, decrees, determinations, settlements, adjudications, unpaid Taxes of any kind (including withholding Tax), costs of investigation and any type of fees (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto, whether created by law, contract, tort, voluntary settlement, or otherwise, arising out of, related to, or in any way connected with the Purchase Order or the performance of the Services.
- (c) **"Completion"** means that the Services have been fully completed in accordance with the Purchase Order.
- (d) **"Confidential Information"** means all information of a confidential nature (including information in writing or transmitted or acquired orally, electronically, visually or by other means) which a Party acquires, directly or indirectly, from the other Party in connection with the Purchase Order, including any information concerning or relating to Contractor, Suncor, the Project or the Services, including with respect to a Party's business, affairs, financial position, assets, operations, activities, prospects or trade secrets, together with all analyses, evaluations, compilations, notes, studies and other documents prepared by Contractor or Suncor, as the case may be, or their respective Personnel, containing or based upon any such information, but shall not include:
 - (i) information which is or becomes available to the public, other than as a result of disclosure by the receiving Party or its Affiliates, Personnel or, in the case of Contractor, its Subcontractors' or their respective Personnel;
 - (ii) information which the receiving Party can prove, by written evidence, was at the time of disclosure already in its possession on a non-confidential and lawful basis;
 - (iii) information that the receiving Party can demonstrate was independently developed by it or for it and that was not obtained, in whole or in part, from the other Party; or
 - (iv) information that is acquired independently from a third party representing that it has the right to disseminate such information at the time it is acquired by the receiving Party.
- (e) **"Contractor"** means the party named in the Purchase Order as the supplier of the Services to Suncor.
- (f) **"Contractor Group"** means Contractor, Contractor's Subcontractors and Contractor's invitees, and the Affiliates, Personnel and insurers of all of the foregoing.
- (g) **"Contract EH&S Plan"** means Contractor's environmental, health and safety plan described in Paragraph 32.1 (Contract EH&S Plan).
- (h) **"Contractor Alcohol and Drug Standard"** means: (i) for Work performed in Canada, the current version of Suncor's Contractor Alcohol and Drug Standard available on Suncor's website at www.suncor.com as updated from time to time, or as may be provided by Suncor from time to time; or (ii) for Work performed in any other jurisdiction, any Suncor alcohol and drug standard provided to Contractor.
 - (i) **"Documents"** includes, without limitation, diagrams, illustrations, specifications or drawings supplied directly or indirectly by Suncor to Contractor, or produced by Contractor or its Subcontractors in connection with the supply of the Services.
 - (j) **"Event of Force Majeure"** means an event or circumstance, not reasonably within the control of a Party, which prevents the exercise of rights hereunder or restrains or delays the performance by a Party of its obligations under the Purchase Order and, which by the exercise of due diligence and planning, the Party was, or is, unable to prevent or overcome. Notwithstanding the generality of the foregoing, an Event of Force Majeure shall not include:
 - (i) strikes, lockouts or other industrial concerted action by workers of Contractor or its Subcontractors which may adversely impact the supply of the Services;
 - (ii) lack of finances or inability to perform because of a Party's financial condition;
 - (iii) shortage of labour, materials, equipment, transportation or utilities (unless caused by circumstances which are themselves an Event of Force Majeure); or
 - (iv) climatic, weather and subsurface conditions reasonably expected to occur within the geographic area where the Services are being performed.
- (k) **"GAAP"** means generally accepted accounting principles in Canada, as defined in the Chartered Professional Accountant (CPA) Canada Handbook, including International Financial Reporting Standards and Accounting Standards for Private Enterprises.
- (l) **"Gross Negligence"** means (i) a marked and flagrant departure from the standard of conduct of a reasonable Person acting in the circumstances at the time of the alleged misconduct, or (ii) such wanton and reckless conduct or omissions as constitutes in effect an utter

Terms and Conditions

Services Purchase Order

(East Coast Canada)

disregard for harmful, foreseeable and avoidable consequences.

- (m) **"Hazardous Substance"** means any substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material which is or becomes listed, regulated or addressed under any Law or applicable regulation respecting the use, manufacture, importation, handling, transportation, storage, disposal or treatment of the substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material.
- (n) **"Invoicing Requirements"** means Suncor's invoicing and accounts payable standards, procedures, policies and guidelines, available on Suncor's website at www.suncor.com, and as specified in the Contract Documents and as may be provided by Suncor from time to time.
- (o) **"Law"** or **"Laws"** means collectively all applicable common law, federal, provincial, state and municipal and other local laws, orders, rules, regulations and decisions of regulatory bodies, including laws applicable to occupational health and safety, fire, immigration, employment insurance, workers' compensation, Hazardous Substances, transportation and handling of dangerous goods, environmental protection legislation, building codes, anti-bribery law or international convention, as may apply now or in the future, including but not limited to the *Corruption of Foreign Public Officials Act* (Canada), the *Foreign Corrupt Practices Act* (U.S.), the *Bribery Act* (U.K.) and the OECD Convention on Combating Bribery of Foreign Public Officials and the convention's commentaries, the laws of Canada, the laws of the country of incorporation of a Party or a Party's Affiliates and ultimate parent company and of the principle place of business of such entities, and any other governmental requirements, work practices and procedures prescribed by law and related to Suncor, Contractor, the Project or the Services.
- (p) **"Other Contractors"** means contractors or suppliers, other than any member of Contractor Group, engaged by Suncor to provide labour, materials, products or services.
- (q) **"Owners"** has the meaning ascribed thereto in Paragraph 3.1.
- (r) **"Party"** means each of Contractor and Suncor, together being the **"Parties"**.
- (s) **"Person"** means an individual, partnership, a limited liability partnership, limited partnership (including a limited liability limited partnership), limited liability company, joint venture, trust, business trust, cooperative, association or a corporation, as the case may be.
- (t) **"Personnel"** means, in relation to any Person, the directors, officers, employees, contract personnel, representatives, advisors and agents of such Person, and, in respect of Contractor, includes direct field labour (as applicable), which meaning shall, *mutatis mutandis*, apply to Affiliates of a Party and Subcontractors.
- (u) **"Project"** means, as applicable, the Terra Nova Project or such other project as may be identified in the Purchase Order.
- (v) **"Purchase Order"** means the purchase order issued by Suncor, the Services Purchase Order Terms and Conditions (East Coast Canada) and all other attachments identified in such purchase order.
- (w) **"Records"** means the records of Contractor and Contractor's Affiliates and Subcontractors relating to the Purchase Order or the Services, and which include paper and electronic copies, as the case may be, of:
 - (i) original invoices and accounts showing all of the Contractor's charges, costs and expenses incurred in the performance of the Services under the Contract, including:
 - (A) records of account for all Services performed by Contractor and Subcontractor Personnel, including names and positions, hours worked, type of Services performed and wages paid;
 - (B) records of account for any items for which Suncor is obliged to reimburse the Contractor, including for equipment and materials, whether subcontracted or not; and
 - (C) information relating to Contractor's compliance with the Invoicing Requirements;
 - (ii) records relating to any termination or suspension costs;
 - (iii) records related to environmental health and safety performance (including Lost Time Injury Frequency (LTIF) and Recordable Injury Frequency (RIF) statistics), and all incident investigations related to the Site;
 - (iv) information relating to Contractor's compliance with the Law and the Supplier Code of Conduct, and Contractor's use of Confidential Information; and
 - (v) where the Services are supplied for Suncor's operations in relation to the Terra Nova Project area, the records described in Paragraph 5.2.
- (x) **"Services"** means all labour, supervision, administration, supplies, tools, equipment and such other work and materials to be supplied or performed by Contractor in accordance with the Purchase Order.
- (y) **"Services Purchase Order Terms and Conditions (East Coast Canada)"** means this document entitled "Services Purchase Order Terms and Conditions (East Coast Canada)" which forms a part of the Purchase Order.
- (z) **"Site"** means the site(s) where the Project is located.
 - (aa) **"Subcontractor"** or **"Subcontractors"**, as the case may be, means one or more of Contractor's subcontractors, suppliers, manufacturers, vendors or agents, whether or not an Affiliate of Contractor, to whom performance of any part of the Services is subcontracted directly or indirectly by Contractor.
 - (bb) **"Suncor"** means the Suncor entity identified in the Purchase Order.
 - (cc) **"Suncor Group"** means Suncor, Other Contractors and their subcontractors, the Owners and Suncor's invitees, and the Affiliates, Personnel and insurers of all of the foregoing, but shall not include any member of Contractor Group.

