



## Services Purchase Order Terms and Conditions

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**1. DEFINITIONS**

1.1 **Definitions.** The following capitalized terms, wherever used in the Contract and any documents prepared pursuant thereto, mean:

- (a) **“Affiliate”** shall have the same meaning given to that term in the Canada Business Corporations Act, or any similar, replacement or supplemental Law in effect from time to time, which meaning shall, mutatis mutandis, also apply to partnerships, limited liability partnerships and limited partnerships, and for the purposes of the Contract, Fort Hills Energy L.P., Syncrude Canada Ltd., and any joint venture (regardless of the form of such joint venture) for which an Affiliate of Suncor is the operator or for which an Affiliate of Suncor has a majority ownership interest shall each be deemed to be an Affiliate of Suncor.
- (b) **“Anti-Bribery Law”** means any anti-bribery law or international convention, as may apply now or in the future, including the Corruption of Foreign Public Officials Act (Canada), the Foreign Corrupt Practices Act (U.S.), the Bribery Act (U.K.) and the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- (c) **“Claim”** means any one or more of: loss, damage, cost, expense, disbursement, penalty, fine, claim, demand, action, proceeding, lien (whether builders', mechanics', construction or other type of lien), encumbrance, statutory obligation, liability, suit, judgment, award, decree, determination, adjudication, unpaid tax of any kind (including withholding tax), cost of investigation and any type of fee (including legal fees, on a solicitor-and-own-client basis), together with any interest in relation thereto at the applicable rate.
- (d) **“Completion”** means that the Work has been fully completed in accordance with the Contract.
- (e) **“Confidential Information”** means all information of a confidential nature which a Party acquires concerning or relating to the other Party, any Indemnitee or the Contract, including such other Party's or any Indemnitee's business, affairs, financial position, assets, operations, activities, prospects or trade secrets, together with all analyses, evaluations, compilations, notes, studies or other documents containing or based upon such information, including those prepared by the Contractor.
- (f) **“Contract”** means the contract created in accordance with Paragraph 40.1 (Binding Agreement).
- (g) **“Contractor”** means the party named in the Purchase Order as the supplier of the Services to Suncor.
- (h) **“Dangerous Goods”** means dangerous goods as defined in the Transportation of Dangerous Goods Act (Canada) or any successor legislation.
- (i) **“Deliverable”** means any and all physical products and any and all documentation, including drawings, specifications, reports, manuals and other documents delivered or required to be delivered to Suncor or its Affiliates as part of the Work, whether generated by the Contractor or a Subcontractor, whether in full or in partial stage of completion.
- (j) **“Event of Force Majeure”** means an event or circumstance not reasonably within the control of a Party which restrains or delays the performance by such Party of its obligations under the Contract and which such Party was, or is, unable to prevent or overcome by the exercise of due diligence and planning. Notwithstanding the foregoing, Event of Force Majeure shall not include:
  - (i) strikes, lockouts or other industrial concerted action by workers of the Contractor or its Subcontractors which may adversely impact the Work;
  - (ii) failure of equipment that could have been prevented by normal maintenance;
  - (iii) shortage of labour, materials, equipment, transportation or utilities (unless caused by circumstances which are themselves Events of Force Majeure);
  - (iv) lack of finances or inability to perform because of a Party's financial condition; or
  - (v) weather and subsurface conditions reasonably expected to occur within the geographic area where the Services are being performed.
- (k) **“GAAP”** means generally accepted accounting principles in Canada, as defined in the Chartered Professional Accountant (CPA) Canada Handbook, including International Financial Reporting Standards and Accounting Standards for Private Enterprises.
- (l) **“General Conditions”** means this document entitled **“Services Purchase Order Terms and Conditions”** which forms part of the Contract.
- (m) **“Hazardous Substance”** means any substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or any other material, radioactive or otherwise, which are or become listed, regulated or addressed under any Law respecting the use, manufacture, importation, handling, transportation, storage, disposal and treatment of the substance, mixture of substances, product, waste, organism, pollutant, material, chemical, contaminant, dangerous good, constituent or other material, including all Dangerous Goods.
- (n) **“Indemnitees”** means Suncor, Suncor's Affiliates, Suncor's joint venturers and the Personnel of each of the foregoing.
- (o) **“Indigenous Business”** means a business that has at least 51% ownership held by indigenous people.
- (p) **“Initial Operations”** means the date that the Work in its totality is first used by Suncor for the purpose that it was intended.
- (q) **“Intellectual Property Rights”** means all intellectual property rights as recognized under Law, including rights in and to patents, copyrights, industrial designs and other intellectual property, but excluding trademarks. Intellectual Property Rights shall include all:
  - (i) applications and registrations;

- (ii) rights and privileges arising under applicable Laws; and
  - (iii) rights of the same or similar effect or nature in any jurisdiction,
- all relating to the foregoing throughout the world.
- (r) **“Invoicing Requirements”** means Suncor’s invoicing and accounts payable standards, procedures, policies and guidelines at <https://www.suncor.com/en-ca/contractors-suppliers-carriers/existing-contractors-suppliers-carriers> or such other Suncor website as may be updated from time to time, or as specified in the Contract, or as may be provided by Suncor from time to time.
  - (s) **“Law”** means collectively all valid applicable common law, federal, provincial, state and municipal and other local laws, orders, rules, regulations and decisions of regulatory bodies, including those related to occupational health and safety, fire, immigration, employment insurance, workers’ compensation, transportation of dangerous goods and handling, environmental protection legislation, building codes, Anti-Bribery Law, and any other governmental requirements, work practices and procedures prescribed by law.
  - (t) **“Other Contractors”** means contractors or suppliers engaged by Suncor to provide labour, materials, products or services, other than the Contractor.
  - (u) **“Party”** means a party to the Contract.
  - (v) **“Person”** means an individual, partnership, company, joint venture, trust, cooperative, association or corporation, as the case may be.
  - (w) **“Personal Data”** means "personal data", "personal information" or an equivalent term, as defined by applicable Personal Data Protection Legislation to the extent such data or information is accessed, collected, stored, transmitted, processed, hosted, used, handled, or disposed of by the Contractor in connection with the Contract.
  - (x) **“Personal Data Processing”** means any operation or set of operations which is performed by or on behalf of the Contractor in connection with the Contract upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.
  - (y) **“Personal Data Processing Addendum”** means the document entitled "Suncor Personal Data Processing Addendum" and found on Suncor’s website at <https://www.suncor.com/en-ca/contractors-suppliers-carriers/existing-contractors-suppliers-carriers> or such other Suncor website as may be updated from time to time.
  - (z) **“Personal Data Protection Legislation”** means all Laws applicable to Personal Data Processing under the Contract.
  - (aa) **“Personnel”** means a Party’s directors, officers, employees, contractors, representatives, advisors and agents, and, in respect of the Contractor, includes Subcontractors and the directors, officers, employees, contractors, representatives, advisors and agents of Subcontractors.
- (bb) **“Practice”** means, directly or indirectly through a third party, to make, use, sell, import, export, remanufacture, reproduce, create derivative works of, or otherwise commercially exploit Technology.
  - (cc) **“Project Technology”** means any Technology, and any Intellectual Property Rights therein, created, developed or acquired by the Contractor, the Contractor’s Personnel or Suncor as a result of or in connection with the performance of the Services.
  - (dd) **“Purchase Order”** means the purchase order issued by Suncor and all other attachments identified in the purchase order.
  - (ee) **“Records”** means the records of the Contractor and its Affiliates and the Personnel of each of the foregoing relating to the Contract or the Work, including paper and electronic documents and copies in their native form of:
    - (i) original invoices and accounts showing all the Contractor’s charges, costs and expenses incurred in the performance of the Work, including:
      - (A) records of account for all Work performed, including names and positions of Personnel, hours worked, type of Work performed and wages paid; and
      - (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;
    - (ii) information relating to the Contractor’s compliance with the Invoicing Requirements;
    - (iii) records related to environmental health and safety performance, including Lost Time Injury Frequency (LTIF) and Recordable Injury Frequency (RIF) statistics, and all incident investigations related to the Site;
    - (iv) records relating to any termination or suspension costs; and
    - (v) information relating to the Contractor’s compliance with Suncor’s Supplier Code of Conduct and the Law, and the Contractor’s use of Confidential Information.
  - (ff) **“Regional Business”** means a local business or Indigenous Business established within the same region or municipality in which the Site is located and, for the purposes of this definition, established means:
    - (i) having a staffed office within the region or municipality;
    - (ii) having an employment base within the region or municipality; and
    - (iii) having a valid business license for the region or municipality.
  - (gg) **“Serious Injury, Incident or Fatality”** means any type of injury, near miss or incident at Site associated with or in the vicinity of the Work for which Suncor undertakes a Suncor led incident investigation, including:

