

Services Purchase Order Terms and Conditions

1. Definitions

1.1 **Definitions.** Unless the context requires otherwise, the following capitalized terms, wherever used in the Purchase Order, have the meanings indicated:

- (a) **"Affiliate"** means, with respect to any Person, any other Person who controls, is controlled by, or is under common control with the subject Person, where "control" means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.
- (b) **"Claim"** means any loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, proceeding, Lien, 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), together with any interest in relation thereto at the applicable rate.
- (c) **"Completion"** means that the Services have been fully performed and completed in accordance with the Purchase Order.
- (d) **"Confidential Information"** means all information, knowledge or know-how of a confidential nature that a Party, directly or indirectly, acquires from the other Party or any of its Affiliates, including any information concerning or relating to the Project, or to the other Party's or any of its Affiliates' 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 receiving Party or any of its Affiliates, or any of their respective officers, directors, employees, advisors or agents, containing or based upon such information, knowledge or know-how.
- (e) **"Contractor"** means the Party named in the Purchase Order as the provider of the Services to Suncor.
- (f) **"EH&S Management Procedure"** means the current release of Suncor's Central Management Team Environment, Health, Safety and Security Reference Manual.
- (g) **"Documents"** means the Purchase Order, all documents prepared by or on behalf of Suncor pursuant to the Purchase Order, and all documents prepared by the Contractor pursuant to the Purchase Order that are reviewed and approved in writing by Suncor.
- (h) **"Event of Force Majeure"** means an event or circumstance beyond the reasonable control of a Party that restrains or delays the performance by such Party of its obligations under the Purchase Order, and, that by the exercise of due diligence and planning, such 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; (ii) failure of equipment owned or procured by the Contractor that could have been prevented by normal maintenance; (iii) shortage of labor, materials, equipment, transportation or utilities (unless caused by circumstances that are an Event of Force Majeure); or (iv) climatic, weather or subsurface conditions reasonably expected to occur within the geographic area where the Services are being conducted.
- (i) **"GAAP"** means generally accepted accounting principles in the United States.
- (j) **"Hazardous Substance"** means any (i) "hazardous substance," "pollutant," "contaminant," "hazardous waste," "regulated substance," "hazardous chemical" or "toxic chemical" as designated, listed or defined (whether expressly or by reference) in any statute, regulation or other Law (including any "superfund" or "superlien" Law); (ii) other substance or material (regardless of physical form) or form of energy that is subject to any Law that regulates or establishes standards of conduct in connection with, or that otherwise relates to, the protection of human health or the environment; or (iii) compound, mixture, solution, product or other substance or material that contains any substance or material referred to in clauses (i), (ii) or (iii) of this definition.
- (k) **"Indemnitees"** means Suncor, its Affiliates and agents, and their respective directors, officers, partners, members, employees, agents, invitees and contractors, excluding the Contractor.
- (l) **"Invoicing Requirements"** means Suncor's invoicing and accounts payable standards, procedures, policies and guidelines 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.
- (m) **"Law"** means collectively all valid applicable foreign, federal, tribal, state, county, municipal and other local statutes, laws, orders, rules, regulations, decisions, requirements, work practices and procedures of courts, legislative, administrative, governmental and regulatory agencies and authorities, including the common law.
- (n) **"Other Contractors"** means contractors or suppliers engaged by Suncor to provide labor, materials, products or services, other than the Contractor or its Subcontractors.
- (o) **"Party"** means the Contractor or Suncor, as the case may be.
- (p) **"Person"** means an individual, corporation (whether or not for profit), partnership, limited liability partnership, limited partnership (including a limited liability limited partnership), limited liability company, joint venture, trust, business trust, cooperative, association or governmental agency or authority.
- (q) **"Project"** means the project identified in the Purchase Order.
- (r) **"Purchase Order"** means the Purchase Order issued by Suncor with respect to the Services, these Terms and Conditions, and any other attachments identified in the Purchase Order, as modified, amended or supplemented in accordance with these Terms and Conditions.

- (s) **"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 Work 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 Work 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; and
 - (iv) information relating to Contractor's compliance with the Law and the Supplier Code of Conduct, and the Contractor's use of Confidential Information.
- (t) **"Services"** means the services, including all labor, supervision, administration and other services, and all supplies, tools, equipment and such other services and materials that are necessary to be performed or supplied in accordance with the Purchase Order.
- (u) **"Site"** means the site(s) where the Project is located.
- (v) **"Site Policies"** means the current version of all of Suncor's standards, procedures, policies and guidelines, issued from time to time, that relate to Suncor's contractors generally or to the Site or the performance of the Services, including: (i) Suncor's U.S. Alcohol and Drug Policy and U.S. Safety and Security Policies; and (ii) if applicable, the Commerce City Refinery Contractor Safety Handbook, in each case, as updated from time to time, or as may be provided by Suncor from time to time, all of which are incorporated herein by this reference.
- (w) **"Subcontractor"** means any of the Contractor's subcontractors, suppliers, manufacturers, vendors or agents, whether or not an Affiliate of the Contractor, to whom performance of any part of the Services is directly or indirectly contracted or subcontracted by the Contractor.
- (x) **"Suncor"** means the United States Suncor entity identified in the Purchase Order.
- (y) **"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.