- (dd) **"Suncor's EH&S Management Requirements"** means Suncor's environment, health and safety requirements applicable to the Services, as set out in the Purchase Order and on Suncor's website at www.suncor.com, as updated from time to time, or as may be provided by Suncor from time to time, and at all times, as required by applicable Laws.
- (ee) **"Supplier Code of Conduct"** means the document entitled "The Way We Do Business – Working with Suncor" reflecting Suncor's Standards of Business Conduct as applicable to suppliers, available on Suncor's website at www.suncor.com.
- (ff) **"Tax"** and **"Taxes"** means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any governmental authority together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of such taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges, excluding VAT.
- (gg) **"VAT"** means Value Added Tax or similar tax on goods or services, including, without limitation, sales, use, excise, and similar taxes (as amended from time to time) as may be applicable to the Services.
- (hh) **"Warranty Period"** means the period of time starting on the date of Completion and continuing until 24 months after Completion.

2. Interpretation

- 2.1 **Interpretation.** The interpretation of the Purchase Order shall be governed by the following rules:
- (a) headings contained in the Purchase Order are for convenience and reference only and are not to be considered in the interpretation of, or affect the meaning of any of its provisions;
- (b) all dollar figures shall mean Canadian Dollars (CAD), unless otherwise specifically referenced; and
- (c) the word "include" or "including", when following a general term or statement, is not to be construed as limiting the term or statement to the specific items or matters stated or to similar items or matters, but rather as referring to all items or matters that could reasonably fall within the broadest possible scope of such term or statement.
- 2.2 **Statutes.** Any reference to a statute shall include such statute and the corresponding regulations, together with all amendments made and in force from time to time, and any statute or regulation that may be passed which has the effect of supplementing or superseding the statute referred to or the corresponding regulations.
- 2.3 **Precedence.** In the event of a conflict or inconsistency among or between the documents comprising the Purchase Order, the following priority, in descending order, shall govern:
- (a) Services Purchase Order Terms and Conditions (East Coast Canada);
- (b) for documents as revised by either Party and approved by Suncor, the latest revisions shall govern;

- (c) the Purchase Order, exclusive of the Services Purchase Order Terms and Conditions (East Coast Canada);
- (d) technical specifications; and
- (e) drawings.

2.4 **Severability.** If any term, covenant or condition of the Services Purchase Order Terms and Conditions (East Coast Canada), to any extent, is invalid or unenforceable, the remainder of the Services Purchase Order Terms and Conditions (East Coast Canada) other than those provisions held invalid or unenforceable shall not be affected and each remaining term, covenant or condition of the Services Purchase Order Terms and Conditions (East Coast Canada) shall be separately valid and shall be enforceable to the fullest extent permitted by Law.

2.5 **Adverse Rule of Construction Not to Apply.** The words in the Services Purchase Order Terms and Conditions (East Coast Canada) shall bear their natural or defined meaning. The Parties have each had full opportunity of obtaining legal advice and accordingly any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of the Services Purchase Order Terms and Conditions (East Coast Canada).

3. Scope of Undertakings

3.1 **Acknowledgment of Owners.** Contractor acknowledges that, when Suncor is conducting or arranging for operations in relation to the Terra Nova Project area, Suncor is acting on behalf of itself and its co-lessees, joint interest owners or holders of a working, participating or other proprietary interest in the Terra Nova Project and their respective successors in interest and assigns (collectively, the **"Owners"**), and that such Owners, or any of them, shall be entitled under arrangements with Suncor to certain of the benefits of the Purchase Order. Contractor shall nonetheless deal exclusively with Suncor in relation to the Purchase Order. Suncor shall be entitled to exercise, on behalf of itself and the Owners, all rights of action existing under the Purchase Order in favour of the Owners and Suncor. The losses, damages, costs and expenses recoverable by Suncor on behalf of the Owners pursuant to the Purchase Order shall include all losses, damages, costs and expenses of the Owners and Suncor, except that such losses, damages, costs and expenses shall be subject to the same limitations or exclusion of liability applicable to Suncor under the Purchase Order.

3.2 **Enforcement of Liabilities and Obligations.** Suncor may commence proceedings and make Claims in its own name to enforce all liabilities and obligations of Contractor and to make any Claim which all or any of the Owners may have against Contractor in relation to or arising out of the Purchase Order.

3.3 **No Agency.** Contractor shall not, and shall ensure that its Personnel shall not, represent or warrant that it or they are agents, employees or servants of Suncor or of any of the Owners, and Contractor shall indemnify, defend and hold harmless each member of Suncor Group from and against any Claims arising out of a breach of this Paragraph 3.3 by any member of Contractor Group.

4. Scope of Services

4.1 **Services.** Contractor shall supply the Services, in accordance with the Purchase Order.

- 4.2 **Time.** Contractor acknowledges that timely supply of the Services is a matter of paramount importance to Suncor.
- 4.3 **Acceptance of the Site.** Any failure by Contractor to discover matters which affect or could affect the Services shall not relieve Contractor from its obligations under the Purchase Order. Specifically, Contractor accepts the Site and acknowledges that it has investigated and satisfied itself as to:
- (a) the nature of the Services;
 - (b) the location of, and all conditions relating to, the Site, including accessibility, general character, surface conditions, utilities, roads, uncertainties of seasonal weather and all other physical, topographical and geographical conditions;
 - (c) general character, quality, quantity and availability of equipment and materials, plant, consumables and facilities required to execute and complete the Services;
 - (d) the available third party services, labour, facilities and ports;
 - (e) all environmental risks, conditions, Law and restrictions applicable to Contractor Group, or the Services, that might affect the Services; and
 - (f) all conditions affecting labour, including availability, productivity and administrative practices, including those relating to safety, prevailing at the Site or applicable to the Services.
- 4.4 **Errors, Omissions or Inconsistencies.** If Contractor discovers any errors, omissions or inconsistencies in the Documents, or any inconsistencies between the Documents and the Law, it shall resolve all such errors, omissions or inconsistencies with Suncor before proceeding with the affected portion of the Services.
- 4.5 **No Deviations.** Contractor shall not deviate from the specifications or requirements stated in the Purchase Order.
- 4.6 **Unauthorized Work.** Should Contractor perform work not part of the Services, then such work (including any remediation of such work) shall be at Contractor's own risk and expense.
- 4.7 **Permits.** Unless otherwise expressly stated in the Purchase Order, Contractor shall be responsible for and shall at its own expense procure from the proper authorities all permits, licenses, inspections and authorizations required by Law or which may otherwise be required for the performance of the Services.
- 4.8 **Minimum of Interference and Full Cooperation.** Contractor shall perform the Services in such manner as to cause a minimum of interference with Suncor's operations and the operations of Other Contractors. Contractor shall cooperate fully with Other Contractors and all other Persons with whom Contractor may be involved during the performance of the Services.
- 4.9 **Vessels and Aircraft.** With respect to any vessel or aircraft owned or chartered by Contractor and used in performing the Services, Contractor agrees that such vessels are, and shall remain throughout the performance of the Services, seaworthy and maintained in class and that such aircraft are, and shall remain throughout the performance of the Services, airworthy.
- 4.10 **Wreck Removal.** If a vessel or aircraft owned, operated, chartered or brokered by or for Contractor Group in connection with the Services becomes a wreck and interferes with further performance of the Services or is an obstruction to navigation and has to be removed by order of any lawful authority having jurisdiction over the area where the vessel or aircraft is placed or as a result of applicable Law, Contractor shall be liable for any and all expenses in connection with the raising, removal, destruction, lighting or marking of the vessel or aircraft as may be necessary.
- 4.11 **Property Damage.** Contractor shall use reasonable commercial efforts to protect the Services and Suncor's property and property adjacent to the Site from damage which may arise as a result of Contractor's operations or the operations of its Subcontractors.
- 5. Canada – Newfoundland and Labrador Benefits**
- 5.1 Contractor shall fulfill the Canada-Newfoundland and Labrador Benefits representations as submitted in Contractor's proposal, or as modified from time to time by agreement of Suncor and Contractor.
- 5.2 Contractor shall maintain, from the date of the Purchase Order and for a period of two (2) years after Completion, records containing the following information:
- (a) the nation and, if applicable, province in which each Person employed or subcontracted by Contractor in relation to the Services resides, and the cost attributable to each such Person invoiced from time to time by Contractor to Suncor;
 - (b) the nation and, if applicable, province in which each manufacturer or other contractor of goods or services used by Contractor in providing the Services is located, and the cost attributable to each such manufacturer or other contractor invoiced from time to time by Contractor to Suncor;
 - (c) the nation and, if applicable, province in which each Person who has received training from Contractor or its Subcontractors resides, and the nature of such training, including the amount of time and expenditures incurred in relation to such training; and
 - (d) any expenditures incurred in relation to research and development carried out in Newfoundland and Labrador, and education and training provided in Newfoundland and Labrador.
- Contractor shall specifically identify any of the foregoing information that pertains to disadvantaged individuals and groups, or corporations owned or co-operatives operated by such individuals or groups. Contractor shall provide summaries or other reports in relation to the foregoing information from time to time as and when requested by Suncor.
- 5.3 Contractor shall maintain a written auditable trail identifying that full and fair opportunity has been given to Canadian and Newfoundland and Labrador entities when awarding subcontracts for the supply of equipment or services with a contract value in excess of CAD 100,000.
- 6. Material, Equipment and Supplies**
- 6.1 **Contractor to Check Material, Equipment and Supplies.** Contractor shall check, assess and record upon delivery to Contractor the quantity and condition of all materials, equipment and supplies supplied by or on behalf of Suncor or otherwise obtained by Contractor which are to be installed