- (i) an injury or accident that results in the death of Personnel;
  - (ii) an injury or accident that results in a physician writing admitting orders to cause Personnel to be an inpatient of a hospital;
  - (iii) an unplanned or uncontrolled explosion, fire or flood that causes a serious injury or that has the potential of causing a serious injury;
  - (iv) electrical equipment failures or incidents that cause, or threaten to cause, injury to Personnel or damage to equipment or facilities; and
  - (v) any other unusual incident or unexpected event that could have caused serious injury to Personnel.
- (hh) **“Services”** means all labour, supervision, administration, transportation, delivery and such other work to be performed by the Contractor, and the supply of tools, equipment and other materials necessary for the performance of such services.
- (ii) **“Site”** means the site(s) identified in the Contract.
- (jj) **“Subcontractor”** means any Person directly or indirectly subcontracted by the Contractor to perform all or any part of the Work.
- (kk) **“Suncor”** means the purchasing entity.
- (ll) **“Suncor’s Contractor Alcohol and Drug Standard”** means the current version of Suncor’s Contractor Alcohol and Drug Standard at <https://www.suncor.com/en-ca/contractors-suppliers-carriers/existing-contractors-suppliers-carriers> or such other Suncor website as may be updated from time to time or as may be provided and updated by Suncor from time to time, including as part of Suncor’s prequalification process.
- (mm) **“Suncor’s EH&S Management Requirements”** means Suncor’s environment, health and safety requirements applicable to the Work at <https://www.suncor.com/en-ca/contractors-suppliers-carriers/existing-contractors-suppliers-carriers> or such other Suncor website as may be updated from time to time or as may be provided and updated by Suncor from time to time, including as part of Suncor’s prequalification process.
- (nn) **“Suncor’s Supplier Code of Conduct”** means the document "The Way We Do Business – Working with Suncor" available on Suncor’s website at <https://www.suncor.com/en-ca/contractors-suppliers-carriers/existing-contractors-suppliers-carriers> or such other Suncor website as may be updated from time to time.
- (oo) **“Supplemental Freight Services Addendum”** means the Supplemental Freight Services Addendum available on Suncor’s website at <https://www.suncor.com/en-ca/contractors-suppliers-carriers/existing-contractors-suppliers-carriers>, or such other Suncor website as may be updated from time to time.
- (pp) **“Tax”** means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any governmental authority together with all fines, interest, penalties on or in respect of, in lieu of or for non-collection of those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges.
- (qq) **“Technology”** means all: Documents, trade secrets and other proprietary or confidential information; any information of a scientific, technical, or business nature; standards and specifications; conceptions, ideas, innovations, principles, knowledge and discoveries; research, developmental, demonstration or engineering work; systems, designs, analytical tools, practices, methods of assessment and techniques; data and data files; metrics and statistics; scoping studies; and all other information, methods, processes, formulations, formulae, technical or procedural information. Furthermore, Technology may be embodied in or on any media including hardware, software, photographs, drawings, plans, documents, Deliverables, reports, studies, manuals, summaries and other work product.
- (rr) **“Term”** means the time period commencing on the date of issuance stated in the Purchase Order and terminating on the earlier of the following events:
- (i) Completion; or
  - (ii) termination of the Contract.
- (ss) **“Transportation Services”** shall have the same meaning as stated in the Supplemental Freight Services Addendum.
- (tt) **“Warranty Period”** means:
- (i) for the Work for which the Contractor is compensated on a cost reimbursable or similar basis, the period of time starting at commencement of performance of the Work and continuing until 18 months after the date of Initial Operations; and
  - (ii) for the Work for which the Contractor is compensated on any other basis, the period of time starting at Completion and continuing until 18 months after the date of Initial Operations.
- (uu) **“Work”** means the supply of goods, Services, labour, supervision, administration, Deliverables and such other activities that are inherent, necessary or customarily provided for the scope of work described in the Contract.

**2. INTERPRETATION**

- 2.1 **Interpretation.** The interpretation of the Contract shall be governed by the following rules:
- (a) headings contained in the Contract are for convenience and reference only and are not to be considered in the interpretation of any of its provisions;
  - (b) all dollar figures shall mean Canadian Dollars unless otherwise specifically referenced;
  - (c) words signifying the singular include the plural, and vice versa;
  - (d) words importing the masculine, feminine or neutral genders shall mean any of them as the context requires unless specifically stated otherwise;

