



# Terms and Conditions

## Services Purchase Order

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### 1. Definitions

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

- (a) **“Aboriginal Business”** means a business that has at least 51% ownership held by aboriginal people.
- (b) **“Affiliate”** shall have the same meaning given to that term in the *Canada Business Corporations Act*, or any similar, replacement or supplemental Law in effect from time to time, which meaning shall, mutatis mutandis, apply to partnerships, limited liability partnerships and limited partnerships.
- (c) **“Claim”** or **“Claims”** means, as the case may be, any one or more of: loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, proceeding, lien (whether builders’, mechanic’s, construction or other type of lien), legal hypothec, encumbrance, statutory obligation, liability, suit, judgment, award, decree, determination, adjudication, unpaid tax of any kind (including withholding tax), cost of investigation and any type of fee (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto at the applicable rate.
- (d) **“Completion”** means that the Services have been fully completed in accordance with the Purchase Order.
- (e) **“Confidential Information”** means all information of a confidential nature which the Contractor or Suncor, directly or indirectly, acquires from the other party to the Purchase Order, including any information concerning or relating to the Contractor or Suncor, including such party’s business, affairs, financial position, assets, operations, activities, prospects or trade secrets, together with all analyses, evaluations, compilations, notes, studies or other documents prepared by the Contractor or Suncor, as the case may be, or their respective Personnel, containing or based upon such information.
- (f) **“Contractor”** means the party named in the Purchase Order as the supplier of the Services to Suncor.
- (g) **“Contract EH&S Plan”** means the Contractor’s environmental, health and safety plan described in Paragraph 29.1 Contract EH&S Plan.
- (h) **“Contractor Alcohol and Drug Standard”** means the current version of Suncor’s Contractor Alcohol and Drug Standard available on Suncor’s website at [www.suncor.com](http://www.suncor.com), as updated from time to time, or as may be provided by Suncor from time to time.
- (i) **“Documents”** includes, without limitation, diagrams, illustrations, specifications or drawings supplied directly or indirectly by Suncor to the Contractor, or produced by the 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 to the Purchase Order, which 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 foregoing, an Event of Force Majeure shall not include:
  - (i) strikes, lockouts or other industrial concerted action by workers of the Contractor which may adversely impact the supply of the Services;
  - (ii) failure of equipment that could have been prevented by normal maintenance;
  - (iii) shortage of labour, materials, equipment, transportation or utilities (unless caused by circumstances which are themselves an Event of Force Majeure);
  - (iv) lack of finances or inability to perform because of a party’s financial conditions; or
  - (v) 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) **“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 and treatment of the substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material, including all Dangerous Goods as defined in the *Transportation of Dangerous Goods Act (Canada)* or any successor legislation.
- (m) **“Indemnitees”** means Suncor, its Affiliates and their respective Personnel.
- (n) **“Invoicing Requirements”** means Suncor’s invoicing and accounts payable standards, procedures, policies and guidelines on Suncor’s website at [www.suncor.com](http://www.suncor.com) and as specified in the Purchase Order and as may be provided by Suncor from time to time.
- (o) **“Law”** or **“Laws”** means collectively all valid applicable common law, federal, provincial, state and municipal and other local laws, orders, rules, regulations and decisions of regulatory bodies, including, occupational health and safety, fire, employment insurance, workers’ compensation, Hazardous Substance, transportation of dangerous goods and handling, 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 any other governmental requirements, work practices and procedures prescribed by law and related to the Contractor, the Site or the Services.
- (p) **“Other Contractors”** means contractors or suppliers engaged by Suncor to provide labour, materials,

