

Supplemental Site Service Terms and Conditions

1. Definitions

1.1 **Definitions.** Except as otherwise defined below, the terms defined in the Purchase Order Terms and Conditions and used herein shall have the meanings ascribed to such terms in the Purchase Order Goods Terms and Conditions. Unless the context requires otherwise, the following capitalized terms, wherever used herein shall have the meanings indicated:

- (a) **“Completion”** means that the Services have been fully performed and completed in accordance with the Purchase Order.
- (b) **“EH&S Management Procedure”** means the current release of Suncor’s Central Management Team Environment, Health, Safety and Security Reference Manual.
- (c) **“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 Supplier; (ii) failure of equipment owned or procured by the Supplier 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.
- (d) **“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.
- (e) **“Other Contractors”** means contractors or suppliers engaged by Suncor to provide labor, materials, products or services, other than the Supplier or its Subcontractors.
- (f) **“Purchase Order Terms and Conditions”** means the Purchase Order Terms and Conditions incorporated by reference in and forming a part of the Purchase Order issued by Suncor to the Supplier.
- (g) **“Services 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.
- (h) **“Supplemental Terms and Conditions”** means these Supplemental Site Services Terms and Conditions,

which are hereby incorporated by reference into the Purchase Order.

- (i) **“Subcontractor”** means any of the Supplier’s subcontractors, suppliers, manufacturers, vendors or agents, whether or not an Affiliate of the Supplier, to whom performance of any part of the Services is directly or indirectly contracted or subcontracted by the Supplier.

2. Interpretation and Coordination

- 2.1 **Interpretation.** The Purchase Order shall include these Supplemental Terms and Conditions. To the extent applicable, the provisions of the Purchase Order Terms and Conditions that apply to the supply of the Goods shall apply equally to the provision of the Services. For clarity, the provisions of the Purchase Order Terms and Conditions that apply to Vendors shall apply equal to Subcontractors.
- 2.2 **Conflicts.** In the event of any conflict between the terms of the Purchase Order Terms and Conditions and these Supplemental Terms and Conditions, the stricter or higher standard shall apply.

3. Scope of Services

- 3.1 **Services.** The Supplier 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 Supplier to discover matters that affect or could affect the Services shall not relieve the Supplier from its obligations under the Purchase Order. Specifically, the Supplier 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 Supplier, 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 **Minimum of Interference and Full Cooperation.** The Supplier shall perform the Services in such manner as to cause a minimum of interference with Suncor’s operations. The Supplier shall cooperate fully with Suncor, Other Contractors and all other Persons with whom Suncor or the Supplier may be involved during the performance of the Services.
- 3.5 **Property Damage.** The Supplier shall protect Suncor’s property and nearby property from loss or damage that may arise or result from the actions or omissions of the Supplier 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 **Supplier to Check Material, Equipment and Supplies.** The Supplier shall check, assess and record upon delivery to the Supplier the quantity, quality and condition of all

materials, equipment and supplies supplied by Suncor or otherwise obtained by the Supplier in connection with the Services. If any materials, equipment or supplies are lost, damaged or destroyed after having been delivered to the Supplier, or while in the custody or control of the Supplier, the Supplier 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 Supplier at the time of such loss, damage or destruction.

5. Independent Contractor

5.1 **Independent Contractor.** The Supplier 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 Supplier 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 Supplier or any of its employees and agents, except in the results to be obtained in connection with the Services.

5.2 **Not Employees.** Neither the Supplier nor any employee, Subcontractor or agent of the Supplier 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.**

5.3 **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 Supplier 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.

6. Subcontractors and Other Contractors

6.1 **Subcontractors.** The Supplier 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.

6.2 **Access to Site.** Under no circumstances shall the Supplier 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.

6.3 **Compliance with Documents.** The Supplier shall cause each of its Subcontractors to comply with all provisions of the Documents applicable to any Services performed by such Subcontractor.

6.4 **Other Contractors.** If any part of the Project or the Services depends upon the work of Other Contractors, and the Supplier 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 Supplier shall provide a written notice to Suncor as soon as practicable of such defects, deficiencies or conflicts. If the Supplier fails to provide a notice to Suncor as required by this Paragraph, then the Supplier 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 Supplier had provided such a notice as soon as practicable as required by this Paragraph.

7. Clean Up

7.1 **Waste.** In addition to the requirements of Article 14 Hazardous Waste Handling, no waste materials shall be allowed to accumulate in or around the Site, and the Supplier shall remove debris or waste materials at periodic intervals or as often as Suncor may direct. The Supplier shall ensure that the Site is kept clean and free of debris and waste materials at all times. Before Completion of the Services, the Supplier shall remove or cause to be removed all temporary structures, superfluous and waste materials of whatever kind resulting from the Services.

8. Warranties

8.1 **Warranties and Guaranties.** The Supplier 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 Supplier 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 Supplier has all permits, licences and authorizations required to carry on its business and to perform the Services.