or used by Contractor during the performance of the Services. If any of the materials, equipment or supplies are lost, damaged or destroyed after having been delivered to Contractor, or while in the custody or control of Contractor, Contractor shall repair and replace the same at its own expense unless:

- (a) such loss, damage or destruction is caused by the negligence of Suncor; and
- (b) Suncor was not acting under the direction of Contractor at the time of such loss, damage or destruction.

6.2 Inspection and Acceptance. All materials, equipment and supplies covered by this Purchase Order may be inspected and tested by Suncor or its designee. If Suncor so elects to inspect or test successful completion of such inspection and testing shall be a prerequisite to Suncor's acceptance of the materials, equipment and supplies. If deemed necessary by Suncor, Contractor shall provide without charge, all reasonable facilities and assistance for such inspection and test. Any inspection records relating to materials, equipment and supplies covered by this Purchase Order shall be available to Suncor during the performance of this Purchase Order and for such longer periods as specified by Suncor. If any materials, equipment and supplies covered by this Purchase Order are defective or otherwise not conforming with the requirements of this Purchase Order, at its discretion, Suncor may, by written notice to Contractor:

- (a) rescind this Purchase Order as to such non-conforming materials, equipment and supplies;
- (b) accept such materials, equipment and supplies at an equitable reduction in price; or
- (c) reject such non-conforming materials, equipment and supplies and require the delivery of suitable replacements.

If Contractor fails to deliver suitable replacements promptly, Suncor, with notice of 5 business days, may replace or correct such materials, equipment and supplies and charge Contractor the additional cost occasioned Suncor thereby, or terminate this Purchase Order for default. No inspection (including source inspection) test, approval (including design approval) or acceptance of materials, equipment and supplies shall relieve Contractor from responsibility for defects or other failures to meet the requirements of this Purchase Order. Rights granted to Suncor in this Article 6 (Material, Equipment and Supplies) are in addition to any other rights or remedies provided elsewhere in this Purchase Order or at Law.

7. Changes

7.1 Suncor Change. Suncor may, at any time, make changes to the Services including, without limitation, additions, deletions, rescheduling and acceleration or deceleration to all or any part of the Services, and Contractor agrees to perform its obligations under the Purchase Order as changed.

7.2 Compensation for Change. In the event that a change directly or indirectly causes an increase or decrease in the time or cost to perform its obligations under the Purchase Order, Contractor shall, within 10 days of receiving notice of such change, submit to Suncor detailed information, substantiating its impact. An equitable adjustment shall be made to schedule or compensation, or both, and the Purchase Order shall be modified in writing accordingly.

7.3 Performance. Contractor shall proceed diligently with the supply of the Services even though final resolution may be pending in respect of any change.

8. Independent Contractor

8.1 Independent Contractor. Contractor is an independent contractor and not an agent of Suncor.

9. Other Contractors

9.1 Other Contractors. If any part of the Services depends upon the work of Other Contractors for its proper execution or result and Contractor becomes aware of any defects, deficiencies or conflicts in the work or in the timing of the work of the Other Contractors as may interfere with the proper execution of the Services, Contractor shall as soon as practicable provide a notice to Suncor of such defects, deficiencies or conflicts. Should Contractor fail to provide notice to Suncor as required by this Paragraph, Contractor shall: (i) have no Claim against Suncor by reason of defective, deficient or unfinished work of any Other Contractors; and (ii) reimburse Suncor for all costs, expenses and losses suffered, sustained, paid or incurred by Suncor relating to any Services that require re-performance as a result of any defects, deficiencies or conflicts in the work or in the timing of the work of Other Contractors.

10. Clean Up

10.1 Waste. In addition to the requirements of Article 34 (Hazardous Waste Handling), no waste materials shall be allowed to accumulate in or around the Site, and Contractor shall remove, or cause its Subcontractors to remove, debris or waste materials at periodic intervals or as often as Suncor may direct. Contractor shall ensure that the Site is kept clean and free of debris and waste materials at all times. Before Completion of the Services, Contractor shall remove or cause to be removed all temporary structures, superfluous and waste materials of whatever kind resulting from the Services.

11. Ownership of Documents

11.1 Ownership. Ownership of any and all Documents shall at all times rest with Suncor, and Suncor shall have the unlimited right to their use. All Documents shall be considered Confidential Information, and shall be returned or delivered to Suncor prior to final payment to Contractor.

12. Representations

12.1 Contractor's Performance Representations and Warranties. Contractor acknowledges Suncor is relying on Contractor's skill, knowledge and expertise in the supply of the Services in accordance with the Purchase Order. Contractor represents and warrants with respect to the Services supplied by Contractor that:

- (a) the Services shall be performed in a professional, ethical, proper, efficient and good and workmanlike manner, using only qualified, skilful and careful workers, in strict accordance with the Purchase Order and in accordance with sound and currently accepted practices and principles normally employed in the industry similar to the Services and, in the event of a conflict, the stricter or higher-standard practice or principle shall take precedence;
- (b) Contractor and its Subcontractors have the necessary qualified personnel, with the skills and expertise, to supply the Services and are experienced, ready and

willing to supply the Services in accordance with the terms and provisions of the Purchase Order; and

- (c) Contractor has all required permits, licences and authorizations necessary to carry on its business and to be obtained by it to supply the Services.

13. Warranty

13.1 Remediation of Defective or Deficient Services. If a defect or deficiency in the Services, or in any portion of the Services,

- (a) is discovered during the Warranty Period; and
- (b) if Suncor has notified Contractor in writing of such defect or deficiency no later than 30 days after the expiry of the Warranty Period,

Contractor shall, at its own risk and expense:

- (i) remedy without delay, and in a manner satisfactory to Suncor, such defect or deficiency in the Services; and
- (ii) repair, replace or re-perform all other equipment, materials or work or property of Suncor or others damaged or required to be remedied as a result of such defective or deficient Services, or damaged or required to be remedied by the remedy of such defective or deficient Services.