- (e) words importing persons, firms or corporations shall mean any of them as the context requires unless specifically stated otherwise;
  - (f) **“Article”** or **“Paragraph”** refers to the specified article or paragraph of the Contract unless expressly noted otherwise;
  - (g) the word **“include”** or **“including”**, when following a general term or statement, is not to be construed as limiting the term or statement to the specific items or matters stated or to similar items or matters, but rather as referring to all items or matters that could reasonably fall within the broadest possible scope of the term or statement;
  - (h) where a reference is made to a **“day”**, **“week”**, **“month”** or **“year”**, the reference is to the calendar period; and
  - (i) all Appendices are integral parts of the Contract.
- 2.2 **Statutes.** Any reference to a statute shall include such statute and the corresponding regulations, together with all amendments made and in force from time to time, and any statute or regulation that may be passed which has the effect of supplementing or superseding the statute referred to or the corresponding regulations.
- 2.3 **Severability.** If any term, covenant or condition of the Contract is invalid or unenforceable, in whole or in part, the remainder of the Contract shall not be affected.
- 2.4 **Adverse Rule of Construction Not to Apply.** The words in the Contract shall bear their natural or defined meaning. Each Party acknowledges that it has had the opportunity to obtain legal advice. Any rule of construction that an ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of the Contract.
- 2.5 **Document Precedence.** In the event of any conflict between or among the various documents comprising the Contract, such documents shall be interpreted in the following order of precedence:
- (a) General Conditions; and
  - (b) the Purchase Order.
- 3. SCOPE OF WORK**
- 3.1 **Work.** The Contractor shall perform the Work in accordance with the Contract.
- 3.2 **Time.** The Contractor acknowledges that timely performance of the Work is a matter of paramount importance to Suncor.
- 3.3 **Terms and Conditions.** Where the Work includes Transportation Services, such Transportation Services shall be performed in accordance with the Supplemental Freight Services Addendum and the General Conditions.
- 3.4 **Matters Affecting the Contractor's Obligations.** Any failure by the Contractor to discover matters which affect or could affect its obligations under the Contract shall not relieve the Contractor from any such obligations. Specifically, the Contractor acknowledges that it has investigated and satisfied itself as to:
- (a) the nature of its obligations under the Contract;
  - (b) the general character, quality, quantity and availability of equipment and materials required to fulfill its obligations under the Contract;
  - (c) 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 that may affect the Contractor's obligations under the Contract and are discoverable by due diligence;
  - (d) all environmental risks, conditions, Law and restrictions that affect or might affect the Contractor or its obligations under the Contract; and
  - (e) all conditions affecting labour, including availability, productivity and safety, applicable to the Contractor's obligations under the Contract.
- 3.5 **Errors, Omissions or Inconsistencies.** Each of the Parties shall promptly and fully inform each other of any errors, omissions or inconsistencies in the Contract and of any inconsistencies between the Contract and the Law of which they become aware. The Contractor shall resolve all such matters with Suncor before proceeding with the affected portion of the Work.
- 3.6 **Minimum of Interference and Full Cooperation.** The Contractor shall perform the Work in such manner as to minimize interference with operations of Suncor or Other Contractors. The Contractor shall cooperate fully with Other Contractors and all Persons that the Contractor may be involved with during the performance of the Work.
- 4. MATERIAL, EQUIPMENT AND SUPPLIES**
- 4.1 **Contractor to Check Material, Equipment and Supplies.** The Contractor shall check, assess and record upon delivery to the Contractor the quantity and condition of all materials, equipment and supplies which are to be installed or consumed by the Contractor during the performance of the Work, and shall at all times protect such materials, equipment and supplies from loss or damage.
- 5. CHANGES**
- 5.1 **Suncor Change.** Suncor may make any changes to the Work including additions, deletions, rescheduling, acceleration or deceleration to all or any part of the Work. The Contractor agrees to perform the Work as changed.
- 5.2 **Compensation for Change.** In the event a change directly or indirectly causes an increase or decrease in the time or cost to perform its obligations under the Contract, the Contractor shall, within 10 days of receiving such notice of the change, submit to Suncor detailed information, substantiating its impact. An equitable adjustment shall be made to schedule or compensation, or both, and the Contract shall be modified in writing accordingly.
- 6. INDEPENDENT CONTRACTOR**
- 6.1 **Independent Contractor.** The Contractor is an independent contractor and not an agent of Suncor.
- 7. SUBCONTRACTORS**
- 7.1 **Subcontracting.** The Contractor may subcontract any portion of the Work, subject to the prior written approval of Suncor, which approval may be withheld at Suncor's sole discretion.
- 7.2 **Responsibility.** Where any portion of the Work is subcontracted by the Contractor, the Contractor shall remain responsible for the performance of the Work and for the acts, omissions or defaults of its Subcontractors and their

respective Personnel as if they were acts, omissions or defaults of the Contractor.

## 8. OTHER CONTRACTORS

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

## 9. REGIONAL BUSINESSES

9.1 **Regional Businesses.** Suncor strongly supports the use of Regional Businesses in the execution of the Work. When subcontracting any portion of the Work, the Contractor shall proactively seek out Regional Businesses to perform such subcontracts, and whenever appropriate, and provided there is no time or cost penalty to Suncor or the Contractor, the Contractor shall give preference to such Regional Businesses.

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

## 10. CLEAN-UP

10.1 **Waste.** In addition to the requirements of Article 34 (Hazardous Substance Handling), no waste materials shall be allowed to accumulate in or around the Site, and the Contractor shall remove, or cause its Subcontractors to remove, debris or waste materials at periodic intervals or as often as Suncor may direct and shall ensure disposal of such debris and waste materials in accordance with applicable environmental Laws. Before Completion, the Contractor shall remove or cause to be removed all temporary structures, superfluous materials and waste materials of whatever kind resulting from the Work.

## 11. QUALITY ASSURANCE

11.1 **Quality Assurance.** The Contractor shall have an implemented and documented system for quality assurance in accordance with the requirements stated in the Contract. Suncor has the right to audit the quality assurance system of the Contractor. Suncor shall notify the Contractor of such audit. The audit may include any part of the Work. The Contractor shall give the necessary assistance during such audit.

## 12. REPRESENTATIONS

12.1 **Contractor's Performance Representations and Warranties.** The Contractor acknowledges that Suncor is relying on the Contractor's skill, knowledge and expertise in

performing the Work in accordance with the Contract. The Contractor represents and warrants that:

- (a) the Contractor and its Subcontractors have and shall retain the necessary qualified Personnel with the skills, experience and expertise to perform and to complete the Work and who are ready and willing to perform the Work in accordance with the Contract;
- (b) the Contractor has or will obtain prior to performing the Work, and shall retain while performing the Work, all required permits, licenses, certifications, registrations and authorizations necessary to carry on its business and to be obtained by the Contractor to conduct the Work; and
- (c) the Work shall be performed in a professional, ethical, efficient, good and workmanlike manner, using only qualified, skillful and careful Personnel, in accordance with the Contract, in accordance with sound and currently accepted practices and principles normally employed in the industry and in compliance with the applicable Laws.

## 13. DEFECTIVE OR DEFICIENT WORK

13.1 **Remediation of Defective or Deficient Work.** If a defect or deficiency in the Work is discovered during the Warranty Period and if Suncor has notified the Contractor in writing of such defect or deficiency no later than 30 days after the expiry of the Warranty Period, the Contractor shall, at its own risk and expense, including all costs to access the Work:

- (a) remedy without delay, and in a manner satisfactory to Suncor, such defect or deficiency in the Work;
- (b) repair, replace or re-perform any portion of the Work required to be remedied as a result of such defective or deficient Work, or the remedy of such defective or deficient Work;
- (c) reimburse Suncor for all costs and expenses incurred by Suncor to repair, replace or re-perform services performed or goods provided by Other Contractors required to be remedied as a result of such defective or deficient Work, or the remedy of such defective or deficient Work; and
- (d) reimburse Suncor for all costs and expenses incurred by Suncor to repair or replace any existing property or facilities, including real property, belonging to Suncor or others, which is damaged as a result of the defective or deficient Work or damaged by the remedy of such defective or deficient Work provided that the Contractor's liability for such reimbursement shall not exceed the value of the comprehensive general liability policy required to be maintained by the Contractor in accordance with Article 14 (Insurance).