8.2 **Application of Purchase Order Terms and Conditions.** The provisions of Article 6 Warranties of the Purchase Order Terms and Conditions that relate to defects, deficiencies or breaches of the warranties and guarantees therein shall apply equally to defects and deficiencies in the Services or breaches of the warranties and guarantees under Paragraph 8.1 Warranties and Guaranties of these Supplemental Terms and Conditions that are discovered during the Services Warranty Period.

9. Insurance

9.1 **Insurance Coverage.** Without limiting any of the obligations or liabilities of the Supplier under the Purchase Order and prior to commencing any Services under the Purchase Order, the Supplier 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 Supplier 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 Supplier in performing the Services; and
- (e) such additional coverage as may be required by Law or that the Supplier considers necessary.

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

- (a) Before commencing any Services, the Supplier shall provide Suncor with a certificate of insurance satisfactory to Suncor to evidence that the Supplier has workers' compensation coverage for all employees of the Supplier 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 9.1 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 Supplier 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 Supplier 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.

9.3 **Insurance Indemnity.** If the Supplier fails to furnish Suncor with a certificate of insurance for any policy of insurance required to be obtained under Paragraph 9.1 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 Supplier. The Supplier 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 Supplier to obtain or maintain the insurance required under this Article, including any insurance costs incurred by Suncor to place any insurance for the Supplier.

9.4 **Subcontractors.** The Supplier 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 Supplier under Paragraphs 9.1 Insurance Coverage and 9.2 Requirements of Supplier, 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 9.2(e). The Supplier shall provide to Suncor, upon request, copies of certificates of insurance for the policies it has obtained from its Subcontractors.

9.5 **Liability of the Supplier.** Neither the providing of insurance by the Supplier 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 Supplier from any other provisions of the Purchase Order with respect to liability of the Supplier or otherwise.

9.6 **Notice.** The Supplier 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.

10. Workers' Compensation

10.1 **Workers' Compensation.** The Supplier shall, and shall ensure that its Subcontractors, comply with all workers' compensation Laws covering all persons employed by the Supplier and its Subcontractors. Without limiting the foregoing, the Supplier shall, and shall ensure that its Subcontractors, at all times carry the workers' compensation coverage required under subparagraph 9.1(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 Supplier and its Subcontractors shall not self-insure for workers' compensation, regardless whether self-insurance is permitted by Law. Under no circumstances shall the Supplier or any Subcontractor be permitted to elect to reject workers' compensation coverage.

10.2 **Indemnification for Workers' Compensation.** The Supplier shall indemnify, defend and hold harmless the Indemnitees from all Claims arising out of, relating to or in connection with the Supplier'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.

11. Force Majeure

11.1 **Event of Force Majeure.** Subject to compliance with this Article, if, due to an Event of Force Majeure, a Party cannot perform its obligations 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 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.

11.2 **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.

12. Taxes

12.1 **Tax Responsibility.** Except as set forth in Paragraph 12.2 below, the Supplier shall be solely responsible for all Taxes, and the withholding, collection and remittance of all Taxes, arising out of or relating to the Services, 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.

12.2 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 Supplier 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 Supplier 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 Supplier to such Suncor entity.
- (d) For so long as a Suncor entity has a direct pay permit from a Taxing Jurisdiction, the Supplier 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 Supplier or offset against future amounts owing from Suncor to the Supplier.

12.3 **Tax Indemnity.** The Supplier 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 Supplier under this Article, or the breach or default by the Supplier of any of the provisions of this Article.

13. Health, Safety and Security

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

13.2 **Risk Avoidance.** The Supplier 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.

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

13.4 **Arms and Ammunition.** The Supplier 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.

13.5 **Security Requirements.** The Supplier 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 Supplier shall not, and shall cause its Subcontractors not to, take any photographs, video or other visual or audio recordings while present on the Site.

13.6 **Site Access.** If requested by Suncor, the Supplier 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 Supplier, deny access to the Site to any individual or vehicle, or require the Supplier 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 Supplier or its Subcontractor is reassigned or removed, the Supplier 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.

14. Laws, Supplier Code of Conduct, and Site Policies

14.1 **Compliance with Law.** The Supplier 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.

14.2 **Compliance with Supplier Code of Conduct and Site Policies.** The Supplier 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 Supplier 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, 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.

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

14.4 **Arms and Ammunition.** The Supplier 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.

15. Hazardous Waste Handling

15.1 **Hazardous Substances.** The Supplier 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 Site Policies.

15.2 **Release of Hazardous Substances.** The Supplier 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 Supplier 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 Supplier 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 Supplier or any Subcontractor at the Site or in connection with the Services.

16. Survival

16.1 **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 and Coordination, Article 5 Independent Contractor, Article 8 Warranties, Article 10 Workers' Compensation, Article 12 Taxes, Article 13 Health, Safety and Security and Article 15 Hazardous Waste Handling.

[End of Supplemental Terms and Conditions]