13.2 Indemnification by Contractor to Suncor for Remediation. Should Contractor fail to promptly remedy any defect or deficiency in accordance with Paragraph 13.1 (Remediation of Defective or Deficient Services), Suncor may proceed with any activities necessary to remedy the defects or deficiencies and Contractor shall indemnify, defend and hold harmless each member of Suncor Group from any Claim suffered, sustained, paid or incurred by Suncor Group in remedying or rectifying such defects or deficiencies.

13.3 Remediation of Defects or Deficiencies Affecting Safety, Environment or Operations. If, in Suncor's sole discretion, a defect or deficiency in the Services, or in any portion of the Services, affects safety, the environment or operations, and Contractor is not immediately available to remedy such defect or deficiency, Suncor may proceed with any activities necessary to remedy such defect or deficiency, and any resultant impact of such defect or deficiency, and Contractor shall reimburse Suncor for all reasonable costs incurred by Suncor as a result of such remediation.

13.4 Warranty for Warranty Work. Contractor further warrants any and all corrective actions and additional Services that it supplies in respect of defects or deficiencies appearing during the Warranty Period for a period equal to the greater of: (i) 12 months from completion of the corrective actions or supply of such Services; or (ii) the Warranty Period.

14. Quality Assurance and Environment, Health and Safety.

14.1 Contractor Group shall have an implemented and documented system for quality assurance in accordance with the requirements stated in the Purchase Order. Suncor has the right to audit the quality assurance system of Contractor Group. Suncor shall notify Contractor of such audit. The audit may include any part of the Services. Contractor shall give the necessary assistance during such audit.

14.2 Contractor Group shall have an implemented and documented system for health, environment and safety in accordance with Suncor's EH&S Management Requirements. Suncor reserves the right to audit the above mentioned system and carry out corrective measures at Contractor's expense. Suncor shall notify Contractor of such audit. Contractor shall give Suncor all reasonable and necessary assistance during such audit.

15. Insurance

15.1 Insurance Coverage. Without limiting any of the obligations or liabilities under the Purchase Order and prior to commencing any Services under the Purchase Order, Contractor and its Subcontractors shall obtain and continuously carry, at its own expense and cost, policies suitable to Suncor in respect of the following insurances:

- (a) Workers' compensation coverage for all employees engaged in the Services in accordance with the statutory requirements of the province, territory or state in which the Services are being performed;
- (b) Employer's Liability Insurance, including maritime coverage, with limits as required by applicable Laws, but not less than USD 10 million, covering each employee engaged in the Services;
- (c) Commercial General Liability Insurance, including bodily injury, death and property damage, in an amount of not less than USD 5 million (combined single limit on each occurrence). Such coverage to include Blanket Contractual Liability, Contingent Employer's Liability Insurance, Tortious Liability, Contractual Liability, Contractors Protective Liability, Non-Owned Automobile Liability, Attached Equipment, Broad Form Property Damage Liability, Products and Completed Operations Liability, and, when applicable to the Services, Hook Liability, Sudden and Accidental Pollution Liability and Explosion, Collapse and Underground Damage Liability. Such policy shall include an extension of territorial limits to include operations offshore east coast Canada and shall have the watercraft exclusion deleted in respect of any watercraft furnished by Contractor hereunder. This policy will respond to property damage to Suncor's existing facilities;
- (d) Automobile Liability Insurance for owned, leased, hired, operated or licensed vehicles with limits of not less than USD 2 million for accidental injury to or death of one or more Persons or damage to or destruction of property as a result of any one accident or occurrence;
- (e) if aircraft or watercraft are used in connection with the Services, Contractor shall carry Aircraft Liability or Watercraft Liability Insurance covering all aircraft or watercraft owned or non-owned and licensed by Contractor with limits of liability of not less than USD 15 million for aircraft liability and USD 5 million for watercraft liability, for bodily injury or death of one or more Persons or damage to or destruction of property as a result of one accident occurrence;
- (f) property insurance covering loss or damage to construction machinery, tools, equipment and property that is owned by, leased by, or rented by and used by Contractor Group in performing the Services; and
- (g) such additional coverage as may be required by Law or which Contractor considers necessary.

15.2 Requirements of Contractor. The insurance provided by Contractor and its Subcontractors shall be provided in accordance with the following terms and conditions:

- (a) Contractor shall, upon request, provide Suncor with evidence of compliance with applicable workers' compensation legislation and coverage;
- (b) At Suncor's request, certificates of insurance of the policies described in Paragraph 15.1 (Insurance Coverage) shall be submitted to Suncor. All such policies shall be placed with insurers and shall be in a form acceptable to Suncor. The approval or non-approval of any such policy by Suncor shall in no way relieve Contractor of its obligations to provide, and to cause its Subcontractors to provide, the insurance in this Article 15 (Insurance);
- (c) All property insurance policies provided by Contractor and its Subcontractors shall contain a waiver of subrogation against Suncor Group;
- (d) All insurance provided by Contractor and its Subcontractors shall be considered primary and non-contributory and not excess to any insurance carried by Suncor Group;
- (e) All insurance which is project specific shall contain extended reporting provisions for a period of 18 months past Completion; and
- (f) All liability insurance policies, except for automobile liability insurance and workers' compensation, provided by Contractor and its Subcontractors shall:
 - (i) name Suncor Group as additional insureds, but only with respect to any potential legal liability arising out of the operations, actions or conduct of the named insured; and
 - (ii) contain a cross-liability and severability of interest clause; and
 - (iii) state that each such policy cannot be cancelled or modified without at least 30 days' written notice to Suncor.

15.3 Insurance Indemnity. If Contractor fails, or any of its Subcontractors fail, upon request, to furnish Suncor with a certificate of insurance and all applicable endorsements for each policy of insurance required to be obtained in Paragraph 15.1 (Insurance Coverage), or if any policy lapses, is cancelled or is materially altered, then in every case Suncor may obtain and maintain such insurance in the name of Contractor and any of its Subcontractors. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from any Claim suffered, sustained, paid or incurred by Suncor Group in connection with such insurance, including in respect of any deductibles paid or claims made thereunder, and the Subcontractors' insurance costs. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from any Claim suffered, sustained, paid or incurred as a result of Contractor's failure to maintain the insurance required by this Article 15 (Insurance).

15.4 Subcontractors. Contractor shall require its Subcontractors to enter into an agreement with Contractor containing defence, indemnity and hold harmless provisions equal to those set forth in the Purchase Order in favour of Suncor Group and provisions in the same form as those found in Paragraph 15.1 (Insurance Coverage) and Paragraph 15.2

(Requirements of Contractor). Contractor shall provide to Suncor, upon request, copies of certificates of insurance for the policies it has obtained from its Subcontractors and a copy of the agreements entered into with the Subcontractors setting out the insurance and indemnity requirements of the Subcontractors, without reference to commercial terms. Unless such contracts with Contractor's Subcontractors contain said provisions, such Subcontractors shall be deemed to be employees of Contractor for all purposes hereunder and Contractor shall be responsible for all defence, indemnity and hold harmless provisions in the Purchase Order for and on behalf of such Subcontractors.

15.5 Deductibles. Contractor shall be responsible for payment of all deductibles applicable to the insurance described in this Article 15 (Insurance). For greater certainty, the cost of deductibles shall not be deducted from the total insurance coverage in determining the amount of coverage under the policies of insurance.

15.6 Liability of Contractor. Neither the providing of insurance by Contractor in accordance with the requirements of this Article 15 (Insurance), nor the insolvency or bankruptcy of any insurance company, nor the failure of any insurance company to pay any claim, shall be held to relieve Contractor from any other provisions of the Purchase Order with respect to liability of Contractor or otherwise.