13.2 **Indemnification by Contractor to Suncor for Remediation.** Should the Contractor fail to remedy the defects or deficiencies in accordance with Paragraph 13.1 (Remediation of Defective or Deficient Work) as soon as practicable from the time of Suncor providing a notice to the Contractor to remedy the same, Suncor may proceed with any activities necessary to remedy the defects or deficiencies and the Contractor shall indemnify and hold harmless the Indemnitees from any Claim brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees to remedy such defects or deficiencies.

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

13.4 **Warranty for Warranty Work.** The Contractor further warrants any and all warranty work in respect of defects or deficiencies appearing during the Warranty Period for a period of 18 months from completion of the warranty work.

**14. INSURANCE**

14.1 **Insurance Coverage.** Without limiting any of the obligations or liabilities under the Contract and prior to commencing any Work under the Contract, the Contractor shall obtain and continuously carry or cause to be maintained during the Term or at any time when on Site, at its own expense, including all retentions and deductibles, policies suitable to Suncor in respect of the following insurances, which limits may be achieved through a combination of primary and excess or umbrella policies:

- (a) commercial general liability Insurance, including bodily injury, death and property damage, in an amount of not less than \$5 million (combined single limit on each occurrence). Such coverage to include, blanket contractual liability, employer's liability, contingent employer's liability, non-owned automobile liability, products and completed operations liability, and, when applicable to the Work, attached equipment, hook liability, riggers liability, sudden and accidental pollution liability and explosion, collapse and underground damage liability. This policy will respond to property damage to Suncor's existing facilities;
- (b) 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;
- (c) property insurance on a replacement cost basis, covering loss or damage to construction machinery, tools, equipment and property that is owned by, leased by, or rented by and used by the Contractor or its Subcontractors in performing the Work; and
- (d) additional coverage as may be required by Law, which is customary for work similar to the Work or which Suncor, acting reasonably, considers necessary.

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

- (a) at Suncor's request, certificates of insurance of the policies described in Paragraph 14.1 (Insurance Coverage) shall be submitted to Suncor. All such policies shall be placed with insurers and shall be in a form acceptable to Suncor. The approval or non-approval of any such policy by Suncor shall in no way relieve the Contractor of its obligations to provide, and to cause its Subcontractors to provide, the insurance in this Article for the Term or while on the Site;

- (b) all property insurance policies provided by the Contractor and its Subcontractors shall contain a waiver of subrogation against the Indemnitees;
- (c) all insurance which is project specific shall contain extended reporting provisions for a period of 18 months past Completion; and
- (d) all liability insurance policies, except for automobile liability and professional liability, provided by the Contractor and its Subcontractors shall:
  - (i) name the Indemnitees as additional insureds, but only with respect to any potential legal liability arising out of the operations, actions or conduct of the named insured; and
  - (ii) contain a cross-liability and severability of interest clause; and
- (e) all insurance provided by the Contractor or its Subcontractors shall be considered primary and not excess to any insurance carried by Suncor; and
- (f) each such policy shall state that it cannot be cancelled without at least 30 days' written notice to Suncor.

14.3 **Insurance Indemnity.** If the Contractor fails, or any of its Subcontractors fail, to furnish Suncor with a certificate of insurance for each policy of insurance required to be obtained in Paragraph 14.1 (Insurance Coverage), or if after furnishing a certificate of insurance, any policy lapses, is cancelled or is materially altered, in every case Suncor may terminate the Contract or obtain and maintain such insurance in the name of the Contractor and any of its Subcontractors. The Contractor shall indemnify and hold harmless the Indemnitees from any Claim suffered, sustained, paid or incurred by one or more of the Indemnitees to place such insurance for the Contractor, including the Subcontractors' insurance costs.

14.4 **Subcontractors.** The Contractor shall require its Subcontractors to enter into an agreement with the Contractor containing provisions in the same form as those found in Paragraph 14.1 (Insurance Coverage) and Paragraph 14.2 (Requirements of Contractor). The Contractor shall provide to Suncor, upon request, copies of certificates of insurance for the policies it has obtained from its Subcontractors.

14.5 **Claims Made.** For any policy required under Paragraph 14.1 (Insurance Coverage) that is written on a claims made basis, any retroactive date applicable to coverage under such policy shall precede the Effective Date and continuous coverage shall be maintained for a period of two years beginning from the expiry of the Term or termination of the Contract.

14.6 **Liability of the Contractor.** Neither the providing of insurance by the Contractor in accordance with the requirements of this Article, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim occurring shall be held to relieve the Contractor from any other liability under the Contract or otherwise.

14.7 **Notice.** The Contractor shall immediately notify Suncor in writing and the relevant insurer of any occurrence or incident arising from or connected to the Contractor's performance of the Work likely to give rise to a claim under the policies or insurance coverage referred to in this Article. In addition, both Suncor and the Contractor shall give all such information, reports, documentation and assistance as may be reasonably practicable to achieve prompt settlement of insurance claims.



**15. WORKERS' COMPENSATION****15.1 Workers' Compensation.**

(a) The Contractor shall, and shall ensure that its Subcontractors, comply with workers' compensation Law covering all Persons employed by the Contractor and its Subcontractors. Without limitation, the Contractor shall, and shall ensure that its Subcontractors, at all times pay or cause to be paid any assessment or contribution required to be paid pursuant to workers' compensation Law, whether in respect of a statutory workers' compensation scheme or by carrying workers' compensation insurance in accordance with the Law. In the event that an employee of the Contractor or of a Subcontractor engaged in the Work ordinarily resides outside the province, territory or state in which the Work is being performed and is employed by an employer who is based outside the province, territory or state (and such employer carries on business at the location where the Work is being performed on a temporary basis) the Contractor shall comply with workers' compensation Law in accordance with the workers' compensation Law of the province, territory or state to which such Contractor or Subcontractor and the respective employees are subject.

(b) The Contractor shall and shall ensure that its Subcontractors comply with all workers' compensation and occupational health and safety Laws applicable to all persons employed by the Contractor and its Subcontractors. The Contractor shall and shall ensure that all its Subcontractors are at all times in good standing with the Commission de la santé et de la sécurité du travail du Québec in regard to the payment of the assessments payable pursuant to any occupational health and safety Laws including the Act respecting industrial accidents and occupational diseases (RSQ, chapter A-3.001) and the Act respecting occupational health and safety (RSQ, chapter S-2.1).

**15.2 Indemnification for Workers' Compensation.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees as a result of the Contractor's failure to pay, or the failure of the Contractor to ensure its Subcontractors pay, any assessment, contribution, or insurance premium relating to workers' compensation in accordance with the applicable Law.

**16. LIABILITY AND INDEMNIFICATION**

**16.1 Liability of Contractor.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees as a result of the negligence or breach of contract by the Contractor arising out of or incidental to the performance or non-performance of the Contract or of the Work.