- products or services, other than the Contractor or Subcontractors.
- (q) **"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 corporation, as the case may be.
- (r) **"Personnel"** means a party's directors, officers, employees, contract personnel, representatives, advisors and agents, and, in respect of the Contractor, includes direct field labour (as applicable), which meaning shall, mutatis mutandis, apply to Affiliates of a party and Subcontractors.
- (s) **"Purchase Order"** means the purchase order issued by Suncor, the Services Purchase Order Terms and Conditions and all other attachments identified in the Purchase Order.
- (t) **"Records"** means the records of the Contractor relating to the Purchase Order or the Services, and which include paper and electronic documents and/or copies in their native form, 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 Purchase Order, 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 the 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 37.2.
- (u) **"Regional Business"** means a local business or Aboriginal Business "established" within the same region or municipality as the Services are provided and, for the purposes of this Purchase Order, "established" means:
- (i) retains a manned office within the region or municipality, other than a post office box address;
  - (ii) retains an employment base within the region or municipality; and
  - (iii) retains a valid business license in the region or municipality.
- (v) **"Services"** means all labour, supervision, administration, supplies, tools, equipment and such other work and materials to be supplied or performed by the Contractor at the Site in accordance with the Purchase Order.
- (w) **"Services Purchase Order Terms and Conditions"** means this document entitled "Services Purchase Order Terms and Conditions", including where applicable, the Supplemental Freight Services Addendum, and forming part of the Purchase Order.
- (x) **"Site"** means the site(s) identified in the Purchase Order.
- (y) **"Subcontractor"** or **"Subcontractors"**, as the case may be, means one or more of the Contractor's subcontractors, suppliers, manufacturers, vendors or agents, whether or not an Affiliate of the Contractor to whom supply of any part of the Services are subcontracted directly or indirectly by the Contractor.
- (z) **"Suncor"** means the Suncor entity identified in the Purchase Order.
- (aa) **"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](http://www.suncor.com), and as updated from time to time, or as may be provided by Suncor from time to time.
- (bb) **"Supplemental Freight Services Addendum"** means the Terms & Conditions - Supplemental Freight Services Addendum available on Suncor's website at [www.suncor.com](http://www.suncor.com), as updated from time to time, which shall apply where the Services include Suncor's direct hire of transportation of cargo and materials.
- (cc) **"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](http://www.suncor.com).
- (dd) **"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 those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges.
- (ee) **"Warranty Period"** means the period of time starting on the date of Completion and continuing until 18 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, 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 the 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;
- (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 and attachments;
- (d) technical specifications; and
- (e) drawings.
- 2.4 **Severability.** If any term, covenant or condition of the Services Purchase Order Terms and Conditions, to any extent, is invalid or unenforceable, the remainder of the Services Purchase Order Terms and Conditions 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 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 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.
- 3. Scope of Services**
- 3.1 **Services.** The Contractor shall supply the Services, in accordance with the Purchase Order.
- 3.2 **Time.** The Contractor acknowledges that timely supply of the Services is a matter of paramount importance to Suncor.
- 3.3 **Acceptance of the Site.** Any failure by the Contractor to discover matters which affect or could affect the Services shall not relieve the Contractor from its obligations under the Purchase Order. Specifically, the 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 required to execute and complete the Services;
- (d) all environmental risks, conditions, Law and restrictions applicable to the Contractor, or the Services, that might affect the Services; and
- (e) all conditions affecting labour, including availability, productivity and administrative practices, including those relating to safety, prevailing at or applicable to the Services.
- 3.4 **Errors, Omissions or Inconsistencies.** If the 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.
- 3.5 **No Deviations.** The Contractor shall not deviate from the specifications or requirements stated in the Purchase Order.
- 3.6 **Minimum of Interference and Full Cooperation.** The Contractor shall perform the Services in such manner as to cause a minimum of interference with Suncor’s operations. The Contractor shall cooperate fully with all other parties with whom the Contractor may be involved during the performance of the Services.
- 3.7 **Property Damage.** The Contractor shall protect the Services and Suncor’s property and property adjacent to the Site from damage which may arise as a result of the Contractor’s operations or the operations of its Subcontractors. Should the Contractor’s operations or the operations of its Subcontractors cause damage to the Services or Suncor’s property, the Contractor shall be responsible for making good such damage at the Contractor’s expense.
- 4. Material, Equipment and Supplies**
- 4.1 **Contractor to Check Material, Equipment and Supplies.** The Contractor shall check, assess and record upon delivery to the Contractor the quantity and condition of all materials, equipment and supplies supplied by Suncor or otherwise obtained by the Contractor which are to be installed or used by the 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 the Contractor, or while in the custody or control of the Contractor, the 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 the Contractor at the time of such loss, damage or destruction.
- 5. Changes**
- 5.1 **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 the Contractor agrees to perform its obligations under the Purchase Order as changed.

5.2 **Compensation for Change.** In the event a change directly or indirectly causes an increase or decrease in the time or cost to perform its obligations under the Purchase Order, the Contractor shall, within 10 days of receiving such notice of the 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.

5.3 **Performance.** The Contractor shall proceed diligently with the supply of the Services, pending final resolution of any request for relief, dispute, claim, appeal or action arising under the Purchase Order.

### 6. Independent Contractor

6.1 **Independent Contractor.** The Contractor is an independent contractor and not an agent of Suncor.