- (z) **"Tax"** means any present or future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any governmental agency or authority, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of any such taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges.
- (aa) **"Warranty Period"** means the period of time starting at commencement of performance of the Services and continuing until 12 months after the date of 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; (b) all dollar figures shall mean United States Dollars, unless otherwise specifically referenced; (c) in the calculation of time, the first day shall be excluded and the last day shall be included; (d) the words "include," "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar import; and (e) the word "or" is not exclusive.
- 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 that 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: (a) the latest revisions revised by Suncor or revised by the Contractor and approved in writing by Suncor shall govern; and (b) the conflict or inconsistency shall be resolved in the following order, giving precedence to the earlier listed document: (i) these Terms and Conditions; (ii) the Purchase Order, exclusive of these Terms and Conditions and attachments; (iii) attachments to the Purchase Order; (iv) technical specifications; and (v) drawings.
- 2.4 **Severability.** If any term, covenant or condition of the Purchase Order, to any extent, is invalid or unenforceable, the remainder shall not be affected.
- 2.5 **Adverse Rule of Construction Not to Apply.** The words in the Purchase Order shall bear their natural or defined meaning. The Parties have each had full opportunity of obtaining legal advice. 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 Purchase Order.
- 2.6 **Agency.** If Suncor Energy Services Inc. issues the Purchase Order on behalf of Suncor, then it represents and warrants to the Contractor that it has the authority to do so.
- ## 3. Scope of Services
- 3.1 **Services.** The Contractor shall perform the Services in accordance with the Purchase Order.
- 3.2 **Time.** Time is of the essence in the performance of the Services.
- 3.3 **Acceptance of the Site.** Any failure by the Contractor to discover matters that 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 and magnitude 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, the Site or the Services; and (e) all conditions affecting employment, personnel and labor, including availability, productivity, prevailing compensation and benefits, Laws and Site Policies.

- 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 Suncor, Other Contractors and all other Persons with whom Suncor or the Contractor may be involved during the performance of the Services.
- 3.7 **Property Damage.** The Contractor shall protect Suncor's property and nearby property from loss or damage that may arise or result from the actions or omissions of the Contractor and its Subcontractors, and shall indemnify, defend and hold harmless the Indemnitees from any such loss or damage.

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, quality and condition of all materials, equipment and supplies supplied by Suncor or otherwise obtained by the Contractor in connection with the Services. If any 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 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 of a change made by Suncor that 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 knowledge or notice of the change, submit a written notice to Suncor containing detailed information substantiating the impact of the change. If Suncor approves the notice, an equitable adjustment shall be made to the schedule or compensation under the Purchase Order, or both, as applicable, and the Purchase Order shall be modified in writing accordingly.
- 5.3 **Performance.** The Contractor shall proceed diligently with the Services as changed, pending final resolution of any

request for relief, dispute, claim, appeal or action arising out of or relating to the change.

6. Independent Contractor

- 6.1 **Independent Contractor.** The Contractor shall perform the Services as an independent contractor. The Services constitute professional work that Suncor typically does not itself perform in its normal business. Suncor has engaged the Contractor to perform only the Services for a finite period of time and only as provided in the Purchase Order. Suncor shall have the rights specified in the Purchase Order, but shall have no direction or control of the Contractor or any of its employees and agents, except in the results to be obtained in connection with the Services.
- 6.2 **Not Employees.** Neither the Contractor nor any employee, Subcontractor or agent of the Contractor shall be treated as an employee of Suncor for any purpose. **THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE CONTRACTOR IS OBLIGATED TO WITHHOLD AND PAY ALL FEDERAL, STATE AND LOCAL INCOME TAX, AND ALL PAYROLL AND SIMILAR TAXES, REQUIRED TO BE PAID ON ANY COMPENSATION EARNED PURSUANT TO THE PURCHASE ORDER, INCLUDING ANY TAXES REQUIRED TO BE PAID OR WITHHELD UNDER THE SELF-EMPLOYMENT CONTRIBUTION ACT.**
- 6.3 **No Benefits.** **THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT NEITHER IT NOR ANY OF ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS SHALL BE ENTITLED TO ANY BENEFITS PROVIDED TO SUNCOR'S EMPLOYEES, INCLUDING ANY WORKERS' COMPENSATION BENEFITS, OR ANY MEDICAL, UNEMPLOYMENT, VACATION, INCENTIVE OR PENSION BENEFITS.** The Contractor further acknowledges and agrees that it is solely responsible for providing workers' compensation insurance coverage and all other legally required benefits to any persons performing any Services.

7. Subcontractors and Other Contractors

- 7.1 **Subcontractors.** The Contractor may not contract or subcontract any part of the Services without the prior written approval of Suncor, which approval may be withheld in Suncor's sole discretion. The Contractor's contracts with its subcontractors shall provide that such subcontractors are not entitled to payment for Services until the Contractor is paid by Suncor for such Services.
- 7.2 **Access to Site.** Under no circumstances shall the Contractor cause or permit any access by any Subcontractor to the Site without the prior written consent of Suncor, the qualification of the Subcontractor under the Site Policies, and the execution by the Subcontractor of a site access or other agreement containing such terms and conditions as shall be satisfactory to Suncor in its sole discretion.
- 7.3 **Compliance with Documents.** The Contractor shall cause each of its Subcontractors to comply with all provisions of the Documents applicable to any Services performed by such Subcontractor.
- 7.4 **Other Contractors.** If any part of the Project or the Services depends upon the work of Other Contractors, and the Contractor becomes aware of any defects, deficiencies or conflicts in the work or in the timing of the work of any such Other Contractor that may interfere with the proper execution of the Services, then the Contractor shall provide a written notice to Suncor as soon as practicable of such defects, deficiencies or conflicts. If the Contractor fails to provide a notice to Suncor as required by this Paragraph, then the Contractor shall: (i) have no Claims against Suncor arising out of or relating to the defects, deficiencies or

conflicts; and (ii) indemnify, defend and hold harmless the Indemnitees from and against all Claims asserted against, or suffered, sustained, paid or incurred by the Indemnitees relating to the Services that arise out of the defects, deficiencies or conflicts and that would not have been suffered, sustained, paid or incurred if the Contractor had provided such a notice as soon as practicable as required by this Paragraph.