**17. LIMITATION OF LIABILITY**

**17.1 Limitation of Liability for the Contractor.** Subject to Paragraph 17.2 (Gross Negligence and Willful Misconduct) and the Contractor's obligations to indemnify pursuant to Article 14 (Insurance), Article 18 (Third Party Claims), Article 24 (Confidentiality), Article 25 (Personal Information), Article 27 (Intellectual Property), Article 29 (Anti-Bribery Law), Article 31 (Liens) and Article 32 (Taxes), the liability for which shall

not be limited in any way, the Contractor's liability under the Contract shall be limited to the greater of:

- (a) all amounts of applicable insurance coverage required to be maintained under the Contract, provided that the cost of the deductibles shall not be deducted from the total insurance coverage in determining the amount of coverage under the policies of insurance; or
- (b) the total compensation to complete the full scope of Work.

**17.2 Gross Negligence and Willful Misconduct.** Notwithstanding any other provision in the Contract, the limitations of liability contained in the Contract shall not apply in respect of any liability of the Contractor arising from, or connected to, its, or any of its Subcontractors', gross negligence or willful misconduct. Where the Contract is governed by the Laws of Quebec, "**gross negligence and willful misconduct**" shall have the same meaning as "**intentional or gross fault**".

**18. THIRD PARTY CLAIMS**

**18.1 Third Party Claims.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims by any third party which may be brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees as a result of and to the extent of the acts, faults, errors, omissions or negligence of the Contractor.

**19. CONSEQUENTIAL AND PUNITIVE DAMAGES**

**19.1 Consequential and Punitive Damages Exclusion.** Subject to Paragraph 19.3 (Exception to Consequential and Punitive Damages Exclusion) and except for coverage that may be available under insurance policies required to be maintained under the Contract by the Contractor, the Contractor shall not be liable to the Indemnitees and the Indemnitees shall not be liable to the Contractor, its Affiliates, or its Subcontractors, or their respective Personnel for consequential or punitive damages.

**19.2 Direct Economic Damages Limitation.** Notwithstanding Paragraph 19.1 (Consequential and Punitive Damages Exclusion), the Contractor shall be liable to the Indemnitees for damages for losses of profits, revenue, business, reputation, financing or opportunity if and to the extent that such losses are a direct result of the negligence or breach of contract by the Contractor arising out of or incidental to the performance or non-performance of the Contract or of the Work, but such liability will be limited as stated in Article 17 (Limitation of Liability).

**19.3 Exception to Consequential and Punitive Damages Exclusion.** Paragraph 19.1 (Consequential and Punitive Damages Exclusion) and the limitation in Paragraph 19.2 (Direct Economic Damages Limitation) shall not apply to: (i) any liability of the Contractor arising from or connected to its, or any of its Subcontractors', gross negligence or willful misconduct; or (ii) the Contractor's obligation to indemnify the Indemnitees pursuant to Article 18 (Third Party Claims), Article 24 (Confidentiality), Article 25 (Personal Information), Article 27 (Intellectual Property) and Article 29 (Anti-Bribery Law).

**20. FORCE MAJEURE**

**20.1 Event of Force Majeure.** Subject to compliance with this Article, if, due to an Event of Force Majeure, a Party cannot fulfill an obligation pursuant to the Contract, such obligation shall be suspended during the period of time and to the extent

that the Event of Force Majeure continues to prevent performance of such obligation. Such Party shall not be entitled to the benefit of this Article if the failure to observe or perform such obligation was caused by such Party's failure to act in a reasonable and prudent manner in the circumstances or failure to remedy the condition and resume the performance of such obligation as soon as practicable.

20.2 **Notice of Event of Force Majeure.** The Party claiming under this Article shall:

- (a) within a reasonable period of time of the Event of Force Majeure occurring, provide a notice to the other Party of the particulars of the Event of Force Majeure upon which it relies, including the date of its commencement, its anticipated cessation and which portion of the Work, if any, it affects;
- (b) within a reasonable period of time of the Event of Force Majeure ceasing, provide a notice to the other Party;
- (c) within a reasonable period of time of the Event of Force Majeure ceasing, recommence performance of the suspended obligation; and
- (d) use its best efforts to mitigate the loss, damage or adverse impact on the Work arising from the Event of Force Majeure.

20.3 **Suspension.** Where a Party claims suspension pursuant to this Article of its obligations, the obligations of the other Party shall also be suspended if and to the extent those obligations are dependent upon or are a consequence of the performance by the Party claiming suspension of its obligations.

20.4 **Continuance of Event of Force Majeure.** If an Event of Force Majeure exists and continues for a period in excess of 180 continuous days and results in substantially all of the Work being stopped or suspended during that period, either Suncor or the Contractor may, by giving written notice of no less than seven days, terminate the Work or the Contract, and Suncor shall pay the Contractor all compensation owed in accordance with the Contract for all Work satisfactorily completed up to the date of the termination. The Contractor shall not be entitled to any compensation for the terminated portion of the Work.

20.5 **No Compensation.** In no circumstances shall a Party be entitled to any compensation as a result of or during an Event of Force Majeure, including any delays, demobilization or remobilization, 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.

## 21. PAYMENT

21.1 **Payment.** Subject to the General Conditions, payment shall be made in accordance with the Purchase Order.

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

- (a) the Contractor failing to complete the Work, not making satisfactory progress with the Work or being in default of any condition of the Contract, including quality assurance and health and safety requirements, or failing to provide any Deliverables in a timely manner;

- (b) the Contractor not promptly remedying defective or deficient Work;
- (c) the Contractor failing to promptly and satisfactorily pay any Claim for labour performed or materials or equipment furnished; or
- (d) loss or damage to the work of Other Contractors or to the property of Suncor or others for which the Contractor or its Subcontractors is responsible.

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

## 22. SET-OFF

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

## 23. SUSPENSION OR TERMINATION

23.1 **Suspension or Termination for Convenience.** Suncor may, without cause:

- (a) suspend the Contract in whole or in part, at any time, by giving notice to the Contractor stating the extent and effective date of such suspension or termination; or
- (b) terminate the Contract in whole or in part, at any time, by giving 15 days' notice to the Contractor stating the extent and effective date of such termination.

In the event of a suspension or termination under this Paragraph, the Contractor shall place no further orders, subcontracts or other agreements related to the suspended or terminated Work and shall make every effort to suspend or terminate all outstanding purchase orders, subcontracts or other agreements as they relate to the suspended or terminated Work.

23.2 **Compensation.** In the event of suspension or termination under Paragraph 23.1 (Suspension or Termination for Convenience), Suncor shall pay the Contractor the following in full satisfaction of all Claims the Contractor may have in relation to, or arising from, the suspension or termination:

- (a) compensation owed in accordance with the Contract for all Work satisfactorily completed up to the date of the suspension or termination, less any Claims that Suncor may have against the Contractor; and
- (b) third party cancellation charges incurred by the Contractor due to the suspension or termination, provided that such charges were approved in writing by Suncor prior to the Contractor entering into the subcontract giving rise to such charges.