15.7 Notice. Contractor shall immediately notify Suncor and the relevant insurer in writing of any occurrence or incident likely to give rise to a claim under the policies or insurance coverage referred to in this Article 15 (Insurance), or of any other matter or thing in respect of which notice should be given by Contractor to the relevant insurers. In addition, both Suncor and Contractor shall give all such information, reports, documentation and assistance as may be reasonably necessary in all the circumstances to achieve prompt settlement of insurance claims.

16. Workers' Compensation.

16.1 Workers' Compensation.

- (a) Contractor shall, and shall ensure that its Subcontractors shall, comply with workers' compensation Law covering all Persons employed by Contractor and its Subcontractors. Without limitation, Contractor shall, and shall ensure that its Subcontractors at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to workers' compensation Law or, in jurisdictions where workers' compensation is not funded by the province, territory or state through a statutory workers' compensation scheme, carry workers' compensation insurance in accordance with the Law as set out in Paragraph 15.1(a). Upon Suncor's request, Contractor shall deliver to Suncor a statement from the applicable governing body, indicating that Contractor and its Subcontractors are registered and in good standing.
- (b) In the event that an employee of Contractor or a Subcontractor engaged in the Services ordinarily resides outside the province, territory or state in which the Services are being performed and is employed by an employer who is based outside the province, territory or state in which the Services are being performed (and such employer carries on business at the location of the performance of the Services on a temporary basis) Contractor shall comply with workers' compensation Law in accordance with the statutory requirements of the province, territory or state where the employee is

ordinarily resident and the employer ordinarily carries on business.

16.2 Indemnification for Workers' Compensation. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from all Claims brought against or suffered, sustained, paid or incurred by Suncor Group as a result of Contractor's failure to pay, or the failure of Contractor to ensure its Subcontractors pay, any assessment, contribution, or insurance premium relating to workers' compensation coverage.

17. Liability and Indemnification

17.1 Liability of Contractor for Contractor Group Loss. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from and against any and all Claims arising from or in connection with personal injury, illness, death, or property loss or damage suffered by any member of Contractor Group in connection with the performance of Services, howsoever caused and regardless of whether or not and to what extent any such Claim is caused or contributed to by breach of contract, negligence, breach of duty (statutory or otherwise) or other default on the part of any Person to be indemnified pursuant to this Paragraph 17.1, except to the extent that any such Claim is caused or contributed to by the Gross Negligence or wilful misconduct on the part of any Person to be indemnified pursuant to this Paragraph 17.1.

17.2 Liability of Suncor for Suncor Group Loss. Suncor shall indemnify, defend and hold harmless each member of Contractor Group from and against any and all Claims arising from or in connection with personal injury, illness, death, or property loss or damage suffered by any member of Suncor Group in connection with the performance of Services, howsoever caused and regardless of whether or not and to what extent any such Claim is caused or contributed to by breach of contract, negligence, breach of duty (statutory or otherwise) or other default on the part of any Person to be indemnified pursuant to this Paragraph 17.2, except to the extent that any such Claim is caused or contributed to by the Gross Negligence or wilful misconduct on the part of any Person to be indemnified pursuant to this Paragraph 17.2.

18. Limitation of Liability

18.1 Limitation of Liability for Contractor. Subject to Paragraph 18.2 (Gross Negligence and Wilful Misconduct) and Contractor's obligations pursuant to Paragraph 3.3, Article 13 (Warranty), Article 15 (Insurance), Article 16 (Workers' Compensation), Article 17 (Liability and Indemnification), Article 19 (Third Party Claims), Article 20 (Consequential Loss), Article 25 (Confidentiality), Article 27 (Intellectual Property), Article 29 (Business Ethics), Article 30 (Liens), and Article 31 (Taxes), which shall not be limited in any way, Contractor's liability to Suncor under the Purchase Order shall be limited to the total compensation payable to Contractor for completion of the Services.

18.2 Gross Negligence and Wilful Misconduct. The limitation of Contractor's liability, specified in Paragraph 18.1 (Limitation of Liability for Contractor) shall not apply in respect of any liability of Contractor Group arising from, or connected to, Contractor Group's Gross Negligence or wilful misconduct.

19. Third Party Claims

19.1 Third Party Claims. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from and against, all Claims arising from or in connection with loss or damage suffered by third parties, including Consequential Loss, to the extent attributable to the acts, faults, errors, omissions or negligence of any member of Contractor Group.

20. Consequential Loss

20.1 Consequential Loss. The expression "Consequential Loss" shall mean:

- (a) consequential or indirect loss under the Laws of the Province of Newfoundland and Labrador; and
- (b) loss and /or deferral of production, loss of product, loss of use, loss of revenue, loss of profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in Paragraph 20.1(a), and whether or not foreseeable at the effective date of the Purchase Order.

20.2 Consequential Loss and Punitive Damages Exclusion. Notwithstanding any other provision of the Purchase Order to the contrary, except as provided in Paragraph 20.3 (Exception to Consequential Loss and Punitive Damages Exclusion), and except for coverage that may be available under insurance policies required to be maintained under the Purchase Order by Contractor:

- (a) Contractor shall indemnify, defend and hold harmless each member of Suncor Group from and against, all Claims arising from or in connection with the Purchase Order in respect of Contractor Group's own Consequential Loss and any punitive damages awarded against Contractor Group; and
- (b) Suncor shall indemnify, defend and hold harmless each member of Contractor Group from and against, all Claims arising from or in connection with the Purchase Order in respect of Suncor Group's own Consequential Loss and any punitive damages awarded against Suncor Group.

20.3 Exception to Consequential Loss and Punitive Damages Exclusion. Paragraph 20.2 (Consequential Loss and Punitive Damages Exclusion) shall not apply to Contractor's obligation to indemnify Suncor Group pursuant to Paragraph 3.3, Paragraph 19.1 (Third Party Claims), Paragraph 25.3 (Confidentiality Indemnification), Paragraph 27.2 (Intellectual Property Indemnification) and Article 29 (Business Ethics), or any liquidated damages or termination fees expressly provided for in the Purchase Order.

21. Force Majeure

21.1 Event of Force Majeure. Subject to compliance with this Article 21 (Force Majeure), if, due to an Event of Force Majeure, a Party cannot fulfill its obligations under the Purchase Order, then that Party's obligations (excluding any indemnification obligations and any payments required to be made in accordance with the Purchase Order) shall be suspended during the period of time and to the extent that the Event of Force Majeure continues to prevent such performance of the obligations; except that a Party shall not be entitled to the benefit of this Article 21 (Force Majeure) if the failure to observe or perform the obligation was caused by such Party's failure to act in a reasonable and prudent manner in the circumstances or failure to remedy the

condition and resume the performance of the obligation with reasonable dispatch.

- 21.2 **No Compensation.** In no circumstances shall a Party be entitled to any compensation as a result of an Event of Force Majeure and this Article 21 (Force Majeure) shall be available only to extend the period of time for a Party claiming an Event of Force Majeure under this Article 21 (Force Majeure) to perform its obligations.

22. Payment

- 22.1 **Payment.** Subject to the terms and conditions herein, payment shall be made in accordance with the Purchase Order.

- 22.2 **Withholding.** Notwithstanding any other provision of the Purchase Order, an amount otherwise due to Contractor may be withheld, without payment of interest, if, in the opinion of Suncor, it is necessary to protect Suncor from loss on account of:

- (a) Contractor, in the opinion of Suncor, failing to complete the Services, not making satisfactory progress with the Services or being in default of any condition of the Purchase Order, including without limitation, quality assurance and health and safety requirements;
- (b) Contractor not promptly remedying defective or deficient Services; or
- (c) Contractor failing to promptly and satisfactorily pay any Claim for labour performed or materials or equipment furnished;

and if and when the cause of the withholding of any amount is removed and satisfactory evidence of such removal is furnished to Suncor, Suncor shall promptly pay the amount withheld to Contractor pertaining to such cause.