8. Clean Up

8.1 **Waste.** In addition to the requirements of Article 27 Hazardous Waste Handling, no waste materials shall be allowed to accumulate in or around the Site, and the Contractor shall remove debris or waste materials at periodic intervals or as often as Suncor may direct. 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.

9. Ownership of Documents

9.1 **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.

10. Warranties

10.1 **Warranties and Guaranties.** The Contractor warrants and guarantees to Suncor that: (a) the Services shall be performed in a professional, efficient, good and workmanlike manner, using only qualified, skilled 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 has the necessary qualified personnel, with the skills and expertise required to perform the Services, and is experienced, ready and willing to perform the Services in accordance with the terms and provisions of the Purchase Order; and (c) the Contractor has all permits, licences and authorizations required to carry on its business and to perform the Services.

10.2 **Remediation of Defective or Deficient Services.** If any defect, deficiency or breach of warranty is discovered during the Warranty Period, and Suncor notifies the Contractor in writing of the defect, deficiency or breach within 30 days after the expiration of the Warranty Period, then the Contractor shall: (a) correct, repair, replace, re-perform or otherwise remedy the defect, deficiency or breach; and (b) correct, repair, replace, re-perform or otherwise remedy any loss, damage or destruction to any existing real or personal property of Suncor or other Persons arising out of, resulting from or in connection with the defect, deficiency or breach (or the remedy of the defect, deficiency or breach).

10.3 **Indemnification for Remediation.** If the Contractor fails to promptly remedy any defect, deficiency or breach of warranty in accordance with Paragraph 10.2 Remediation of Defective or Deficient Services, Suncor may proceed with any activities necessary to remedy the defect, deficiency or breach, and the Contractor shall indemnify, defend and hold harmless the Indemnitees from any costs or other Claims arising out of, relating to or in connection therewith.

10.4 **Warranty Work.** All warranty work shall be at the sole risk, cost and expense (including all costs for any necessary disassembly, transportation, reassembly and retesting) of the Contractor and performed without delay and in a manner

satisfactory to Suncor. At Suncor's request, the Contractor shall take all reasonable efforts to plan, sequence and coordinate any remaining Services and any work performed under this Article to minimize any disruptions to Suncor's commercial operations or any other work being done at or near the Site.

11. Insurance

11.1 **Insurance Coverage.** Without limiting any of the obligations or liabilities of the Contractor under the Purchase Order and prior to commencing any Services under the Purchase Order, the Contractor and its Subcontractors shall obtain and continuously carry during the term of the Purchase Order and when on the Site, at its own expense and cost, policies suitable to Suncor with respect to the following insurance:

- (a) workers' compensation coverage for all employees and other personnel engaged in the Services in accordance with the statutory requirements of all states and other jurisdictions where any portion of the Services are performed (regardless of whether the Contractor may be entitled under Law to reject such coverage);
- (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), which coverage shall: (i) include, but not be limited to, blanket contractual liability, contingent employer's liability, 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; and (ii) cover property damage to Suncor's existing facilities, including consequential damages;
- (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, leased, licensed or rented by and used by the Contractor in performing the Services; and
- (e) such additional coverage as may be required by Law or that the Contractor considers necessary.

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

- (a) Before commencing any Services, the Contractor shall provide Suncor with a certificate of insurance satisfactory to Suncor to evidence that the Contractor has workers' compensation coverage for all employees of the Contractor in accordance with the statutory requirements of all states and other jurisdictions where any portion of the Services are being performed.
- (b) Certificates of insurance of the policies described in Paragraph 11.1 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.
- (c) All property insurance policies provided by the Contractor 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 shall be considered primary and not excess to any insurance carried by Suncor.
- (e) All liability insurance policies, except for automobile liability insurance and workers' compensation, shall: (i) name Suncor, its Affiliates, and each of their respective directors, officers, employees and agents as additional insureds, but only with respect to any potential legal liability arising out of the operations, actions or conduct of the named insured; (ii) contain a cross-liability and severability of interest clause; and (iii) state that it cannot be cancelled without at least 30 days written notice to Suncor.

11.3 Insurance Indemnity. If the Contractor fails to furnish Suncor with a certificate of insurance for any policy of insurance required to be obtained under Paragraph 11.1 Insurance Coverage, or if after furnishing a certificate of insurance, any policy lapses, is cancelled or is materially altered, then in each case Suncor may obtain and maintain such insurance in the name of the Contractor. The Contractor shall indemnify, defend and hold harmless the Indemnitees from any Claim asserted against, or suffered, sustained, paid or incurred by the Indemnitees arising out of, relating to, or in connection with the failure of the Contractor to obtain or maintain the insurance required under this Article, including any insurance costs incurred by Suncor to place any insurance for the Contractor.