23.3 **Overpayment.** If, as of the date of suspension or termination, the amount paid by Suncor to the Contractor exceeds the amount payable under Paragraph 23.2 (Compensation), the amount of such overpayment shall be promptly returned to Suncor.

23.4 **Termination for Cause.** Suncor may, at any time, upon notice to the Contractor, require the Contractor stop any or all activities if the Contractor is in default of any provision of the

Contract, and if the Contractor fails to commence to rectify or cause to be rectified the thing or matter giving rise to such default within five days of receipt of such notice, Suncor may immediately terminate the Contract.

- 23.5 **Subcontractors.** In the event of any termination under this Article, on the request of Suncor, the Contractor shall assign to Suncor, in the manner directed, all of the rights of the Contractor under purchase orders and subcontracts relating to the terminated portion of the Work.

## 24. CONFIDENTIALITY

- 24.1 **Confidential Information.** Confidential Information received by a Party (including Confidential Information received by a Party prior to the execution of the Contract) shall be received in the strictest confidence and shall not, for a period of 10 years following expiry of the Contract, be disclosed to any third party in any manner whatsoever, in whole or in part, or be used in any manner whatsoever directly or indirectly for any purpose other than for the purposes of carrying out the Work, except in accordance with this Article and with the prior written consent of the other Party, which consent may be arbitrarily withheld. Notwithstanding the foregoing, in respect of Confidential Information that is a trade secret, the restrictions on disclosure and use stated in this Paragraph shall continue for so long as such Confidential Information retains the status of a trade secret.

- 24.2 **Exempt Disclosure.** Despite any other provision of this Article, a receiving Party is entitled to disclose Confidential Information to the extent necessary:

- (a) where the receiving Party is the Contractor, to its Personnel who have a need to know the Confidential Information in connection with the Contract and the Work and who have been informed of the confidential nature of such Confidential Information;
- (b) where the receiving Party is Suncor, to its Personnel and Affiliates;
- (c) to acknowledge to third parties that the Contract exists between the Parties;
- (d) to Other Contractors as may be necessary to Practice the Project Technology;
- (e) to any third party who has a need to know the Confidential Information in connection with the Contract if, prior to disclosure, such third party executes an agreement respecting the confidential nature of the Confidential Information with confidentiality terms at least as stringent as those in this Article, and provided prior approval of disclosure is obtained from Suncor, in its sole discretion, which approval may be unreasonably withheld; or
- (f) to comply with the Law, provided that the Party subject to such obligation to comply with the Law shall provide the other Party with a prompt notice so that such other 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 Party subject to such obligation to comply with the Law shall furnish only that portion of the Confidential Information which in the reasonable opinion of its counsel is legally required and will use reasonable efforts to ensure that the Confidential Information so disclosed will be kept confidential.

- 24.3 **Unauthorized Disclosure by a Third Party.** Any unauthorized disclosure of Confidential Information by a third party shall be considered an unauthorized disclosure by the Party that, directly or indirectly, provided the Confidential Information to such third party.

- 24.4 **Confidentiality Indemnification.** Without limitation and in addition to any other rights or remedies Suncor may have, the Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees arising out of or resulting from a breach of this Article by the Contractor.

- 24.5 **Ownership of Confidential Information.** Each Party shall retain ownership of all its Confidential Information and the other Party shall have no right, title or interest therein or thereto unless expressly stated in the Contract. The Contractor shall return or destroy Suncor's Confidential Information in the Contractor's possession, including any documents prepared by the Contractor based on or incorporating Suncor's Confidential Information, no later than 10 days following a request by Suncor or at termination or conclusion of the Contract, whichever may occur first. Upon request by Suncor, the Contractor shall promptly certify that all such materials constituting Suncor's Confidential Information in the Contractor's possession have been returned to Suncor or destroyed.

## 25. PERSONAL INFORMATION

- 25.1 **Application.** Where the Contractor performs Personal Data Processing in relation to the Contract, the Personal Data Processing Addendum shall apply to such Personal Data Processing and shall form part of the General Conditions.

## 26. PUBLICITY

- 26.1 **Advertising.** Without the prior written consent of Suncor, which consent may be arbitrarily withheld, the Contractor shall not, with respect to the Contract or the Work: (i) use any endorsement of Suncor, (ii) erect any sign or advertising, (iii) use any Suncor trademark, logo or device in any sign or advertisement or on its website, (iv) provide any link to Suncor's website or otherwise make reference to Suncor on Contractor's website, or (v) issue any statement to a news media organization.

## 27. INTELLECTUAL PROPERTY

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

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

- 27.3 **Rights of Parties.** Subject to any rights, title or interests expressly granted by the Contract, neither Party shall acquire any right, title, or interest in or to any Technology of the other Party in existence prior to the execution of the Contract and any Intellectual Property Rights therein.

- 27.4 **Intellectual Property Indemnification.** The Contractor shall be liable to and, in addition, shall indemnify and hold harmless the Indemnitees from and against any and all Claims arising out of or resulting from the actual or alleged infringement or

misappropriation of Intellectual Property Rights or other intellectual property rights or any litigation based thereon in respect of Project Technology or Work supplied by the Contractor or the license provided pursuant to Paragraph 27.6 (License). The Contractor, if requested to do so by Suncor, shall, at its sole expense, promptly defend against the Claim. Suncor shall notify the Contractor upon becoming aware of the Claims. The Contractor shall have the right at its own expense to modify the Work so they become non-infringing, or to obtain the necessary licenses to use the infringing Work only if such substituted and modified Work shall meet all the requirements and be subject to all the provisions of the Contract.

- 27.5 **License.** The Contractor grants to Suncor a fully sub-licensable, worldwide, irrevocable, royalty-free, perpetual, non-exclusive right and license to use any and all patents, industrial designs, copyrights and technology related to the Work.
- 27.6 **License.** Notwithstanding Paragraph 27.3 (Rights of Parties), if any Technology that the Contractor owned, created, developed or acquired prior to or independent of the Services (“**Background IP**”) is incorporated or embedded into any Project Technology or is otherwise necessary to use the Project Technology or is related to the Services, then the Contractor hereby grants to Suncor and its Affiliates a non-exclusive, irrevocable, worldwide, transferable, royalty-free, fully paid-up, sub-licensable and perpetual right and license to Practice such Background IP as a part of the Project Technology or as related to the Services with no obligation to account to the Contractor.
- 27.7 **Project Technology.** Suncor shall own all Project Technology, which shall be Suncor’s Confidential Information. The Contractor hereby assigns, and agrees to assign to Suncor, an ownership interest in any Project Technology that it or its Personnel create, develop or acquire and provide such Project Technology to Suncor.