- 22.3 **No Waiver of Suncor's Rights.** The payment of, objection to, or failure to object to any invoice, or any payment or settlement in resolution of any dispute, or any combination thereof shall not constitute acceptance by Suncor of the accuracy or justification of Contractor's invoices. Any payment by Suncor is made on the condition that Suncor reserves the right to challenge subsequently the validity of any invoiced amounts.

23. Set-Off

- 23.1 **Set-Off.** Notwithstanding any other provision in the Purchase Order, Suncor may, from time to time, without prejudice to any other right or remedy it may have at Law, under the Purchase Order or under any other contract Suncor or its Affiliates has or may have with Contractor or its Affiliates, deduct and set-off any amounts owed by Contractor to Suncor under the Purchase Order, howsoever arising, from any amount due or owing by Suncor or its Affiliates under any contract Suncor or its Affiliates has or may have with Contractor or its Affiliates.

24. Suspension or Termination

- 24.1 **Suspension or Termination by Suncor.** Suncor may, at any time, without cause, suspend or terminate the Purchase Order for any reason on 30 days' written notice.

- 24.2 **Resumption of Suspended Supply of Services.** If Suncor requests Contractor to resume the supply of the Services, Contractor shall resume the supply of the Services as requested in accordance with the terms of the Purchase Order.

- 24.3 **Compensation.** In the event of suspension or termination under this Article 24 (Suspension or Termination), Suncor shall pay Contractor the following in full satisfaction of all Claims Contractor may have in relation to, or arising from, the suspension or termination:

- (a) all compensation owed in accordance with the Purchase Order for all Services satisfactorily completed pursuant thereto up to the date of the suspension or termination, less any Claims that Suncor may have against Contractor; and
- (b) actual, direct and non-recoupable third party cancellation charges incurred by Contractor which were reasonably necessitated by the suspension or due to the termination, provided that such charges were approved by Suncor in writing prior to Contractor entering into the subcontract giving rise to such charges;

in each case to the extent such Claims are substantiated by documentation satisfactory to and verified by Suncor.

- 24.4 **Overpayment.** If, as of the date of suspension or termination, the amount paid by Suncor to Contractor under the Purchase Order exceeds the amount payable under Paragraph 24.3 (Compensation), then the amount of such overpayment shall be promptly returned to Suncor.

- 24.5 **Termination for Cause.** Should Contractor be in default of any provision of the Purchase Order, and if Contractor fails to rectify or cause to be rectified the thing or matter giving rise to such notice within 5 days of receipt of a written notice from Suncor, Suncor may immediately terminate the Purchase Order.

- 24.6 **Subcontractors.** Suncor, in its sole discretion, may require that agreements between Contractor and any of its Subcontractors be assigned to Suncor, and Contractor hereby authorizes and consents to any such assignment. Contractor shall ensure that all of its subcontracts are in writing and contain provisions that allow those subcontracts to be assigned to Suncor without restriction.

25. Confidentiality

- 25.1 **Confidential Information.** Any and all Confidential Information received by a Party shall be received in the strictest confidence and shall not be: (i) disclosed to any Person or (ii) used in any manner whatsoever directly or indirectly for any purpose other than for the purposes of carrying out the Services, except in accordance with this Article 25 (Confidentiality) and with the prior consent of the Party who provided the Confidential Information, which consent may be arbitrarily withheld.

- 25.2 **Exempt Disclosure.** Despite any other provision of this Article 25 (Confidentiality), a Party is entitled to disclose Confidential Information to the extent necessary:

- (a) to its Personnel who have a need to know the Confidential Information in connection with the supply of the Services and who have been informed of the confidential nature of such Confidential Information;
- (b) in the case of Suncor, to its advisors, the Owners and Other Contractors, including, without limitation, any Person acting as a project manager, construction manager, "buyer" or individuals working under a personal services contract for and on behalf of Suncor;
- (c) to any third party associated with the Project who has a need to know the Confidential Information in connection with the supply of the Services if, prior to disclosure,

such third party executes an agreement in form and substance acceptable to Suncor, in its sole discretion, respecting the confidential nature of the Confidential Information, and provided prior approval of disclosure is obtained from Suncor, in its sole discretion, which approval may be unreasonably withheld;

- (d) to acknowledge to third parties that the Purchase Order exists between the Parties; or
- (e) to comply with the Law; provided that, if any Party is required by Law to disclose any of the Confidential Information, the disclosing Party shall provide the Party who provided the Confidential Information with a prompt notice so that the providing Party may seek either a protective order or other appropriate remedy, and in the event such protective order or other appropriate remedy is not obtained, the disclosing Party shall furnish only that portion of the Confidential Information which in the reasonable opinion of its counsel is legally required. Each Party agrees to be responsible for any breach of this Article 25 (Confidentiality) by any Person to whom it has provided the Confidential Information.

25.3 Confidentiality Indemnification. Without limitation and in addition to any other rights or remedies Suncor may have, Contractor shall be liable to and shall indemnify, defend, and hold harmless each member of Suncor Group from all Claims brought against or suffered, sustained, paid or incurred by Suncor Group arising out of or resulting from a breach of this Article 25 (Confidentiality) by any member of Contractor Group.

25.4 Further Relief. It is understood that a breach of any of the promises or provisions contained in this Article 25 (Confidentiality) may cause the other Party to suffer a loss for which it could not be adequately compensated by monetary damages. In addition to claiming damages or an indemnity, the affected Party shall be entitled as a matter of right to seek an injunction and enforce the terms and provisions of this Article 25 (Confidentiality). The Parties agree that the effected Party will suffer irreparable harm as a result of a breach of any of the promises or provisions contained in this Article 25 (Confidentiality), and the other Party consents to any preliminary or *ex parte* applications for such relief to any court of competent jurisdiction, including equitable relief such as injunctive relief and specific performance. The foregoing rights shall be cumulative and shall be in addition to any other remedies which may be available to the affected Party.

25.5 Survival. The obligations under this Article 25 (Confidentiality) shall survive termination or expiry of the Purchase Order.

26. Publicity

26.1 Advertising. Contractor acknowledges that Suncor shall not provide any endorsement of Contractor, its Subcontractors or the Services, except as Suncor may otherwise determine in its sole discretion. Contractor agrees that it shall not (i) erect any sign or advertising, (ii) use any Suncor trademark, logo or device in any sign or advertisement, (iii) on its website, provide any link to Suncor's website or otherwise make reference to Suncor, or (iv) issue any statement to a news media organization, regarding the existence of the Purchase Order, the Project or the supply of the Services without Suncor's prior written consent, which consent may be arbitrarily withheld.

27. Intellectual Property

27.1 Rights of Parties. Subject to any rights, title or interests expressly granted by the Purchase Order, neither Party shall acquire any right, title, or interest in or to any patents, trade secrets, copyright or other intellectual property of the other Party in existence prior to the execution of the Purchase Order.

27.2 Intellectual Property Indemnification. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from and against any and all Claims arising out of or resulting from the actual or alleged infringement or misappropriation of any rights under patents, trade secrets, copyright or other intellectual property rights or any litigation based thereon in respect of Services supplied by Contractor. Contractor, if requested to do so by Suncor, shall, at its sole expense, promptly defend against any such Claims. Each Party shall notify the other Party upon becoming aware of any such Claim. Contractor shall have the right at its own expense to modify the Services so they become non-infringing, or to obtain the necessary licenses for Contractor or Suncor, as applicable, to use the infringing Services, provided that such substituted and modified Services shall meet all of the requirements and be subject to all of the provisions of the Purchase Order.

27.3 License. Contractor grants to Suncor a fully sub-licensable, transferable, worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license to use any and all patents, industrial designs, copyrights and technology related to the Services.

28. Compliance with Laws and Supplier Code of Conduct

28.1 Compliance with Law. Contractor shall be fully knowledgeable of the Law applicable to the supply of the Services and shall comply with the Law.