11.4 Subcontractors. The Contractor shall ensure that its Subcontractors obtain and maintain policies of insurance providing the same insurance coverage and subject to the same terms and conditions applicable to the Contractor under Paragraphs 11.1 Insurance Coverage and 11.2 Requirements of Contractor, including the requirement to name Suncor and its Affiliates, and each of their respective directors, officers, employees and agents as additional insureds to the extent required under subparagraph 11.2(e). The Contractor shall provide to Suncor, upon request, copies of certificates of insurance for the policies it has obtained from its Subcontractors.

11.5 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.

11.6 Notice. The Contractor shall immediately notify in writing Suncor 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.

12. Workers' Compensation

12.1 Workers' Compensation. The Contractor shall, and shall ensure that its Subcontractors, comply with all workers' compensation Laws covering all persons employed by the Contractor and its Subcontractors. Without limiting the foregoing, the Contractor shall, and shall ensure that its Subcontractors, at all times carry the workers' compensation coverage required under subparagraph 11.1(a) and pay or cause to be paid any assessment, contribution or premium required to be paid pursuant to any workers' compensation Law to obtain and maintain such coverage. Without the written consent of Suncor, the Contractor and its Subcontractors shall not self-insure for workers' compensation, regardless whether self-insurance is permitted by Law. Under no circumstances shall the

Contractor or any Subcontractor be permitted to elect to reject workers' compensation coverage.

12.2 Indemnification for Workers' Compensation. The Contractor shall indemnify, defend and hold harmless the Indemnitees from all Claims arising out of, relating to or in connection with the Contractor's failure, or the failure of any Subcontractor, to obtain and maintain workers' compensation coverage for all of their respective employees, or to pay any assessment, contribution or insurance premium relating to workers' compensation coverage in accordance with this Article.

13. Liability and Indemnification

13.1 Liability of Contractor. The Contractor shall be liable to the Indemnitees for, and shall indemnify, defend and hold harmless the Indemnitees from and against, any and all Claims asserted against, or suffered, sustained, paid or incurred by the Indemnitees arising out of, relating to or in connection with: (i) the negligent acts or omissions or the intentional misconduct of the Contractor, any of its Subcontractors, or any of their respective employees or agents; (ii) the performance, purported performance or non-performance of the Contractor under the Purchase Order; and (iii) any Claims made by or on behalf of any employees or agents of the Contractor or any Subcontractor, including Claims for bodily injury or death.

14. Limitation of Liability

14.1 Limitation of Liability for the Contractor. Except as provided in Paragraph 14.2 Gross Negligence and Willful Misconduct, and without limitation of the Contractor's other liabilities and obligations under the Purchase Order, including the Contractor's liability and obligations under Article 10 Warranties and the Contractor's other indemnification obligations under the Purchase Order (which shall not be limited in any way), the Contractor's aggregate liability for indemnification under Article 13 Liability and Indemnification shall be limited to the greater of: (a) all amounts of insurance coverage required to be maintained by the Contractor under the Purchase Order; and (b) the total compensation paid and estimated to be payable under the Purchase Order.

14.2 Gross Negligence and Willful Misconduct. The limitation of the Contractor's liability specified in Article 10 Warranties and Paragraph 14.1 Limitation of Liability for the Contractor shall not apply in respect of any Claim or liability of the Contractor arising out of, relating to or in connection with the gross negligence or willful misconduct of the Contractor or its Subcontractors, or their respective employees or agents.

15. Consequential and Punitive Damages

15.1 Consequential and Punitive Damages Exclusion. Subject to Paragraph 15.2 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 or its Subcontractors, or their respective directors, officers or employees, for: (a) consequential damages, which for the purpose of the Purchase Order shall include losses of profits, revenue, business, reputation or financing, lost opportunity, loss of use of the Services or facilities, loss of output, loss of sale contracts and claims of customers (but shall specifically exclude fines or penalties imposed by governmental agencies or authorities); or (b) punitive or exemplary damages.

15.2 Exception to Consequential and Punitive Damages Exclusion. Paragraph 15.1 Consequential and Punitive

Damages Exclusion shall not apply to: (a) the Contractor's obligation to indemnify the Indemnitees pursuant to Paragraph 20.3 Confidentiality Indemnification, Paragraph 22.2 Intellectual Property Indemnification or Paragraph 27.2 Release of Hazardous Substances; or (b) with respect to Claims brought or alleged by third parties that are subject to indemnification hereunder.

16. Force Majeure

16.1 **Event of Force Majeure.** Subject to compliance with this Article, if, due to an Event of Force Majeure, a Party cannot perform its obligations pursuant to 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 the performance; provided, however, that: (a) the suspension shall be of no greater scope and of no longer duration than is required by the effects of the Event of Force Majeure and only for so long as the Party claiming the Event of Force Majeure is not otherwise in breach of the Purchase Order; and (b) a Party shall not be entitled to the benefit of this Article if the failure to perform was caused by the Party's failure to act in a reasonable and prudent manner in the circumstances or to use commercially reasonable efforts to remedy the condition and resume performance as soon as reasonably possible.

16.2 **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.

17. Payment

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

17.2 **Lien Release.** If requested by Suncor, the Contractor shall not be entitled to any payment under the Purchase Order until it has delivered to Suncor a release of all Liens arising under the Purchase Order or relating to the Services with respect to the amount of any payments that have previously been made by Suncor.