**28. COMPLIANCE WITH LAWS AND SUNCOR'S SUPPLIER CODE OF CONDUCT**

- 28.1 **Compliance with Law.** The Contractor and its Personnel shall be fully knowledgeable of the Law applicable to the Work and the performance of the Contract and shall comply with the Law.
- 28.2 **Compliance with Suncor's Supplier Code of Conduct.** At the Contractor’s expense, the Contractor and its Personnel shall understand and comply with Suncor’s Supplier Code of Conduct and shall provide written certification of same if requested, and shall use reasonable efforts to prevent any harm to Suncor’s reputation. In the case of any difference between the requirements of Suncor’s Supplier Code of Conduct and the Law, the stricter or higher standard shall apply.
- 28.3 **Suncor's Right to Suspend.** Suncor shall have the right to suspend performance of the Work for as long as it is necessary to prevent or stop any violation of Suncor’s Supplier Code of Conduct or the Law, without compensating the Contractor in relation to any suspended Work or for any Claims the Contractor may suffer, and without any time extension for performance of the Work. Suncor shall have no liability for any Claims in relation to suspension of the Work, or failing to suspend the Work, pursuant to this Paragraph. Any suspension of the Work pursuant to this Paragraph shall not relieve the Contractor of any of its responsibilities

pursuant to the Contract, or otherwise, and shall not affect Suncor’s right to terminate for the same violation.

**29. ANTI-BRIBERY LAW**

- 29.1 **Indemnification for Anti-Bribery Law Compliance.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees as a result of the Contractor’s or Subcontractors’ failure to comply with Anti-Bribery Law.
- 29.2 **Obligation to Report Non-Compliance.** The Contractor shall immediately notify Suncor of any alleged or actual breach of Anti-Bribery Law by the Contractor or a Subcontractor in relation to the Work or in connection with the Contractor’s business relationship with Suncor.

**30. SECURITY**

- 30.1 **Risk Avoidance.** The Contractor shall, and shall ensure that its Subcontractors shall, conduct all operations in a manner to avoid risk of loss, theft or damage to the Work or other property.
- 30.2 **Security Requirements.** The Contractor shall comply with Suncor’s security requirements for the Site and the Work and shall cooperate with Suncor on all security matters.
- 30.3 **Access to the Site.** Suncor may, in its sole discretion, deny access to the Site to any individual, or direct the Contractor to reassign, replace or remove any Personnel. In the event any Contractor’s Personnel is reassigned, replaced or removed, the Contractor shall promptly replace such Personnel with another who is fully competent and skilled to perform such Personnel’s duties.

**31. LIENS**

- 31.1 **If Lien or Legal Hypothec Filed.** If a lien or legal hypothec in respect of the Work (excluding any valid liens of the Contractor) is filed against the Site or any of Suncor’s property, including leases, Suncor may immediately withhold payment of any monies owing to the Contractor until the Contractor discharges such lien or legal hypothec.
- 31.2 **Contractor to Discharge or Release Liens or Legal Hypothecs.** The Contractor shall promptly discharge or release or cause to be discharged or released any and all liens and legal hypothecs in respect of the Work which are registered, filed, recorded or brought by any Person against the Site or any of Suncor’s property.
- 31.3 **Indemnification by Contractor.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees in connection with any liens or legal hypothecs (excluding any valid liens or legal hypothecs of the Contractor).
- 31.4 **Waiver of Legal Hypothec.** Where the Contract is governed by the Laws of Québec, the Contractor with no reserve hereby waives its right to a legal hypothec in respect of the Work.

**32. TAXES**

- 32.1 **Tax Responsibility.** With the exception of goods and services tax and harmonized sales tax pursuant to the Excise Tax Act (Canada) and, if applicable, Québec sales tax as described in an Act respecting the Quebec Sales tax (Québec), payable on amounts due to the Contractor, which shall remain the responsibility of Suncor, the Contractor shall:

- (a) be responsible for and pay all Taxes in relation to the Work;
- (b) be responsible for and pay the costs of all contributions, assessments and deductions, including those required for labour unions or associations, workers' compensation insurance contributions, employment insurance contributions, employees' income tax deductions, Canada Pension Plan, disability benefits and other similar contributions, assessments and deductions, together with all Taxes in relation to same as may be required by Law; and
- (c) be knowledgeable of the Law related to the Contractor's liability for Taxes, including withholding, exemptions, waivers, credits and similar arrangements which may be available under international treaties or reciprocal agreements.

**32.2 Tax Withholding.** If the Contractor is a non-resident of Canada within the meaning of the Income Tax Act (Canada) or the Taxation Act (Québec), Suncor is obligated by Law to withhold at the then current rate a percentage of the value of the Work, as applicable, unless an official exemption from tax withholding is received by Suncor from the Contractor. Suncor shall be entitled to deduct any such required withholding from any amounts paid or payable to the Contractor under the Contract. Any amounts deducted by Suncor pursuant to this Paragraph shall be remitted by Suncor directly to any revenue authorities on behalf of the Contractor, with an official receipt respecting any such remittance provided to the Contractor by Suncor. It is expressly understood and agreed by the Contractor that no additional payment shall be made to compensate the Contractor as a result of costs associated with Canadian and Québec withholding tax. The Contractor shall provide accurate and timely information relating to the value of all Work to permit Suncor to withhold the appropriate amounts as required by Law.

**32.3 Tax Indemnity.** The Contractor shall indemnify and hold harmless the Indemnitees from all Claims brought against or suffered, sustained, paid or incurred by one or more of the Indemnitees in respect of the Contractor's obligations described in this Article.

### **33. HEALTH AND SAFETY**

**33.1 Contractor EH&S Plan.** The Contractor shall maintain and comply with, and ensure that its Subcontractors maintain and comply with, and ensure that the Contractor's Personnel comply with, an environment, health and safety plan that meets or exceeds Suncor's EH&S Management Requirements and any safe work requirements in the Contract. Suncor reserves the right to audit the above-mentioned plan and carry out corrective measures at the Contractor's expense. Suncor shall notify Contractor of such audit. The Contractor shall give Suncor all reasonable and necessary assistance during such audit. In the case of any difference between the requirements of such plan and any safe work requirements in the Contract and the Law, the stricter standard shall apply.

**33.2 Contractor Alcohol and Drug Policy.** The Contractor shall maintain and comply with an alcohol and drug policy that meets or exceeds Suncor's Contractor Alcohol and Drug Standard and any safe work requirements in the Contract. In the case of any difference between the requirements of the Contractor's alcohol and drug policy and the Law, the stricter or higher standard shall apply.

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

**33.4 Full Cooperation with Incident Investigations.** In the event of an environmental, health and safety incident, including any Serious Injury, Incident or Fatality, the Contractor shall use best efforts to cooperate fully with Suncor on any Suncor led incident investigation, regardless of and notwithstanding the fact that legal privilege may attach to information or correspondence associated with such incident, including, at Suncor's discretion:

- (a) providing emergency response to aid any injured Personnel;
- (b) providing emergency response to prevent further injuries and to protect property and the environment;
- (c) providing assistance to secure the Site;
- (d) complying with any information requests, including evidence gathering activities;
- (e) providing witness statements; and
- (f) assisting in root cause analysis.

