

**SUNOCO RETAIL LLC  
GENERAL TERMS AND CONDITIONS FOR  
FIELD SERVICES**

Notwithstanding any acceptance, offer, proposal, quotation, acknowledgment or other writing executed by Contractor and Sunoco containing additional or different terms and conditions, commencement of Work by Contractor or any other reasonable form of acceptance shall be deemed an acceptance of all terms hereof. Any additional or different terms and conditions proposed by Contractor shall be deemed rejected unless specifically accepted in writing by Sunoco. All references to "Sunoco" herein shall mean Sunoco Retail LLC, inclusive of all Sunoco parents, affiliates, subsidiaries, and assigns.

**1. COMMENCEMENT AND EXECUTION OF THE WORK**

1.1. Contractor shall furnish the services, and/or all materials, labor, construction equipment, tools and/or supplies as specified in this Contract (the "Work"), and shall carry out all obligations, duties and responsibilities imposed on Contractor by this Contract.

1.2. Contractor represents to Sunoco that it has the necessary expertise, skill and ability to perform the Work. Contractor agrees that, in carrying out all the Work required by this Contract, Contractor will exercise the skill, expertise, and diligence normally exercised by similar licensed contractors in carrying out work of a similar nature and scope ("Required Standard of Care").

1.3. If Sunoco has permitted Contractor to begin any Work before this Contract has been issued and executed by Contractor, and that work is within the definition of "Work", Contractor agrees that said work shall be governed by, and shall be deemed to have been carried out in accordance with, the terms and conditions of this Contract.

1.4. Contractor shall not employ any subcontractors to carry out all, or portions of, the Work, without Sunoco's prior written consent, which may be withheld in Sunoco's discretion. In the event that Contractor subcontracts any of the Work, Contractor shall be solely responsible for the engagement and management of its subcontractors in the performance of the Work in accordance with the terms of this Contract, for the performance of the Work by its subcontractors and for all acts or omissions of subcontractors. Contractor shall ensure that all Work furnished or performed by its subcontractors conforms to the requirements of this Contract. No contract or agreement with any permitted subcontractor shall bind, or purport to bind, Sunoco, or give the subcontractor a right to seek compensation or damages from Sunoco. Contractor shall remain responsible for all Work performed by its subcontractors.

1.5. Contractor shall comply with all applicable local and federal safety and health requirements, including OSHA. Contractor shall also comply with Sunoco's Safety and Security Requirements, which are available for inspection, or any safety directions or rules reasonably issued by Sunoco to prevent injury or assure compliance with applicable law, whether or not Contractor agrees that those directions or rules are actually required in order to comply with applicable law, and do so without demanding further compensation from Sunoco for such compliance. Sunoco, at its sole option and without liability to Sunoco, may require Contractor to remove from its property any and all personnel of Contractor or its subcontractors who violate such practices and requirements.

1.6. Contractor shall comply with all local, state and federal rules, regulations, orders, directives and statutes applicable to wage and employment practices and shall act in the best interest of Sunoco on matters which affect area labor practices and might lead to or set precedent. Contractor agrees all work performed incident to this Contract and all goods furnished under this Contract shall comply with all applicable federal, state and local laws. In performing this Contract, Contractor shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, sex, disability, covered veteran status and/or sexual orientation. Specifically, Contractor agrees to comply with the regulations set forth in the Equal Opportunity Clause at 41 CFR 60-250.5(a), 41 CFR 60-741.5(a), 41 CFR 60-1.4, Executive Order 13201 and Section 202 of the Executive Order 11246, and all amendments thereto, unless specifically exempt. In the event of such discrimination, Sunoco may, in addition to any other rights or remedies available under this Contract, at law or equity, terminate this Contract forthwith. Contractor warrants and agrees that it has used and will continue to use due diligence to ensure that during the performance of this Contract, no officer, employee, agent or other representative of Contractor has made or will make any payment in violation of any applicable federal, state, or local law or regulation, and all amendments therein. Contractor shall supply such evidence of compliance as Sunoco may require.