17.3 **Withholding.** Notwithstanding any other provision of the Purchase Order, an amount otherwise due to the Contractor may be withheld, without payment of interest, if Suncor determines that such withholding is necessary to protect Suncor from any Claims arising out of or resulting from: (a) the Contractor failing to complete the Services, not making satisfactory progress with the Services, or being in breach or default of any term or condition of the Purchase Order, including health and safety requirements; (b) the Contractor not promptly remedying defective or deficient Services; (c) the Contractor failing to promptly and satisfactorily pay any Claim for labor performed or materials or equipment furnished; (d) the failure of the Contractor to comply with the accounts payable, invoicing and payment request procedures set forth in the Invoicing Requirements and the Documents; or (d) any other amounts that Suncor disputes in good faith as not being due and owing. 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 to the Contractor the amount withheld pertaining to such cause.

18. Set-Off

18.1 **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 or in equity or under the Purchase Order or any other contract or agreement 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, however arising, from any amount due or owing by Suncor or its Affiliates under any such other contract or agreement Suncor or its Affiliates has or may have with the Contractor.

19. Suspension or Termination

19.1 **Termination for Cause.** Without limiting any other rights or remedies of Suncor under the Purchase Order, under Law, in equity or otherwise, Suncor may demand that the Contractor and its Subcontractors stop all Services and vacate the Site, and may terminate the Purchase Order for cause: (i) after the occurrence and during the continuance of any breach or default by the Contractor under the Purchase Order; (ii) after the bankruptcy or insolvency of the Contractor or any parent company of the Contractor; or (iii) at any time after the breach by the Contractor of any Site Policies, the Supplier Code of Conduct, or provisions of these Terms and Conditions relating to the environment, health or safety or any unsafe conduct by the Contractor.

19.2 **Payment on Termination for Cause.** In the event of termination under Paragraph 19.1 Termination for Cause, in full satisfaction of all Claims that the Contractor may have against Suncor to the date of termination arising out of, relating to or in connection with the Purchase Order, Suncor shall pay the Contractor the net compensation owed in accordance with the Purchase Order for any Services that have been satisfactorily completed up to the date of the termination, less the amount of all Claims that Suncor may have against the Contractor.

19.3 **Suspension or Termination for Convenience.** Suncor may, at any time, with or without cause, suspend or terminate the Services, or any portion thereof, for convenience or any other reason upon 30 days written notice.

19.4 **Resumption of Suspended Services.** If Suncor requests that the Contractor resume any suspended Services, or any portion thereof, the Contractor shall resume performance of such Services, or portion thereof, as requested, in accordance with the terms of the Purchase Order.

19.5 **Compensation.** In the event of suspension or termination under Paragraph 19.3 Suspension or Termination for Convenience, Suncor shall pay the Contractor (without duplication) in full satisfaction of all Claims that the Contractor may have against Suncor to the date of the termination or suspension, as applicable, arising out of, relating to or in connection with the Purchase Order: (a) the net compensation owed in accordance with the Purchase Order for all Services satisfactorily completed up to the date of the suspension or termination; and (b) all reasonable third party cancellation charges incurred by the Contractor to the date of the suspension or termination.

20. Confidentiality

20.1 **Confidential Information.** Except in accordance with this Article and with the prior written consent of the providing Party, which consent may be unreasonably withheld, all Confidential Information shall be received in the strictest confidence and, for a period of 10 years from the issuance of the Purchase Order, shall not be: (a) disclosed in any manner whatsoever; or (b) used in any manner directly or indirectly for any purpose other than for the purposes of the performance by the receiving Party of its obligations under the Purchase Order.

20.2 **Exempt Disclosure.** Notwithstanding Paragraph 20.1 Confidential Information, a Party may disclose Confidential Information to the extent necessary:

- (a) to its Affiliates, and to their respective officers, directors, employees and agents associated with the Project who have a need to know the Confidential Information in connection with the purpose of the Purchase Order and who have been informed of the confidential nature of such Confidential Information;
- (b) with respect to Suncor, to its advisors and contractors including third parties 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 other third party associated with the Project who has a need to know the Confidential Information in connection with the Services if, prior to the disclosure, the 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) with respect to Suncor, to its lenders, investors, agents, and their respective advisors, to the extent required in connection with a proposed financing or an acquisition or disposition of any assets or equity securities by Suncor or any of its Affiliates, or to comply with the disclosure requirements of any securities Law or securities exchange as determined by Suncor; and
- (e) to comply with Law, or a subpoena, order or information request from a court or governmental authority.

If any Party is required by Law, or by a subpoena, order or information request from a court or governmental authority 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 that in the reasonable opinion of its counsel is legally required to be disclosed. Each Party agrees to be responsible for any breach of this Article by any Person to whom it has provided any Confidential Information.

20.3 Confidentiality Indemnification. Without limitation and in addition to any other rights or remedies that Suncor may have, the Contractor acknowledges that it shall be liable for and shall indemnify, defend and hold harmless the Indemnitees from and against all Claims asserted against, or suffered, sustained, paid or incurred by the Indemnitees arising out of or resulting from a breach of this Article by the Contractor.

20.4 Further Relief. It is understood that a breach of any of the covenants 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 effected Party shall be entitled as a matter of right to seek an injunction and enforce the terms and provisions of this Article, without the necessity of posting a bond or other form of security. The foregoing rights shall be cumulative and shall be in addition to any other remedies which may be available to the effected Party.