28.2 Compliance with the Supplier Code of Conduct. Contractor shall, and shall ensure that its Subcontractors and their respective Personnel shall, comply with the Supplier Code of Conduct at the cost and expense of Contractor. In the case of any difference between the requirements of the Supplier Code of Conduct and the Law, the stricter or higher standard shall apply.

28.3 Suncor's Right to Suspend. Suncor, acting reasonably, shall have the right to suspend performance of the Services for as long as it is necessary to prevent or stop any violation of any of the Supplier Code of Conduct or the Law, without compensating Contractor in relation to any suspended Services or for any Claims Contractor Group may suffer, and without any time extension for Completion of performance of the Services. Suncor shall have no liability for any Claims in relation to suspension of the Services, or failing to suspend the Services, pursuant to this Paragraph 28.3. Any suspension of the Services pursuant to this Paragraph 28.3 shall not relieve Contractor of any of its responsibilities pursuant to the Purchase Order, or otherwise, and shall not affect Suncor's right to terminate the Purchase Order.

29. Business Ethics

29.1 Anti-Corruption Warranty. Each Party warrants that it and its respective Group (Contractor Group or Suncor Group, as applicable) have not made, authorized or accepted and will not make, authorize or accept, with respect to the matters provided for herein, any payments, loans or gifts or promises of payment, loans or gifts, directly or indirectly to or for the

use or benefit of any official or employee of any governmental authority or to or for the use of any political party, official, candidate, or to any other Person, to obtain or retain business or to obtain any unfair advantage when such Party or member of its respective Group knows or should have known, or suspects or should have had reason to suspect, that any part of such payment, loan, gift, promise or offer would violate:

- (a) applicable Laws; or
- (b) the common understanding of business ethics.

Notwithstanding any other provision of the Purchase Order, each Party hereto shall indemnify, defend and hold harmless the other Party and its respective Group harmless from and against any and all Claims arising from or related to, any breach by such first Party of the warranty in Paragraph 29.1 (Anti-Corruption Warranty). Such indemnity obligation and the obligations under this Article 29 (Business Ethics) shall survive termination or expiration of the Purchase Order.

29.2 Audit Rights. Without prejudice to Article 35 (Audit), each Party hereto shall in good time:

- (a) respond in reasonable detail to any notice from the other Party reasonably connected with the warranty contained in Paragraph 29.1 (Anti-Corruption Warranty); and
- (b) furnish applicable documentary support for such response upon request from such other Party.

29.3 If Contractor is in breach of the foregoing warranty or this Article 29 (Business Ethics), Suncor may terminate the Purchase Order on twenty four (24) hours' notice without further compensation to Contractor.

30. Liens

30.1 If Lien Filed. If a lien in respect of the Services is filed against the Project, the Site, Suncor's government petroleum agreements, wells, equipment, lands, fixtures, improvements, or other property of Suncor, Suncor may immediately withhold payment of any monies owing to Contractor until Contractor discharges the lien.

30.2 Contractor Liens on Suncor. Contractor shall not file, and shall ensure that no member of Contractor Group files, a lien in respect of the Services or any property of Suncor Group.

30.3 Contractor to Discharge or Release Liens. Contractor shall promptly discharge or release or cause to be discharged or released any and all builders', construction, mechanic's, material, warehousemen's or similar liens which are registered, filed, recorded or brought by any Person and which are in any way related to the Services, against the Project, the Site, Suncor's government petroleum agreements, wells, equipment, lands, fixtures, improvements, or any property of Suncor Group forming part of or connected in any way with the Project.

30.4 Suncor's Right to Remove Liens and Indemnification by Contractor. Upon Contractor's failure to comply with the requirements, set out in Paragraph 30.3 (Contractor to Discharge or Release Liens), Suncor may remove such liens, and Contractor shall indemnify, defend and hold harmless each member of Suncor Group from all Claims brought against or suffered, sustained, paid or incurred by Suncor Group in connection with the removal or handling of such liens.

31. Taxes

31.1 Tax Responsibility. Contractor shall:

- (a) be responsible for and pay all Taxes in relation to the Services in compliance with all Laws relating to the collection and remittance of any and all Taxes;
- (b) be responsible for and pay the costs of all contributions, assessments and deductions, including, those required for labour unions or associations, workers' compensation insurance contributions, employment insurance contributions, employees' income Tax deductions, pension plan or social security, disability benefits, other benefits not specified, all Taxes and fines, penalties and interest thereon assessed or levied against or on account of wages, salaries or other benefits to Contractor's employees or employees of its subsidiaries and Subcontractors, and all Taxes assessed or levied against or on account of any property or equipment of Contractor and its subsidiaries together with all Taxes in relation to same as may be required by Law or payable by reason of the Services, including all Taxes upon income or excess profits and stamp Taxes; and
- (c) be responsible for assessing its liability, impact on its operations and to fully assess the impact of Tax withholding, exemptions, waivers, Tax credits and the like which may be available under reciprocal agreements between applicable countries.

31.2 Tax Withholding. If Suncor is required by the tax authorities of any applicable jurisdiction, or if Suncor in its sole discretion deems that it is required by the tax authorities of any applicable jurisdiction to withhold from any monies due to Contractor hereunder any amount required under the tax legislation of any applicable jurisdiction, then Suncor shall withhold such amounts. The appropriate operational jurisdiction withholding tax will be deducted from these fees by Suncor on behalf of Contractor, if it is applicable. The appropriate operational jurisdiction withholding tax will be deducted, where applicable, from all amounts payable to Contractor by Suncor.

Suncor shall not be liable for any costs or interest to Contractor as a result of withholding as specified herein.

Any amounts deducted by Suncor pursuant to this Article 31 (Taxes) shall be remitted by Suncor directly to any revenue authorities on behalf of Contractor, with an official receipt or other reliable evidence of payment issued by the taxing authority respecting any such remittance provided to Contractor by Suncor. It is expressly understood and agreed by Contractor that no additional payment shall be made to compensate Contractor as a result of costs associated with withholding tax. Contractor shall provide accurate and timely information relating to the value of all Services performed by it to permit Suncor to withhold the appropriate amounts as required by Law.

31.3 VAT. Suncor shall reimburse Contractor for applicable VAT imposed on Contractor as a result of compensation paid to Contractor under the terms of the Purchase Order, provided that Contractor separately invoices Suncor for VAT. As between Suncor and Contractor, Contractor shall pay for VAT levied against Contractor's Subcontractors, and shall not invoice Suncor for same.

31.4 Tax Indemnity. Contractor shall indemnify, defend and hold harmless each member of Suncor Group from all Claims brought against or suffered, sustained, paid or incurred by Suncor Group in respect of Contractor's obligations

described in Article 31 (Taxes) and for all Taxes assessed or levied by the governmental authority having jurisdiction over Contractor or its Affiliates.

32. Health and Safety

32.1 **Contract EH&S Plan.** Contractor shall at all times while performing the Services maintain an environment, health and safety plan that meets or exceeds Suncor's EH&S Management Requirements and the safe work requirements in the Purchase Order.

32.2 **Contractor Alcohol and Drug Policy.** Contractor shall, at all times while performing the Services, maintain an alcohol and drug policy in accordance with the Contractor Alcohol and Drug Standard, provided that Contractor's alcohol and drug policy shall at all times be in full compliance with applicable Laws.

32.3 **Observance of Safety.** Contractor shall, and shall ensure that its Subcontractors and its and their respective Personnel shall, observe and comply with the Contract EH&S Plan, the safe work requirements in the Purchase Order, and Contractor's alcohol and drug policy. In the case of any difference between the requirements of the Contract EH&S Plan, the safe work requirements in the Purchase Order and the Law, or between Contractor's alcohol and drug policy and the Law, in each case the stricter or higher standard shall apply.