### 7. Other Contractors

7.1 **Other Contractors.** If any part of the Services depends upon the work of Other Contractors for its proper execution or result and the 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, the Contractor shall as soon as practicable provide a notice to Suncor of such defects, deficiencies or conflicts. Should the Contractor fail to provide a notice to Suncor as required by this Paragraph, the 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.

### 8. Regional Businesses

8.1 **Regional Businesses.** Suncor strongly supports the use of Regional Businesses. When subcontracting part or parts of the Services, the Contractor shall proactively seek out Regional Businesses to perform such subcontracts, and whenever appropriate, and provided there is no time or cost penalty to Suncor or the Contractor, the Contractor shall give preference to Regional Businesses when subcontracting any part of the Services.

8.2 **Regional Business Plan.** When specified in the Purchase Order, the Contractor shall prepare and submit, for Suncor's approval, a Regional Business plan. The Contractor shall report to Suncor on a monthly basis its performance against this plan including the extent to which Regional Businesses were used in the execution of the Services, the names of the Regional Businesses used and the dollar amount of such subcontracts.

### 9. Clean Up

9.1 **Waste.** In addition to the requirements of Article 31 Hazardous Waste Handling, no waste materials shall be allowed to accumulate in or around the Site, and the Contractor shall remove, or cause its Subcontractors to remove, debris or waste materials at periodic intervals or as often as Suncor may direct and shall ensure disposal of such debris and waste materials in accordance with applicable

environmental Laws. The Contractor shall ensure that the Site is kept clean and free of debris and waste materials at all times. Before Completion of the Services, the Contractor shall remove or cause to be removed all temporary structures, superfluous and waste materials of whatever kind resulting from the Services.

### 10. Ownership of Documents

10.1 **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 the Contractor.

### 11. Representations

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

- (a) the Services shall be performed in a professional, 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 higher practice or principle shall take precedence;
- (b) the 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) the Contractor has all required permits, licences and authorizations necessary to carry on its business and to be obtained by it to supply the Services.

### 12. Warranty

12.1 **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 the Contractor in writing of such defect or deficiency no later than 30 days after the expiry of the Warranty Period,

the 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.

12.2 **Indemnification by Contractor to Suncor for Remediation.** Should the Contractor fail to promptly remedy the defects or deficiencies in accordance with Paragraph 12.1 Remediation of Defective or Deficient Services, Suncor

may proceed with any activities necessary to remedy the defects or deficiencies and the Contractor shall indemnify and hold harmless the Indemnitees from any Claim suffered, sustained, paid or incurred by the Indemnitees in remedying or rectifying such defects or deficiencies.

**12.3 Remediation of Defects or Deficiencies affecting Safety, Environment or Operations.** Subject to the limit of the Contractor's liability under Paragraph 12.1 Remediation of Defective or Deficient Services, 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 the Contractor is not immediately available to remedy such defect or deficiency in the Services, Suncor may proceed with any activities necessary to remedy such defect or deficiency in the Services, and any resultant impact of such defect or deficiency, and the Contractor shall reimburse Suncor for all reasonable costs incurred by Suncor as a result of such remediation.

**12.4 Warranty for Warranty Repairs.** The 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 of 12 months from completion of the corrective actions or supply of such Services.

### 13. Insurance

**13.1 Insurance Coverage.** Without limiting any of the obligations or liabilities under the Purchase Order and prior to commencing any Services under the Purchase Order, the Contractor and its Subcontractors shall obtain and continuously carry when on Site, 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, or in Quebec, the protection pursuant to the *Act respecting industrial accidents and occupational diseases* (RSQ, chapter A-3.001) covering all employees engaged in the Services;
- (b) Commercial General Liability Insurance, including bodily injury, death and property damage, in an amount of not less than \$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. This policy will respond to property damage to Suncor's existing facilities;
- (c) Automobile Liability Insurance for owned, leased, hired, operated or licensed vehicles with limits of not less than \$2 million for accidental injury to or death of one or more persons or damage to or destruction of property as a result of one accident or occurrence;
- (d) 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

the Contractor or its Subcontractors in performing the Services; and

- (e) Such additional coverage as may be required by Law.