21. Publicity

21.1 Advertising. The Contractor acknowledges that Suncor shall not provide any endorsement of the Contractor, the

Services or the Project. 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, the Project or the Services, without the prior written consent of Suncor's designated representative, which consent may be unreasonably withheld.

22. Intellectual Property

22.1 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, trademarks, trade secrets, copyrights or other intellectual property of the other Party or any intellectual property rights therein in existence before the date of issuance of the Purchase Order.

22.2 Intellectual Property Indemnification. The Contractor shall be liable for and indemnify, defend 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, trademarks, trade secrets, copyrights or other intellectual property rights, and any litigation or other proceedings based thereon, in respect of the Services. 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 or modified Services meet all of the requirements of and are subject to all the provisions of the Purchase Order.

22.3 Suncor's Property. Suncor shall have the title to all patents, trademarks, trade secrets, copyrights and other intellectual property, and all intellectual property rights therein, completed, created or arising in connection with the Services of which the reasonable value has been paid or is payable to the Contractor. Suncor shall retain title to any property, tangible or intangible, furnished to the Contractor by Suncor or its Affiliates.

22.4 License. The Contractor grants to Suncor a fully sub-licensable worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license, which may be assigned by Suncor in connection with an assignment or transfer of the Site, including to a successor by merger, to use any and all patents, industrial designs, copyrights, technology or other intellectual property and all intellectual property rights therein related to the Services that are not the property of Suncor under this Article.

23. Laws, Supplier Code of Conduct and Site Policies

23.1 Compliance with Law. The Contractor shall, and shall cause its Subcontractors, and its and their respective employees and agents to, be fully knowledgeable of all Laws applicable to the Services, and comply with all such Laws.

23.2 Compliance with Supplier Code of Conduct and Site Policies. The Contractor shall, and shall cause its Subcontractors, and its and their respective employees and agents to, read and understand the most current copies of the Supplier Code of Conduct, and the Site Policies, before performing any Services. The Contractor shall, and shall cause its Subcontractors, and its and their respective employees and agents to, exercise reasonable care and diligence to prevent any harm to Suncor's reputation, and conduct the Services, and their respective relations with employees of Suncor, Other Contractors and other third parties, in accordance with the Supplier Code of Conduct and the Site Policies. In the case of any difference between or among the requirements of the Supplier Code of Conduct, the Site Policies and any Law, the stricter or higher standard

shall apply. The price under the Purchase Order includes the cost of compliance with the Supplier Code of Conduct and the Site Policies, and Suncor shall not bear any portion thereof. Suncor reserves the right in its sole discretion to modify, amend or supplement the Supplier Code of Conduct or any Site Policies at any time.

23.3 **Alcoholic and Illegal Substances.** The Contractor shall ensure all personnel present at any time on the Site comply with Suncor's U.S. Alcohol and Drug Policy.

23.4 **Arms and Ammunition.** The Contractor shall not permit any personnel to possess, give, barter or otherwise dispose of any arms or ammunition of any kind at the Site, or in any vehicle used to transport personnel to or from any Site or used in connection with the performance of the Work.

24. Liens

24.1 **Filing of Liens.** The Contractor shall not file, deliver, or record any Lien against the Site or any other property of Suncor, except to secure payments due and owing to the Contractor by Suncor for Services that are more than 45 days past due, and limited in such case to Claims for such past due payments. The Contractor shall immediately upon receipt of payment from Suncor take any such actions as may be necessary or as Suncor may request to release any such recorded Liens.

24.2 **Discharge and Release of Liens.** Except as provided in Paragraph 24.1 Filing of Liens, the Contractor shall not permit any Liens to be filed or recorded against the Site or any other property of Suncor. If Suncor at any time receives a notice of intent to file a Lien or evidence of a recorded Lien filed by any Subcontractor or any other Person in respect of any Services, then the Contractor shall immediately cause such Liens to be fully released, and until such Liens are fully released or waived under Law to the satisfaction of Suncor, Suncor may withhold from all payments to the Contractor amounts deemed sufficient by Suncor to ensure the payment of all such Claims and the full release of such Liens.

24.3 **Suncor's Right to Remove Liens; Indemnification.** If the Contractor fails to immediately comply with the requirements set forth in Paragraph 24.2 Discharge and Release of Liens, then Suncor may take such actions as may be necessary or as Suncor deems appropriate to cause any such Liens to be fully released. The Contractor shall indemnify, defend and hold harmless the Indemnitees from and against any and all Claims asserted against, or suffered, sustained, paid or incurred by the Indemnitees arising out of, relating to or in connection with the release or handling of any such Liens.

25. Taxes

25.1 **Tax Responsibility.** Except as set forth in Paragraph 25.2 below, the Contractor shall be solely responsible for all Taxes, and the withholding, collection and remittance of all Taxes, arising out of or relating to the Services or the Purchase Order, including all income or franchise Taxes, all sales, use and excise Taxes, and all withholdings, contributions, assessments and deductions for the employer and employee portions of Social Security, Medicare, unemployment insurance and other payroll Taxes with respect to all individuals performing any Services.

25.2 **Direct Pay Permits.**

- (a) Suncor Energy (U.S.A.) Inc. and Suncor Energy (U.S.A.) Pipeline Company each have a direct payment permit issued by the City of Commerce City, Colorado ("Commerce City").
- (b) Suncor Energy (U.S.A.) Inc. has a direct pay permit issued by the Colorado Department of Revenue that

covers certain Taxes assessed by the State of Colorado, Adams County, Colorado and RTD/CD (together with Commerce City, each a "Taxing Jurisdiction").