### **34. HAZARDOUS SUBSTANCE HANDLING AND DANGEROUS GOODS**

**34.1 Hazardous Substances.** The Contractor shall not, and shall ensure that its Subcontractors shall not, use, store, transport, remove, dispose of or destroy any Hazardous Substances in connection with the Work, except with the prior written approval of Suncor. All Hazardous Substances used, stored, transported, removed, disposed of or destroyed shall be dealt with in accordance with the Law and the Contract. Material safety data sheets for Hazardous Substances brought on Site by the Contractor shall be immediately accessible by the Contractor and Suncor at all times.

**34.2 Asbestos.** Where asbestos is present at the Site, the Contractor shall not proceed with any Work until:

- (a) asbestos surveys and notifications have been completed and provided to the appropriate regulatory agencies as directed by Suncor; and
- (b) Suncor specifically authorizes the Work to proceed.

### **35. AUDIT**

**35.1 Records.** The Contractor shall maintain a complete set of Records during performance of the Work and for a period of at least five years after the expiration or termination of the Contract, and, where applicable, such Records shall be maintained in accordance with GAAP.

**35.2 Audit.** At any time during normal business hours until five years after the expiration or termination of the Contract, Suncor or its nominees shall have the right to inspect and

audit all Records. The Contractor shall give every assistance to Suncor, including proper access and facilities, to enable Suncor or its nominees to undertake such inspection and audit. The Contractor shall allow Suncor to make copies as reasonably required. 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 inspection and audit rights so as to allow Suncor to inspect and audit the Subcontractors.

35.3 **Limitation Period.** The limitation period to commence any Claims that have been identified as a result of a Suncor audit shall commence on the date that Suncor issues the final audit report to the Contractor.

**36. DISPUTE RESOLUTION**

36.1 **Unresolved Dispute.** In the event of a dispute arising between the Parties in connection with the Contract, the Parties may agree to submit the dispute to arbitration pursuant to Paragraph 36.2 (Arbitration) or either Party may, within the limitation periods prescribed by Law, commence litigation with respect to the dispute.

36.2 **Arbitration.** Should the Parties agree to resolve the dispute by arbitration, the following provisions shall apply to the arbitration:

- (a) the arbitration shall be conducted before a single arbitrator who is qualified by education and training and has such technical expertise, if any, as may be necessary or appropriate having regard to the matter in dispute;
- (b) the arbitration shall be conducted in Calgary, Alberta; and
- (c) each Party shall be responsible for its own costs incurred in conducting the arbitration, with the costs associated with the arbitrator and other costs of the arbitration shared equally between Suncor and the Contractor, and notwithstanding the foregoing, the arbitrator shall have the discretion to allocate all or any of the foregoing costs in a different manner.

36.3 **Must Continue with the Work.** Notwithstanding any dispute between the Parties, the Parties shall continue to fulfill their obligations pursuant to the terms of the Contract, including the continued execution of the Work by the Contractor, and by doing so neither Party jeopardizes any Claims or rights one Party may have against the other.

36.4 **Equitable Relief.** In the event a Party breaches or attempts or threatens to breach its obligations stated in Article 24 (Confidentiality), Article 25 (Personal Information), Article 26 (Publicity), or Article 27 (Intellectual Property), such breach may cause the non-breaching Party to suffer a loss for which it could not be adequately compensated by monetary damages. In addition to claiming damages or an indemnity, the affected Party shall be entitled as a matter of right to seek an injunction and enforce the terms and provisions of the applicable Article. The Parties agree that the affected Party will suffer irreparable harm as a result of such breach, and the other Party consents to any preliminary or ex parte applications for such relief to any court of competent jurisdiction, including equitable relief such as injunctive relief and specific performance. The foregoing rights shall be cumulative and shall be in addition to any other remedies which may be available to the affected Party.

36.5 **Subcontractors.** The Contractor shall ensure its contracts with its Subcontractors contain provisions in the same or similar form as those in this Article and Article 39 (Governing Law).

**37. NOTICES**

37.1 **Notices.** Notices shall be given in writing and shall be addressed to the Party in question at the address stated in the Contract.

37.2 **Delivery of Notice.** Notices may only be delivered in person, by courier or transmitted by electronic communication.

37.3 **Receipt of Notice.** A notice shall be deemed to be received by the recipient two hours after delivery or time of transmission, as applicable, except that if such time is not within the recipient's normal business hours, such notice shall be deemed to be received at the commencement of the recipient's next normal business day.

**38. SURVIVAL**

38.1 **Survival.** In addition to any other provisions which by their nature survive the termination or expiry of the Contract, the following Articles and Paragraphs shall survive termination or expiry of the Contract:

- (a) Article 6 (Independent Contractor);
- (b) Article 12 (Representations);
- (c) Article 13 (Defective or Deficient Work);
- (d) Article 14 (Insurance);
- (e) Article 16 (Liability and Indemnification);
- (f) Article 17 (Limitation of Liability);
- (g) Article 18 (Third Party Claims);
- (h) Article 19 (Consequential and Punitive Damages);
- (i) Article 21 (Payment);
- (j) Article 24 (Confidentiality);
- (k) Article 26 (Publicity);
- (l) Article 27 (Intellectual Property);
- (m) Article 29 (Anti-Bribery Law);
- (n) Article 31 (Liens);
- (o) Article 32 (Taxes);
- (p) Article 35 (Audit);
- (q) Article 36 (Dispute Resolution); and
- (r) Article 39 (Governing Law).

**39. GOVERNING LAW**

39.1 **Governing Law and Jurisdiction.** The Contract shall be governed by and construed in accordance with the Laws of the province where the Site is located. The Parties agree to accept and submit to the exclusive jurisdiction of the courts of that province.

39.2 **Forum.** The Contractor waives any objection based on venue or forum non conveniens with respect to any Claim related to the Contract, whether in contract, tort, equity or otherwise.

**40. GENERAL MATTERS**

- 40.1 **Binding Agreement.** Upon the earlier of the Contractor commencing performance of the Work or otherwise acknowledging acceptance of the Purchase Order, Suncor and the Contractor shall have entered into a Contract which shall be governed by the General Conditions and any requirements stated in the Purchase Order.
- 40.2 **Assignment.** Neither Party is permitted to assign the Contract without the prior written consent of the other Party, which consent may be arbitrarily withheld. Notwithstanding the foregoing, Suncor may assign the Contract to any of its Affiliates or to any third party which acquires all or substantially all of the assets of Suncor, conditional upon the successor covenanting and agreeing to be bound to the Contractor by the provisions of the Contract. The Contract shall enure to the benefit of and be binding upon the Parties' respective successors and, in the case of Suncor, its assigns.
- 40.3 **Entire Agreement.** The Contract constitutes the entire agreement between the Parties and shall supersede and replace any and all prior agreements or communications between the Parties with respect to the Work. Any reference to the Contractor's terms and conditions, quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in any such document.
- 40.4 **Amendments.** No amendment to the Contract shall be effective unless made in writing and signed by authorized representatives of both Parties.
- 40.5 **No Waiver.** A waiver by Suncor of any right, power or remedy on any one occasion shall not be construed as a bar to or waiver of any right, power or remedy which Suncor would otherwise have on any future occasion.

**END OF DOCUMENT**