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

- (a) The Contractor shall, upon request, provide Suncor with evidence of compliance with applicable workers' compensation legislation and coverage, or in Quebec, a Compliance Certificate issued by the Commission de la santé et de la sécurité au travail du Québec;
- (b) Certificates of insurance of the policies described in Paragraph 13.1 Insurance Coverage shall be submitted to Suncor prior to commencement of the Services. 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 the Contractor of its obligations to provide, and to cause its Subcontractors to provide, the insurance in this Article;
- (c) All property insurance policies provided by the Contractor and its Subcontractors shall contain a waiver of subrogation against Suncor, its Affiliates and each of their respective directors, officers, employees and agents;
- (d) All insurance provided by the Contractor or its Subcontractors shall be considered primary and not excess to any insurance carried by Suncor;
- (e) All insurance which is project specific shall contain extended reporting provisions for a period of 18 months past Initial Operations; and
- (f) All liability insurance policies, except for automobile liability insurance and workers' compensation, provided by the Contractor and its Subcontractors shall:
  - (i) name Suncor, its Affiliates and their respective Personnel 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) each such policy shall state that it cannot be cancelled without at least 30 days written notice to Suncor.

**13.3 Insurance Indemnity.** If the Contractor fails, or any of its Subcontractors fail, to furnish Suncor with a certificate of insurance for each policy of insurance required to be obtained in Paragraph 13.1 Insurance Coverage, or if after furnishing a certificate of insurance, any policy lapses, is cancelled or is materially altered, then in every case Suncor may obtain and maintain such insurance in the name of the Contractor and any of its Subcontractors. The Contractor shall indemnify and hold harmless the Indemnitees from any Claim suffered, sustained, paid or incurred by Indemnitees to place such insurance for the Contractor, including the Subcontractors' insurance costs.

**13.4 Subcontractors.** The Contractor shall ensure that its Subcontractors maintain the same types and limits of insurance as provided for in Paragraph 13.1 Insurance

Coverage and 13.2 Requirements of Contractor. The 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 agreement entered into with the Subcontractors setting out the insurance requirements of the Subcontractors, without reference to commercial terms.

- 13.5 **Deductibles.** The Contractor shall be responsible for payment of all deductibles applicable to the insurance described in Paragraph 13.1 Insurance Coverage.
- 13.6 **Liability of the Contractor.** Neither the providing of insurance by the Contractor in accordance with the requirements of this Article, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim occurring shall be held to relieve the Contractor from any other provisions of the Purchase Order with respect to liability of the Contractor or otherwise.
- 13.7 **Notice.** Suncor and the Contractor shall immediately notify in writing each other and the relevant insurer of any occurrence or incident likely to give rise to a claim under the policies or insurance coverage referred to in this Article, or of any other matter or thing in respect of which notice should be given by Suncor or the Contractor to the relevant insurers. In addition, both Suncor and the Contractor shall give all such information, reports, documentation and assistance as may be reasonably practicable in all the circumstances to achieve prompt settlement of insurance claims.

#### 14. Workers' Compensation

##### 14.1 Workers' Compensation

- (a) The Contractor shall, and shall ensure that its Subcontractors comply with workers' compensation Law covering all persons employed by the Contractor and its Subcontractors. Without limitation, the 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 13.1(a). Upon Suncor's request, the Contractor shall deliver to Suncor a statement from the Workers' Compensation Board, or applicable governing body, indicating that the Contractor or Subcontractor is registered and in good standing.
- (b) Where the Site is located in Quebec, the Contractor shall and shall ensure that its Subcontractors comply with all workers' compensation and occupational health and safety Laws applicable to all persons employed by the Contractor and its Subcontractors. The Contractor shall and shall ensure that all its Subcontractors are at all times in good standing with the Commission de la santé et de la sécurité du travail du Québec in regard to the payment of the assessments payable pursuant to the *Act respecting industrial accidents and occupational diseases* (RSQ, chapter A-3.001) and the *Act respecting occupational health and safety* (RSQ, chapter S-2.1).
- (c) In the event that an employee of the 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) the 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.

- 14.2 **Indemnification for Workers' Compensation.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against Suncor as a result of the Contractor's failure to pay, or the failure of the Contractor to ensure its Subcontractors pay, any assessment, contribution, or insurance premium relating to workers' compensation coverage.

#### 15. Liability and Indemnification

- 15.1 **Liability of Contractor.** Except as otherwise provided in the Purchase Order, the Contractor agrees that it shall be liable to and indemnify and hold harmless the Indemnitees, the Indemnitees' joint venturers and their respective Personnel for all Claims whatsoever which the Indemnitees, the Indemnitees' joint venturers and their respective Personnel may suffer, sustain, pay or incur as a result of and to the extent of: (i) the negligence; or (ii) breach of contract; of the Contractor; arising out of or incidental to the performance or non-performance of the Purchase Order or of the Services by the Contractor.