(c) Copies of each of the direct pay permits shall be provided to the Contractor upon request. Pursuant to the direct pay permits, the Suncor entity holding the direct pay permit will pay directly (i) any sales, use and excise Taxes imposed by the applicable Taxing Jurisdiction on any Goods or any such goods, equipment or materials that are incorporated into any Goods or manufactured, supplied or procured by the Contractor for such Suncor entity, and (ii) any sales, use and excise Taxes imposed by the applicable Taxing Jurisdiction on any leases, services, and labor made or provided by the Contractor to such Suncor entity.

(d) For so long as a Suncor entity has a direct pay permit from a Taxing Jurisdiction, the Contractor may not charge such Suncor entity, or pass on to such Suncor entity in any manner, any Tax imposed by such Taxing Jurisdiction. Any Tax imposed by a Taxing Jurisdiction that is charged or passed on to a Suncor entity holding a direct pay permit from such Taxing Jurisdiction will be either, at Suncor's option, invoiced back to the Contractor or offset against future amounts owing from Suncor to the Contractor.

25.3 **Tax Withholdings & Representations.** Suncor shall have the right to deduct or withhold from any amount paid or payable to the Contractor, any deductions or withholdings that Suncor is required to make under Law. Suncor shall furnish a receipt to the Contractor disclosing the payment of any such deductions or withholdings to the applicable Tax authority. Notwithstanding the foregoing, Suncor shall not deduct or withhold any amount for income Taxes from the amounts paid or payable to the Contractor hereunder, so long as the Contractor has provided to Suncor an executed Internal Revenue Service Form W-9, and the representations and warranties of the Contractor in this Paragraph are true. The Contractor represents and warrants to Suncor as of the date of the Purchase Order and as of the date each payment is requested by the Contractor or made by Suncor that: (a) the Contractor is a corporation or limited liability company incorporated or organized solely under the Law of a state located in the United States; (b) the Contractor is not a foreign corporation or foreign limited liability company under any United States Law relating to Taxes; and (c) all amounts paid or payable under the Purchase Order for any portion of the Services are for labor or services performed entirely in the United States.

25.4 **Tax Indemnity.** The Contractor shall be liable for and shall indemnify, defend and hold harmless the Suncor Indemnitees from and against all Claims asserted against, or suffered, sustained or incurred by the Suncor Indemnitees arising out of, relating to or in connection with any Taxes that are the responsibility of the Contractor under this Article, or the breach or default by the Contractor of any of the provisions of this Article.

26. Health, Safety and Security

26.1 **Observance of Safety.** The Contractor shall ensure that all employees and agents of the Contractor and its Subcontractors observe all health and safety procedures and rules specified by the Site Policies and Laws, including any requirements of the Occupational Safety and Health Act of 1970.

26.2 **Risk Avoidance.** The Contractor 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.

26.3 **Security Requirements.** The Contractor shall, and shall cause its Subcontractors to, comply with Suncor's security requirements for the Site, cooperate with Suncor on all security matters and promptly comply with any Project security arrangements established by Suncor. For clarity, unless specifically authorized by the Site Policies, the Contractor shall not, and shall cause its Subcontractors not to, take any photographs, video or other visual or audio recordings while present on the Site.

26.4 **Site Access.** If requested by Suncor, the Contractor shall, and shall cause its Subcontractors that are granted any access to the Site, to execute one or more site access agreements in such forms as Suncor shall determine. Suncor may in its sole discretion, by notice to the Contractor, deny access to the Site to any individual or vehicle, or require the Contractor or its Subcontractors to reassign, replace or remove any employee or agent who Suncor determines constitutes a safety or security risk, or replace any vehicle that Suncor determines is unsuitable for the Services or the Site. In the event any employee or agent of the Contractor or its Subcontractor is reassigned or removed, the Contractor or its Subcontractor, as the case may be, shall promptly replace the employee or agent with another who is fully competent and skilled to perform the duties of such employee or agent.

27. Hazardous Waste Handling

27.1 **Hazardous Substances.** The Contractor shall not use, store, transport, remove, dispose of or destroy any Hazardous Substances on the Site, except with the prior written approval of Suncor's designated representative. All Hazardous Substances used, stored, transported, removed, disposed of or destroyed with the consent of Suncor's designated representative shall be handled and otherwise dealt with in accordance with Law, the Purchase Order, and the Site Policies.

27.2 **Release of Hazardous Substances.** The Contractor shall immediately inform Suncor's designated representative and security personnel of any release, discharge, spill, or emission of Hazardous Substances and any disturbance or damage to the environment on the Site of which the Contractor becomes aware, and shall comply with any instructions given by Suncor's designated representative or Suncor's security personnel with respect to any such release, discharge, spill, or emission or disturbance or damage to the environment. The Contractor shall be liable for and indemnify, defend and hold harmless the Indemnitees from and against any Claims asserted against, or suffered, sustained, paid or incurred by the Indemnitees arising out of or resulting from any release, discharge, spill or emission of Hazardous Substances by the Contractor or any Subcontractor at the Site or in connection with the Services.

28. Audit

28.1 **Records.** The Contractor shall maintain a complete set of Records in accordance with GAAP for a period of at least 5 years after Completion.