1.7. Contractor represents that, before executing this Contract, it has, acting as a skilled and experienced contractor, conducted a careful investigation and examination of the Project site to ascertain the nature and location of the site and other reasonably discoverable conditions that may affect its Work, including topographical features, water on or near the site, roads, the size and shape of the site and its ability to accommodate the various trades and any required storage, features affecting transportation, vegetation or physical barriers, rocks, rubble, or existing structures or impediments to construction, and the like. Contractor also represents that it has, before executing this Contract, carefully examined all information

provided by Sunoco concerning soils or subsurface conditions, as-built conditions, location of existing underground utilities and services at the site, and any other information concerning the site or structures on it, and has independently verified the location of all utilities.

1.8. Contractor represents and warrants that: (1) it has received, reviewed and completed the Sunoco Contractor Prequalification Package, which includes the Sunoco Contractor Prequalification Form (collectively, the "CPP"); (2) all of the representations, warranties and other information provided by Contractor in the CPP are complete and accurate as of the date of the execution of this Contract; and (3) if any facts or circumstances arise that render Contractor's representations and warranties in the CPP inaccurate or incomplete, Contractor will provide prompt written notice to the Contract Specialist, updating the information in the CPP and explaining the circumstances requiring the update. Contractor's failure to comply with the requirements of this Section shall constitute a material breach of this Contract and justify termination. Further, Sunoco, in its sole discretion, may terminate this Contract if it determines that the updated information provided by Contractor impacts Contractor's qualifications or ability to perform the Work. The CPP completed by Contractor and all updates thereto are incorporated into this Contract by reference.

**2. PAYMENT**

2.1. Sunoco will make payment per corporate policy (30 days net) of all sums due and owing to Contractor after Contractor's timely submission of invoices to Sunoco's Accounts Payable Department.

2.2. Sunoco will not pay for materials purchased and stored for use in the Work, but not yet incorporated into the Work, unless Sunoco has expressly agreed to such payments, in writing, and then only on the following conditions: (1) Contractor shows that payment is being requested only for a reasonable amount of material, necessary to support its prompt performance of the Work; (2) the material has been properly stored on the Project site or other property approved by Sunoco; (3) Contractor certifies that it has inspected the material and that it is not subject to any defect or non-conformity that could reasonably be discovered by careful inspection; and (4) upon Sunoco's request, Contractor will execute documentation to confirm that good title to Sunoco will pass upon payment.

2.3. Neither progress payments, nor partial or entire use or occupancy of the Work by Sunoco, shall constitute an acceptance or approval of any of Contractor's Work that is defective or otherwise is not in accordance with the Contract, or constitute a waiver of any claim or right that Sunoco may then or thereafter have against Contractor.

2.4. Contractor warrants that title to all the Work covered by an invoice will pass to Sunoco at the earlier of incorporation into the Project or the time of payment. Contractor also warrants that, upon submittal of an invoice, all Work for which payments have been received from Sunoco will be free and clear of liens, claims, security interests or encumbrances in favor of Contractor or any other person or entity performing construction at the Project site or furnishing materials or equipment relating to the Work.

2.5. After Sunoco has acknowledged final acceptance of the Work, Contractor shall submit to Sunoco its invoice for final payment. As a condition precedent to final payment, Contractor shall deliver (1) a full release of liens in such form as Sunoco may require; (2) all warranty and guarantee documents required by this Contract; (3) any instruction or operation manuals or instructions required by this Contract; and (4) all other documents delivery of which is required by provisions elsewhere in the Contract Documents. If any liens have been threatened or asserted against Sunoco or its property as a result of the Work and have not been removed by Contractor, Contractor may be required to post a bond, or other form of security acceptable to Sunoco, covering liability and costs (including attorneys' fees) arising from the lien claim as a condition of receiving final payment.

2.6. Acceptance of final payment shall constitute a waiver of all of Contractor's claims and liens relating to or arising from the Work or this Contract.

2.7. Sunoco may withhold payments if any of the following occurs: (1) the Work is defective and the defects have not been remedied; (2) Contractor's fails to perform the Work in accordance with this Contract; (3) Contractor has failed to pay subcontractors or suppliers promptly, or has made false or inaccurate certifications that payments to subcontractors or suppliers are due or have been made; (4) any construction lien or mechanic's lien claim has been filed against Sunoco, the Project

site or any portion thereof or interest therein, or any improvements on the Project site in violation of the terms of this Contract, and Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within the time allowed by this Contract; or (5) Sunoco has reasonably determined that Contractor's progress has fallen behind the Project Schedule, and Contractor fails, within five (5) business days of Sunoco's written demand, to provide Sunoco with a realistic and acceptable plan to recover the delays or to accelerate the Work as directed.