#### 16. Limitation of Liability

- 16.1 **Limitation of Liability for the Contractor.** Subject to Paragraph 16.2 Gross Negligence and Wilful Misconduct and the Contractor's obligations to indemnify pursuant to Article 17 Third Party Claims, Article 23 Confidentiality, Article 25 Intellectual Property, Article 27 Liens and Legal Hypothecs and Article 28 Taxes which shall not be limited in any way, the Contractor's liability under this Purchase Order shall be limited to the greater of:

- (a) all amounts of applicable coverage under policies of insurance required to be maintained under the Purchase Order; or
- (b) the total compensation payable under the Purchase Order.

- 16.2 **Gross Negligence and Wilful Misconduct.** The limitation of the Contractor's liability, specified in Paragraph 16.1 Limitation of Liability for the Contractor shall not apply in respect of liability of the Contractor arising from, or connected to, its gross negligence or wilful misconduct. Where the Purchase Order is governed by the Laws of Quebec, "gross negligence and wilful misconduct" shall have the same meaning as "intentional or gross fault".

#### 17. Third Party Claims

- 17.1 **Third Party Claims.** The Contractor shall indemnify, and hold harmless the Indemnitees, the Indemnitees' joint venturers and their respective Personnel from all Claims whatsoever by any third party which may be brought or made against the Indemnitees, the Indemnitees' joint venturers and their respective Personnel or which the Indemnitees, the Indemnitees' joint venturers and their respective Personnel may suffer, sustain, pay or incur as a

result of and to the extent of the acts, faults, errors, omissions or negligence of the Contractor.

### 18. Consequential and Punitive Damages

**18.1 Consequential and Punitive Damages Exclusion.** Subject to Paragraph 18.2 Direct Lost Profits and Paragraph 18.3 Exception to Consequential and Punitive Damages Exclusion and except for coverage that may be available under insurance policies required to be maintained under the Purchase Order by the Contractor, the Contractor shall not be liable to the Indemnitees and the Indemnitees shall not be liable to the Contractor, its Affiliates or its Subcontractors, or their respective Personnel, for:

- (a) consequential damages;
- (b) punitive damages; or
- (c) damages for losses of profits, revenue, business, reputation or financing and lost opportunity.

**18.2 Direct Lost Profits.** Notwithstanding Paragraph 18.1 Consequential and Punitive Damages Exclusion, the Contractor shall be liable to the Indemnitees for damages for losses of profits, revenue, business, reputation or financing and lost opportunity if and to the extent that such losses are a direct result of: (i) the negligence; or (ii) breach of contract; of the Contractor; arising out of or incidental to the performance or non-performance of the Purchase Order or of the Services by the Contractor.

**18.3 Exception to Consequential and Punitive Damages Exclusion.** Paragraph 18.1 Consequential and Punitive Damages Exclusion shall not apply to the Contractor's obligation to indemnify the Indemnitees pursuant to Paragraph 17.1 Third Party Claims, Paragraph 23.3 Confidentiality Indemnification and Paragraph 25.2 Intellectual Property Indemnification.

### 19. Force Majeure

**19.1 Event of Force Majeure.** Subject to compliance with this Article, if, due to an Event of Force Majeure, either party cannot fulfill its obligations under the Purchase Order, then that party's obligations 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 to the Purchase Order shall not be entitled to the benefit of this Article 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.

**19.2 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 shall only be available to extend the period of time for a party claiming an Event of Force Majeure under this Article to perform its obligations.

### 20. Payment

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

**20.2 Withholding.** Notwithstanding any other provision of the Purchase Order, an amount otherwise due to the 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) the Contractor, in the opinion of Suncor, failing to complete the Services;
- (b) being in default of any condition of the Purchase Order, including without limitation, quality assurance and health and safety requirements;
- (c) the Contractor not promptly remedying defective or deficient Services; or
- (d) the 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 the Contractor pertaining to such cause.

### 21. Set-Off

**21.1 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 the Contractor, deduct and set-off any amounts owed by the 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 the Contractor.

### 22. Suspension or Termination

**22.1 Suspension or Termination by Suncor.** Suncor may, at any time, without cause, suspend or terminate the Purchase Order for any reason on 15 days' written notice; provided, however, that Suncor may, upon giving 24 hours' notice, immediately terminate the Purchase Order for cause.