28.2 **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 requested. The Contractor shall provide to Suncor an electronic file of such data upon Suncor's request.

The Contractor shall ensure that its contracts with its Subcontractors provide for similar audit rights so as to allow Suncor access to audit the Subcontractors.

28.3 **Limitation Period.** The Parties agree that the applicable statute of limitations 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.

29. Dispute Resolution

29.1 **Submission of Question or Dispute.** The Contractor shall bring any questions, issues, allegations, Claims, disputes or disagreements to the designated representative of Suncor within 15 days after the occurrence of the events or circumstances giving rise to any such questions, issues, allegations, claims or disagreements. The Contractor shall comply with each direction, order, decision or determination of Suncor's designated representative as to any such questions, issues, allegations, Claims, disputes or disagreements, and shall continue to comply with any such directions, orders, decisions or determinations pending final resolution of any dispute or disagreement arising out of or relating thereto in accordance with this Article.

29.2 **Disagreement.** If the Contractor disagrees with any direction, order, decision or determination of Suncor's designated representative, then the Contractor shall deliver a written notice to Suncor within 5 days after the date of the direction, order, decision or determination setting out in reasonable detail the reasons for the disagreement. The designated representatives of the Contractor and Suncor shall attempt to resolve the dispute or disagreement for 10 days after the receipt by Suncor of the notice; provided, however, that at any time either before or after the expiration of such 10 day period, either Party may commence litigation of the unresolved dispute pursuant to Paragraph 29.3 Forum Selection; Waiver of Right to Jury Trial.

29.3 **Forum Selection; Waiver of Right to Jury Trial.** Each Party irrevocably and unconditionally consents to the exclusive jurisdiction of the District Court in and for the City and County of Denver, Colorado or of the United States District Court in and for the District of Colorado (and the appellate courts with respect thereto) for any actions, suits or proceedings arising out of or relating to the Purchase Order, the transactions contemplated by the Purchase Order, the Services, the Project, or the relationship of the Parties, and agrees not to commence any action, suit or proceeding with respect to the foregoing except in such courts. Each Party also irrevocably and unconditionally waives and agrees not to plead or to make any claim that any such proceeding brought in any of the foregoing courts has been brought in an inconvenient forum, or that any other Party does not have personal jurisdiction over such Party in such courts. EACH PARTY EXPRESSLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THE PURCHASE ORDER, THE TRANSACTIONS CONTEMPLATED BY THE PURCHASE ORDER, THE SERVICES, THE PROJECT OR THE RELATIONSHIP OF THE PARTIES.

30. Notices

30.1 **Notices.** Notices shall be given in writing and shall be addressed to the applicable address of the Contractor or Suncor set forth in the Purchase Order. Notices may be delivered in person or by internationally recognized courier or transmitted by facsimile.

31. Survival

31.1 **Survival.** In addition to those provisions of the Purchase Order that by their nature survive the termination or

expiration of the Purchase Order, the following Articles shall survive termination or expiration of the Purchase Order: Article 1 Definitions, Article 2 Interpretation, Article 6 Independent Contractor, Article 10 Warranties, Article 13 Liability and Indemnification, Article 14 Limitation of Liability, Article 15 Consequential and Punitive Damages, Article 18 Set Off, Article 20 Confidentiality, Article 22 Intellectual Property, Article 24 Liens, Article 28 Audit, Article 29 Dispute Resolution, Article 32 Governing Law and Article 33 General Matters.

inconsistent with these Terms and Conditions are agreed to be void and of no force or effect.

[End of Terms and Conditions]

32. Governing Law

32.1 **Governing Law.** The Purchase Order and the other Documents shall be governed by and construed in accordance with the Laws of the State of Colorado, without the application of conflicts of Law rules and principles that would apply the Laws of another jurisdiction.

33. General Matters

33.1 **Assignment.** The Purchase Order shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign the Purchase Order without the prior written consent of the other Party, which consent may be unreasonably 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 that acquires all or substantially all of the assets of Suncor or the Site, conditional upon the agreement of the successor to be bound by the provisions of the Purchase Order.

33.2 **Entire Agreement.** The Purchase Order constitutes the entire agreement between the Parties as to the subject matter of the Purchase Order and supersedes and replaces any and all prior written or oral agreements, undertakings and understandings between the Parties with respect to the subject matter of the Purchase Order.

33.3 **Amendments.** Except as expressly provided in the Purchase Order, no amendment or modification to the Purchase Order shall be binding on Suncor or the Contractor unless made in writing and signed by an authorized representative of both Parties.

33.4 **No Third Party Beneficiaries.** The terms and provisions of the Purchase Order are intended solely for the benefit of each Party and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, including any Subcontractors, or any employees or agents of either Party or any Subcontractors, except for the Indemnitees, each of which is an express and intended third-party beneficiary of the Purchase Order.

33.5 **No Waiver.** Except as expressly provided in the Purchase Order, no Party, by any act, delay, omission or otherwise shall be deemed to have expressly or impliedly waived any of its rights, powers or remedies, or any one or more of them, unless the waiver is in writing and signed by an authorized representative of the Party sought to be charged with the waiver. No course of dealing, custom, or practice between the Parties shall operate as a waiver or estoppel of any rights, powers or remedies.

33.6 **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.

33.7 **Exclusions.** Any terms or provisions in the Contractor's quotation, bid, proposal, invoice or other documents that are