32.4 **Suncor's Right to Suspend.** Suncor, acting reasonably, shall have the right to suspend performance of the Services for as long as it is necessary to prevent or stop any unsafe work practice or any violation of any of the Contract EH&S Plan, the safe work requirements in the Purchase Order, or the Contractor Alcohol and Drug Standard, without compensating Contractor for any loss or damages Contractor may suffer, and without any time extension for Completion of performance of the Services. Suncor shall have no liability for suspending the Services, or failing to suspend the Services, pursuant to this Paragraph 32.4. Any suspension of the Services pursuant to this Paragraph 32.4 shall not relieve Contractor of any of its responsibilities pursuant to the Purchase Order, or otherwise, and shall not affect Suncor's right to terminate the Purchase Order.

33. Security

33.1 **Risk Avoidance.** Contractor shall, and shall ensure that its Subcontractors and its and their respective Personnel shall, at all times conduct all operations on Site in a manner to avoid risk of loss, theft or damage by vandalism, sabotage or any other means to any goods or other property, including real property.

33.2 **Security Requirements.** Contractor shall comply with Suncor's security requirements for the Site and shall cooperate with Suncor on all security matters and shall promptly comply with any Project security arrangements established by Suncor. Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining proper security for any goods or other property, nor shall it be construed as limiting in any manner Contractor's obligation with respect to the Law and to undertake reasonable action to establish and maintain secure conditions at the Site or any other location where goods are being provided or Services are being performed.

33.3 **Site Access.** Suncor may, in its sole discretion, by notice to Contractor, deny access to the Site to any individual, or require Contractor or its Subcontractors to reassign, replace

or remove any Personnel. In the event an employee of Contractor or its Subcontractor is reassigned or removed, Contractor or its Subcontractor, as the case may be shall promptly replace the employee with another who is fully competent and skilled to perform the reassigned or removed employee's duties.

34. Hazardous Waste Handling

34.1 **Hazardous Substances.** Contractor shall not, and shall ensure that its Subcontractors shall not, use, store, transport, remove, dispose of or destroy any Hazardous Substances on Site, except with Suncor's prior written approval. All Hazardous Substances used, stored, transported, removed, disposed of or destroyed shall be dealt with in accordance with the Law and the Purchase Order.

34.2 **Advance Notification.** Contractor hereby agrees to notify Suncor, in advance of use or delivery, of any inherent hazard related to a Hazardous Substance being purchased or used that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to [Suncor's Manager of East Coast Supply Chain Management] and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by Suncor or others and any additional information that Suncor should reasonably expect to know to protect its interests.

35. Audit

35.1 **Records.** Contractor shall maintain a complete set of Records during the Term and for a period of at least 5 years after Completion, and, where applicable, such Records shall be maintained in accordance with GAAP.

35.2 **Audit.** At any time during normal business hours until 7 years after Completion, Suncor or its nominees shall have the right to inspect and audit the Records. Contractor shall provide proper access and facilities to enable Suncor and its nominees to undertake such inspection and audit. Contractor shall allow Suncor to make copies as reasonably required.

35.3 **Limitation Period.** The Parties agree that the limitation period to commence any Claims that have been identified as a result of a Suncor audit will commence on the date that Suncor issues the final audit report to Contractor. Further, any applicable ultimate limitation period for discovery of an action shall not apply to any Claims arising or identified as a result of an audit conducted pursuant to this Article 35 (Audit).

36. Notices

36.1 **Notices.** Notices required or permitted to be given under the Purchase Order must be written in English, be addressed or sent in accordance with the receiving Party's contact information provided in the Purchase Order, and be delivered by (a) hand, (b) courier, (c) facsimile which provides confirmation of receipt of complete transmission, or (d) email which is affirmatively acknowledged by the addressee, who shall have an affirmative duty to acknowledge promptly that the email has been received. A Party may change its contact information by sending a notice to the other Party. If local law requires notices to be in a language other than English, such notices shall be accompanied by a certified English translation, and as between the Parties, the English translation shall be primary.

Such notices shall be effective if delivered in person, by courier, at the time of delivery; or if transmitted by facsimile, the first business day at the recipient's address following the date of complete transmission, or upon receipt of acknowledgement of addressee if sent by email.

36.2 **Service of Formal Litigation Proceedings.** The address and procedure for service of notices under this Article 36 (Notices) shall not apply to the service of any document pursuant to formal litigation proceedings.

37. Survival

37.1 **Survival.** In addition to those provisions of the Purchase Order which by their nature survive the termination or expiry of the Purchase Order, the following Articles shall survive termination or expiration of the Purchase Order: Article 8 (Independent Contractor), Article 12 (Representations), Article 13 (Warranty), Article 15 (Insurance), Article 17 (Liability and Indemnification), Article 18 (Limitation of Liability), Article 19 (Third Party Claims), Article 20 (Consequential Loss), Article 25 (Confidentiality), Article 27 (Intellectual Property), Article 29 (Business Ethics), Article 30 (Liens), Article 31 (Taxes), Article 35 (Audit) and Article 38 (Governing Law).

38. Governing Law

38.1 **Governing Law and Jurisdiction.** The Purchase Order shall be governed by and construed in accordance with the Laws of the Province of Newfoundland and Labrador and the Laws of Canada applicable therein, without regard to any conflicts of laws principles that could require application of any other law.

38.2 **Dispute Resolution.** Any dispute arising between the Parties shall be determined by the courts of the Province of Newfoundland and Labrador and the courts of appeal therefrom, and the Parties hereby attorn to the exclusive jurisdiction of such courts.

38.3 **UN Convention.** The Parties agree that the Purchaser Order is not governed by the United Nations Convention on the International Sale of Goods.

39. General Matters

39.1 **Assignment.** Contractor may not assign the Purchase Order without the prior written consent of Suncor, which consent may be arbitrarily withheld. Subject to the foregoing, the Purchase Order shall enure to the benefit of and be binding upon the Parties and their respective successors and, in the case of Suncor, its assigns.

39.2 **Subcontracting.** Contractor shall not subcontract any portion of the Purchase Order without the prior written consent of Suncor, which consent shall not unreasonably be withheld.

39.3 **Entire Agreement.** The Purchase Order constitutes the entire agreement between the Parties and shall supersede and replace any and all prior agreements between the Parties with respect to the Services.

39.4 **Amendments.** No amendment to the Purchase Order shall be binding on either Party unless made in writing and signed by the authorized representatives of both Parties. Any amendment to the Purchase Order and terms and conditions applicable to the Services must be made by way of written amending agreement, signed by the authorized representatives of both Parties and specifically referencing

the applicable portion(s) of the Purchase Order to be superseded or amended.

39.5 **No Waiver.** Suncor's failure to insist on performance of any term, condition or instruction or failure to exercise any right or privilege, or its waiver of any breach or default shall not thereafter waive any such term, condition, instruction, right or privilege.

39.6 **Further Assurances.** Each of the Parties shall from time to time hereafter and upon any reasonable request of the other, execute and deliver or make or cause to be made all such further acts, deeds, assurances and items as may be required or necessary to implement and carry out the true meaning of the Purchase Order.

39.7 **Binding Agreement.** The Purchase Order shall become a binding agreement upon Contractor signing and returning an executed copy of the Purchase Order or upon Contractor otherwise acknowledging acceptance of the Purchase Order or commencing performance of the Services, whichever occurs first.

39.8 **Exclusions.** Contractor acknowledges and agrees that the Parties intend that the Purchase Order and these Services Purchase Order Terms and Conditions (East Coast Canada) will govern the provision of the Services. Any reference to, or the proposed or actual use or execution of any of Contractor's quotations, bids, proposals, price lists, invoices, field tickets, receipts, delivery slips or other documents presented to Suncor in connection with the delivery of the Services shall not supersede the Purchase Order or imply acceptance of any terms, conditions, or instructions contained in any such document and any such terms, conditions, or instructions shall be null and void. The Purchase Order and the documents incorporated by specific reference and/or produced in accordance with the Purchase Order shall be the only documentation and agreement between the Parties with respect to the Services, notwithstanding the fact that a Person acting or purporting to act on behalf of Suncor and/or Contractor may have purported to accept, execute or acknowledge any other document in relation to the Services.

END OF DOCUMENT