2.8. Sunoco shall be entitled to offset from any sum due Contractor hereunder against any past due obligation Contractor may owe to Sunoco under any other contract with Contractor.

### 3. RECORDS AND AUDIT

3.1. Contractor shall keep accurate daily records of account for all Work performed, and shall provide copies to Sunoco (except Work for which a fixed price has been quoted), which itemize the names of employees, the hours worked by each, the type of work performed, the wages paid, equipment and materials used and any other item of cost for which Sunoco is required to reimburse Contractor. Sunoco shall have the right, at all reasonable times during regular business hours, to inspect and audit such records. Contractor shall preserve such records for 36 months after completion, cancellation or termination of this Contract.

3.2. If the audit discloses that either party owes money to the other, any sums due will be paid within thirty (30) days after the sum due is agreed upon by the parties or determined by a court or other dispute resolution tribunal. In any event, Contractor's right to recover any alleged underpayment shall be waived, unless a claim in writing with full support documents is received by Sunoco within 180 days after the end of the particular contract year, or the contract term, if less than a year.

### 4. WARRANTIES

4.1. Contractor warrants that it shall perform the Work: (1) with due diligence and in a safe, workmanlike, and competent manner and in accordance with sound construction practices and standards; (2) in compliance with all applicable laws, codes, regulations or other standards applied by any governmental entity having jurisdiction over the Work; (3) in accordance with all applicable manufacturer's requirements; (4) in accordance with all applicable standards and codes; and (5) in accordance with the provisions of this Contract. Contractor's warranty shall extend for twelve (12) months from final inspection and acceptance by Sunoco. If the Contract requires warranty terms that are of longer duration or require a higher standard of performance than is set forth in this Section, the more stringent or extensive warranty requirements shall apply. This warranty shall be in addition to, and shall not limit, any warranty of materials provided by any manufacturer or supplier of equipment or materials incorporated in the Work, and any other remedies Sunoco may have pursuant to applicable law. The warranty shall not be deemed to establish a period of limitation or prescription within which such other rights or remedies must be asserted.

4.2. If Contractor is supplying materials or equipment under this Contract, Contractor shall obtain standard commercial warranties from all material or equipment manufacturers. If Sunoco so requests, Contractor shall also provide reasonable assistance in determining whether superior warranty terms are available from a vendor and in obtaining such terms for Sunoco. If warranty terms are available, but only at increased cost, and Sunoco elects to obtain such terms, Sunoco shall pay the additional cost, over and above the Contract sum.

4.3. Within five (5) days after being notified in writing by Sunoco of any breach of Contractor's warranties, Contractor shall commence, and thereafter complete as rapidly as reasonably possible, repair or replacement of the defective or non-conforming Work, at Contractor's sole expense. In addition, Contractor shall, at its sole expense, repair or replace any portions of the Work (or work of other contractors) damaged by the non-conforming Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for longer of (1) the remainder of the original warranty period or (2) six (6) months from the date on which the corrected Work is accepted. Final payment by Sunoco or final acceptance of the Work shall not relieve Contractor from its responsibilities under this Section.

4.4. Alternatively, if in the sole discretion of Sunoco, the defective or non-conforming Work creates an immediate risk to person or property or is critical to Sunoco's operations, Sunoco may undertake the repair or replacement of the defective or non-conforming Work and charge Contractor for all reasonable costs associated with the repair or replacement of the defective or non-conforming Work. In no event, will any work undertaken pursuant to this Section limit, impair or void any warranties provided by Contractor.

4.5. The warranties set forth herein shall not affect or limit any of Sunoco's other rights or remedies provided by the Contract or applicable law and shall not be deemed to establish a period of limitation or prescription within which such other rights or remedies must be asserted.

5. **TITLE TO PROPERTY.** Sunoco shall have title to all Work completed or in progress and to all machinery, equipment, materials and supplies, the cost of which has been paid to Contractor. All studies, specifications, test results, reports, in whatever state of completion prepared by Contractor in exchange for consideration hereunder shall be the property of Sunoco upon completion or termination of this Contract. Sunoco shall have the right to use same for any purpose whatsoever without right on the part of Contractor to any additional compensation therefor.