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

**22.3 Compensation.** In the event of suspension or termination under Article 22 Suspension or Termination, Suncor shall pay the Contractor the following in full satisfaction of all Claims the 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 termination or suspension, less any Claims that Suncor may have against the Contractor; and
- (b) third party cancellation charges incurred by Contractor due to the termination or suspension, provided that such charges were approved in writing by Suncor, prior to the Contractor entering into the subcontract giving rise to such charges.

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

**22.4 Overpayment.** If, as of the date of suspension or termination, the amount paid by Suncor to the Contractor under the Purchase Order exceeds the amount payable under Paragraph 22.3 Compensation, then the amount of such overpayment shall be promptly returned to Suncor.



22.5 **Termination for Cause.** Should the Contractor be in default of any provision of the Purchase Order, and if the Contractor fails to commence 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.

22.6 **Subcontractors.** Suncor, in its sole discretion, may require that agreements between the Contractor and any of its Subcontractors be assigned to Suncor, and the Contractor hereby authorizes and consents to any such assignment.

### 23. Confidentiality

23.1 **Confidential Information.** Any and all Confidential Information received by a party to the Purchase Order shall be received in the strictest confidence and shall not be: (i) disclosed to any third party 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 and with the prior consent of the party who provided the Confidential Information, which consent may be arbitrarily withheld.

23.2 **Exempt Disclosure.** Despite any other provision of Article 23 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) with respect to Suncor, to its advisors or Other Contractors, including, without limitation, third parties acting as a project manager, construction manager, "buyer" or individuals working under a personal services contract for an on behalf of Suncor;
- (c) to any third party associated with the Services 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.

If any party to the Purchase Order 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 to the Purchase Order agrees to be responsible for any breach of this Article by any person to whom it has provided the Confidential Information.

23.3 **Confidentiality Indemnification.** Without limitation and in addition to any other rights or remedies Suncor may have, the Contractor acknowledges that it shall be liable to and shall indemnify and hold harmless the Indemnitees from all

inter-party and third party Claims brought against or suffered, sustained, paid or incurred by the Indemnitees arising out of or resulting from a breach of this Article by the Contractor.

23.4 **Further Relief.** It is understood that a breach of any of the promises or provisions contained in this Article 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. 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, 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 effected party.

23.5 **Term.** The obligations under this Article shall continue for a period of 5 years following the date the Purchase Order becomes a binding agreement in accordance with Paragraph 37.8 Binding Agreement.

### 24. Publicity

24.1 **Advertising.** The Contractor acknowledges that Suncor shall not provide any endorsement of the Contractor, its Subcontractors or the Services supplied pursuant to the Purchase Order. The Contractor agrees that it shall not erect any sign or advertising, use any Suncor trademark, logo or device in any sign or advertisement or issue any statement to a news media organization regarding the existence of the Purchase Order or the supply of the Services without Suncor's prior written consent, which consent may be arbitrarily withheld.

### 25. Intellectual Property

25.1 **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.

25.2 **Intellectual Property Indemnification.** The Contractor shall be liable to and, in addition, shall indemnify and hold harmless the Indemnitees 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 the Contractor. The Contractor, if requested to do so by Suncor, shall, at its sole expense, promptly defend against the Claim. Suncor shall notify the Contractor upon becoming aware of the Claims. The Contractor shall have the right at its own expense to modify the Services so they become non-infringing, or to obtain the necessary licenses to use the infringing Services only if such substituted and modified Services shall meet all the requirements and be subject to all the provisions of the Purchase Order.

25.3 **License.** The Contractor grants to Suncor a fully sub-licensable, 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.

### 26. Compliance with Laws and Supplier Code of Conduct

- 26.1 **Compliance with Law.** The Contractor shall be fully knowledgeable of the Law applicable to the supply of the Services and shall comply with the Law.
- 26.2 **Compliance with Supplier Code of Conduct.** The Contractor shall and shall ensure that its Subcontractors and their respective Personnel comply with the Supplier Code of Conduct at the cost and expense of the 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.
- 26.3 **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 the Supplier Code of Conduct or the Law, without compensating the Contractor in relation to any suspended Services or for any Claims the Contractor 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. Any suspension of the Services pursuant to this Paragraph shall not relieve the 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 for the same violation.