6. **INFRINGEMENT.** Contractor warrants that neither the Work nor use thereof by Sunoco will infringe any U.S. or foreign patent, copyright, trade secret, trade mark or any other property right. Contractor shall (1) defend, indemnify and hold Sunoco harmless from any claim, suit, action or proceeding for infringement or misappropriation of trade secrets in which Sunoco, its parents and/or its respective subsidiaries and/or affiliates, is made a defendant whether for an alleged infringement of any U.S. or foreign patent, trademark or copyright or other property right arising out of the Work or use of the Work, and (2) either (a) procure for Sunoco the right to continue to use the Work, (b) replace the Work with an equivalent non-infringing product; or (c) with the approval of Sunoco, remove the Work and refund all payments made by Sunoco for the Work. Contractor also shall pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against Sunoco, its parents or their respective subsidiaries and affiliates including reasonable attorneys' fees.

7. **INDEPENDENT CONTRACTOR.** Contractor and its subcontractors shall be independent contractor with respect to the Work, and neither Contractor nor its subcontractors, nor any person employed by any of them shall be deemed to be Sunoco's employees, servants, or agents in any respect. Nothing in this Contract shall be construed as creating a joint venture or partnership between Sunoco and Contractor. Contractor, as an independent contractor under this Contract, shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder and any provisions in this Contract which may appear to give Sunoco the right to direct Contractor as to details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Sunoco in the results of the work only.

8. **NO THIRD PARTY BENEFICIARIES.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity, other than the parties, any rights, remedies or other benefits under or by reason of this Contract.

9. **TAXES AND FEES.** Unless otherwise required by law, Contractor has exclusive liability for sales, use, excise and other taxes, charges or contributions with respect to or imposed on any material or equipment supplied or Work performed by Contractor, including such taxes or contributions imposed on the wages, salaries or other payments to persons employed by Contractor or its subcontractors in the performance of this Contract. Contractor shall pay all such taxes, charges, or contributions before delinquency or discount date and shall indemnify and hold Sunoco harmless from any liability and expense by reason of Contractor's failure to pay such taxes, charges or contributions. Sunoco shall not be responsible for the direct payment of any withholding taxes, social security payments, payment under workers' compensation or other insurance premiums, or other charges of any kind or nature, except as specifically outlined herein. Contractor hereby certifies that he will deduct and pay over to the proper governmental authority any withholding taxes or similar assessment which an employer is required to deduct and pay over. Contractor accepts exclusive liability for any payroll taxes or contributions imposed by any federal, state or other governmental authority, covering its agents or employees.

### 10. MATERIAL SAFETY DATA SHEET REQUIREMENTS.

10.1. Contractor shall contact Sunoco's Safety and Health or Risk Management Departments or other Sunoco's authorized representative to request access to Material Safety Data Sheets (MSDS) for areas where Work is to be performed prior to commencing any Work. Contractor shall review the MSDS and ensure that its employees are advised of the location and accessibility of this hazard information.

10.2. Contractor shall furnish copies of MSDS to Sunoco for all substances to be used while performing Work at Sunoco's facility prior to use of such substances. Contractor shall maintain duplicate copies of said MSDS in its field office at the Work site.

10.3. Contractor shall not specify for use in the project any hazardous materials, including, without limitation, asbestos or PCBs, unless expressly authorized to do so in a writing signed by Sunoco.

11. **INSPECTION, TESTING AND ACCEPTANCE.** When any system or component of the Work is completed and ready for testing, Contractor shall so notify Sunoco, and Sunoco at its option may witness any tests to be performed. If any of the Work fails to meet any specified tests, Contractor shall remedy any defect and repeat such tests until the specified tests are successfully completed.

When all Work is completed and tested as required, Contractor shall so notify Sunoco and Sunoco shall have the right to a final inspection of the Work and to review any and all test records and reports maintained by Contractor. Sunoco shall promptly either notify Contractor of its acceptance of the Work or issue to Contractor a listing of additional tests required in order for the Work to conform to the drawings and specifications. Upon satisfactory completion of such additional tests by Contractor, Sunoco shall be deemed to have accepted the Work, subject to the other terms and conditions of this Contract.

**12. BONDS.** If requested by Sunoco, Contractor shall furnish performance and payment bonds covering the faithful performance of this Contract. Such bonds shall be in a form and amount and with a surety satisfactory to Sunoco. The cost of such bonds, without mark-up, shall be paid by Sunoco.

**13. INDEMNITY.** Contractor agrees to defend, indemnify, and hold harmless Sunoco, its parents, their subsidiaries and affiliates, as well as the employees, agents, officers, directors, invitees, partners and assigns, and successors in interest of any of them ("Indemnitees") from and against any and all claims, liabilities, expenses (including reasonable attorneys' fees), losses, damages, demands, fines and causes of action caused by or arising out of (i) Contractor's failure to comply with applicable laws and regulations; or (ii) the Work performed under this Contract; or (iii) the acts or omissions of Contractor, that of its suppliers, subcontractors, agents, servants or employees, as well as any joint negligence or fault of the Indemnitees, whether or not such actions or omissions occur jointly or concurrently; provided, however, that Contractor's obligations hereunder shall not apply to any claim, liability, expense, loss, damage, demand, fine or cause of action established to be the result of the sole negligence of an Indemnitee. Contractor's defense, hold harmless and indemnity requirements, as set forth above, shall also extend to injuries sustained by Contractor's employees and shall not be limited by any applicable workers' compensation law or similar statute. If this Contract relates to Work of any kind performed in Ohio, **CONTRACTOR EXPRESSLY AND SPECIFICALLY WAIVES ITS STATUTORY AND CONSTITUTIONAL WORKERS' COMPENSATION IMMUNITY UNDER OHIO LAW, INCLUDING ANY AMENDMENTS TO THIS CONTRACT.** This Section shall survive termination or cancellation of this Contract.

**14. INSURANCE.** Contractor shall procure and maintain with reputable insurers with AM Best Company's of not less than "A-:VII" policies of insurance written on an occurrence basis or on claims made basis (in which event insurance shall be maintained during the term of this Contract and for a period of two years following expiration or earlier termination of this Contract), or self-insurance acceptable to Sunoco, with limits not less than those indicated for the respective items as follows:

14.1. Statutory Workers' Compensation and Occupational Disease Insurance, including Employer's Liability Insurance and, if applicable, coverage under the Longshoremen and Harbor Workers' Compensation Act, the Jones Act or other Maritime Employer's Liability, complying with laws of each jurisdiction in which any work is to be performed or elsewhere as may be required. Employer's Liability Insurance (and Maritime Employer's Liability, if applicable) shall be provided with a limit not less than: **\$2,000,000** each occurrence;

14.2. Commercial Liability Insurance, including but not limited to all Premises and Operations, Contractual Liability, Products-Completed Operations Liability, Fire Legal Liability, Explosion, Collapse and Underground Damage Liability, Broad Form Property Damage Liability, and if applicable, Watercraft and Aircraft Liability, as well as coverage on all Contractor's mobile equipment (other than motor vehicles licensed for highway use) owned, hired or used in the performance of this Contract with limits not less than: **\$5,000,000** Bodily Injury, Personal Injury & Property Damage combined each occurrence and aggregate;

14.3. Commercial Automobile Liability Insurance, including Contractual Liability, covering all motor vehicles licensed for highway use and employed in the performance of this Contract, with limits not less than: **\$5,000,000** Bodily Injury, Personal Injury & Property Damage combined each occurrence and aggregate.

14.4. Contractor shall provide to the Contract Specialist certificates of insurance acceptable to Sunoco prior to commencement of performance hereunder. All insurance shall (i) provide that coverage shall not be suspended, voided, canceled, non-renewed, reduced in scope or limits except after thirty (30) days' prior written notice has been given to Sunoco; and (ii) apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Commercial General Liability and Automobile Liability policies shall be endorsed to add, or shall have an existing blanket endorsement so as to add, Sunoco as an additional insured; provided, however, that Sunoco shall be named as an additional insured only with respect to any claims arising out of or related to this Contract and/or Contractor's obligations hereunder; and shall provide that the coverage afforded to Sunoco as an additional insured will be primary to any other coverage available to it, and that no act or omission of Sunoco shall invalidate the coverage.

14.5. The insurance requirement set forth herein shall not in any way limit

Contractor's liability arising out of this Contract, or otherwise, and shall survive the termination/cancellation of this Contract.

**15. USE OF PREMISES.** All Work shall be performed in such a manner as to cause minimum interference with Sunoco's operations and the operations of other contractors on the premises. Contractor shall take all necessary and proper precautions to protect the premises and all persons and property thereon from damages or injuries. Contractor shall at all times keep the premises clean and free from accumulation of water, waste materials and rubbish. Upon completion of the Work, Contractor shall remove all tools, equipment, materials and rubbish and shall restore existing premises such as roads, other paved surfaces, fencing, curbing and the like to their original conditions.