### 27. Liens and Legal Hypothecs

- 27.1 **If Lien or Legal Hypothec Filed.** If a lien or legal hypothec in respect of the Services is filed against the Site or any of Suncor's property, including leases (excluding any valid liens of the Contractor), Suncor may immediately withhold payment of any monies owing to the Contractor until the Contractor discharges the lien or legal hypothec.
- 27.2 **Contractor to Discharge or Release Liens or Legal Hypothecs.** The 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 or legal hypothecs which are registered, filed, recorded or brought by any party and which are in any way related to the Services, against the Site or any property of Suncor forming part of or connected in any way with the Services.
- 27.3 **Indemnification by Contractor.** The Contractor shall indemnify the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by the Indemnitees in connection with any liens or legal hypothecs (excluding any valid liens or legal hypothecs of the Contractor) contemplated in this Article 27 Liens and Legal Hypothecs.
- 27.4 **Waiver of Legal Hypothec.** Notwithstanding the preceding Paragraphs in this Article and where this Purchase Order is governed by the Laws of Québec, the Contractor with no reserve hereby waives its right to a legal hypothec in respect of the Services.

### 28. Taxes

- 28.1 **Tax Responsibility.** With the exception of goods and services tax/harmonized sales tax (as defined in the *Excise Tax Act* (Canada)), payable on amounts due to the Contractor, payment of which shall remain the responsibility of Suncor, the Contractor shall:
- (a) be responsible for and pay all Taxes in relation to the Services under the Purchase Order in compliance with

all Law 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, Canada Pension Plan, disability benefits, other benefits not specified, together with all Taxes in relation to same as may be required by Law; 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 with non-Canadian countries.
- 28.2 **Tax Withholding.** If the Contractor is a non-resident of Canada within the meaning of the *Income Tax Act* (Canada), Suncor is obligated by Law to withhold at the then current rate a percentage of the value of the Services performed in Canada by the Contractor unless an official exemption from tax withholding is received by Suncor from the Contractor. Suncor shall be entitled to deduct any such required withholdings from any amounts paid or payable to the Contractor under the Purchase Order. Any amounts deducted by Suncor pursuant to this Paragraph shall be remitted by Suncor directly to any revenue authorities on behalf of the Contractor, with an official receipt respecting any such remittance provided to the Contractor by Suncor. It is expressly understood and agreed by the Contractor that no additional payment shall be made to compensate the Contractor as a result of costs associated with Canadian and Quebec (if applicable) withholding tax. The Contractor shall provide accurate and timely information relating to the value of all Services performed by it in Canada and Quebec (if applicable) to permit Suncor to withhold the appropriate amounts as required by Law.
- 28.3 **Tax Indemnity.** The Contractor shall indemnify and hold harmless the Indemnitees from all third party Claims brought against the Indemnitees in respect of the Contractor's obligations described in Article 28 Taxes.

### 29. Health and Safety

- 29.1 **Contract EH&S Plan.** The 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.
- 29.2 **Contractor Alcohol and Drug Policy.** The Contractor shall, at all times while performing the Services, maintain an alcohol and drug policy in accordance with the Contractor Alcohol and Drug Standard.
- 29.3 **Observance of Safety.** The Contractor shall observe and shall ensure that its Personnel, as well as the Personnel of its Subcontractors, observe and comply with the Contract EH&S Plan, the safe work requirements in the Purchase Order and the 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 the Contractor's alcohol and drug policy and the Law, the stricter or higher standard shall apply.
- 29.4 **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 the safe work requirements in the Purchase Order or the Contractor Alcohol and Drug Standard, without compensating the Contractor for any loss or damages the 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. Any suspension of the Services pursuant to this Paragraph shall not relieve the 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 for the same unsafe work practice or violation.

### 30. Security

- 30.1 **Risk Avoidance.** The Contractor shall, and shall ensure that its Subcontractors 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.
- 30.2 **Security Requirements.** The 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 Site security arrangements established by Suncor. Such compliance with these security requirements shall not relieve the Contractor of its responsibility for maintaining proper security for any goods or other property, nor shall it be construed as limiting in any manner the Contractor's obligation with respect to all 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.
- 30.3 **Site Access.** Suncor may, in its sole discretion, by a notice to the Contractor, deny access to the Site to any individual, or require the Contractor or Subcontractor to reassign, replace or remove any Personnel. In the event an employee of the Contractor or a Subcontractor is reassigned or removed, the Contractor or 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.

### 31. Hazardous Waste Handling

- 31.1 **Hazardous Substances.** The Contractor shall not, and the Contractor 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 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.
- 31.2 **Asbestos.** Where asbestos is present at the Site, the Contractor shall not proceed with any Services until:
- (a) asbestos surveys and notifications have been completed and provided to the appropriate regulatory agencies by the party responsible to carry out such Services as set out in this Purchase Order; and
  - (b) Suncor specifically authorizes those Services to proceed.

### 32. Audit

- 32.1 **Records.** The Contractor shall maintain a complete set of Records during the performance of Services and for a period

of at least 5 years after Completion, and, where applicable, such Records shall be maintained in accordance with GAAP.

- 32.2 **Audit.** At any time during normal business hours until 5 years after Completion, Suncor or its nominees shall have the right to inspect and audit the Records. The Contractor shall provide Suncor with proper access and facilities to enable Suncor or its nominees to undertake such inspection and audit. The Contractor shall allow Suncor to make copies as reasonably required.
- 32.3 **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 the Contractor. Further, the ultimate 10 year 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.

### 33. Dispute Resolution

- 33.1 **Unresolved Dispute.** In the event of a dispute arising between the parties under or in connection with the Purchase Order the parties may agree to submit the dispute to arbitration pursuant to Paragraph 33.2 Arbitration or either party may, within the limitation periods prescribed by Law, commence litigation with respect to the dispute.
- 33.2 **Arbitration.** Should the parties agree to resolve the dispute by arbitration, then the dispute shall be submitted for arbitration before a single arbitrator with the costs associated with the arbitrator and other costs of arbitration shared equally between Suncor and the Contractor and each party bearing their own costs of the arbitration.
- 33.3 **Forum.** The parties consent to the arbitration being conducted in the province where the Site is located.
- 33.4 **Subcontractors.** The Contractor shall require its Subcontractors to enter into an agreement with the Contractor containing provisions in the same form as those found in Paragraph 33 Dispute Resolution.

### 34. Notices

- 34.1 **Notices.** Notices shall be given in writing and shall be addressed to the party in question at the address set forth in the Purchase Order. Notices may be delivered in person, by courier or transmitted by electronic communication.
- 34.2 **Service of Formal Litigation Proceedings.** The address and procedure for service of notices under Article 34 Notices shall not apply to the service of any document pursuant to formal litigation proceedings.

### 35. Survival

- 35.1 **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 6 Independent Contractor, Article 11 Representations, Article 12 Warranty, Article 15 Liability and Indemnification, Article 16 Limitation of Liability, Article 23 Confidentiality, Article 25 Intellectual Property, Article 27 Liens and Legal Hypothecs, Article 32 Audit, Article 33 Dispute Resolution and Article 36 Governing Law.

### 36. Governing Law

- 36.1 **Governing Law and Jurisdiction.** The Purchase Order shall be governed by and construed in accordance with the Laws of the province where the Site is located. The parties

agree, subject to Article 33 Dispute Resolution, to accept and submit to the exclusive jurisdiction of the courts of the province where the Site is located.

36.2 **Forum.** The parties waive any objection based on venue or forum non conveniens with respect to any Claim arising under the Purchase Order or in any way connected to or related to or incidental to the dealings of the Contractor and Suncor in respect of the Purchase Order or any related transactions, in each case whether now existing or hereafter arising and whether in contract, tort, equity or otherwise.

### 37. General Matters

37.1 **Scope of Undertakings.** Where the Services are provided for Suncor's operations in relation to the Terra Nova Project:

(a) Contractor acknowledges that 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.

(b) 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.

37.2 **Canada – Newfoundland and Labrador Benefits.** Where the Services are provided for Suncor's operations in relation to the Terra Nova Project:

(a) 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 the Contractor.

(b) Contractor shall maintain, for a period of two (2) years from the date of the Purchase Order, records containing the following information:

(i) 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;

(ii) 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;

(iii) 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

(iv) any expenditures incurred in relation to research and development carried out in Newfoundland and Labrador, and education and training provided in Newfoundland and Labrador.

(c) 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.

(d) 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.

37.3 **Assignment.** Neither party may assign the Purchase Order without the prior written consent of the other party, which consent may be arbitrarily withheld. Notwithstanding the foregoing, Suncor may assign the Purchase Order to any of its Affiliates or to any third party that amalgamates or merges with Suncor or which acquires all or substantially all of the assets of Suncor, conditional upon the successor covenanting and agreeing to be bound to the Contractor by the provisions of the Purchase Order. 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.

37.4 **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.

37.5 **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.

37.6 **Amendments.** No amendment to the Purchase Order shall be binding on Suncor and the Contractor, unless made in writing and signed by the authorized representatives of both parties.

37.7 **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.

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

37.9 **Exclusions.** Any reference to the Contractor's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document.