**16. LIENS.** To the full extent allowed by law, Contractor hereby waives its right to assert any mechanic's lien or similar lien claim against Sunoco, the project site, or improvements thereon. Upon completion of the Work and as a condition precedent to final payment, Contractor shall deliver a full release of liens in such form as Sunoco may require. Contractor agrees that it shall defend, indemnify and hold Sunoco harmless from all resulting costs and attorneys' fees from all such claims or any mechanic's lien claim that is brought by any person supplying labor or materials for the Work. If any mechanic's lien is placed upon any portion of, or interest in, Sunoco, its facilities or any improvements thereon arising out of or relating to the Work, Contractor will promptly take all action to remove the lien, upon receiving notice from Sunoco or, failing that, will be liable for Sunoco's costs and attorneys' fees for doing so. Contractor agrees to insert a similar clause in all of its subcontract and supply agreements. In addition to any rights Sunoco may have under the law, Sunoco may withhold a retainage from each payment it makes to Contractor, to be paid Contractor after (1) the Work is completed as required and the retainage period required by applicable law has expired without issuance of a lien or claim, or (2) Sunoco is satisfied that all claims have been paid and liens removed. In addition, Sunoco may, at any time, require that Contractor post a bond, at no cost to Sunoco, to remove any claims or liens, or Sunoco may discharge or remove any such claims or liens by bonding, payment or otherwise, all of which are chargeable to Contractor, together with all attorney's fees and costs. Provided Sunoco agrees in writing, Contractor may provide an irrevocable standby letter of credit, naming Sunoco as beneficiary and in form and substance satisfactory to Sunoco, satisfaction of Contractor's obligations and liabilities as aforesaid and in substitution of any retainage.

#### **17. TIME.**

17.1. Contractor shall perform the Work in a prompt, efficient, safe and diligent manner.

17.2. If, because of force majeure, either party hereto is unable to carry out any of the obligations under this Contract, other than the obligations to pay money due hereunder, and if such party promptly gives to the other party hereto written notice of such force majeure, then the obligations of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided that the party giving such notice shall use its best efforts to remedy such force majeure insofar as possible with all reasonable dispatch. The term "force majeure" as used herein shall mean acts of God, acts of public enemy, insurrections, riots, strikes, lockouts, labor disputes, fires, explosions, floods, breakdowns or damage to plants, equipment or facilities, embargoes, orders, or acts of civil or military authority, or other causes of a similar nature which are beyond the reasonable control of the party affected thereby. Upon the cessation of the force majeure event, the party that had given original notice shall again promptly give notice to the other party of such cessation.

**18. CONFIDENTIALITY.** All plans, drawings, design and specifications supplied by Sunoco to Contractor shall remain the property of Sunoco, and any information derived therefrom or otherwise communicated to Contractor from Sunoco, shall be regarded by Contractor as confidential and shall not be disclosed to any third party without the prior written consent of Sunoco. Should Sunoco elect to provide Contractor with access to Sunoco's computer systems or network in connection with this Contract, Contractor agrees that upon termination or cancellation of this Contract, it shall immediately discontinue any further use of such systems or network and return to Sunoco any information related to such systems or network. Further, Contractor agrees to abide by all of Sunoco's policies and procedures applicable to such use and access.

#### **19. TERMINATION, CANCELLATION AND SUSPENSION.**

19.1. Sunoco may terminate this Contract for default if Contractor fails materially to perform any of its duties or obligations under this Contract. In particular, but without limitation, Sunoco may terminate this Contract if: (1) Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as Sunoco reasonably believes is necessary to complete the Work within the time required by this Contract; or (2) Contractor fails to perform the Work in accordance with the Required Standard of Care or (3) Contractor fails to perform the Work in a good and workmanlike manner, or fails to correct defects in the Work promptly upon notice by Sunoco; or

(4) Sunoco reasonably determines that Contractor has abandoned the Work, or has failed to pay any subcontractors, suppliers, or laborers when payment is due; or (5) Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, has a receiver appointed, or files for dissolution or otherwise is dissolved; or (6) Contractor fails to pay its debts in a timely manner, or (7) Sunoco has reasonably determined that Contractor does not have the financial ability to carry out its obligations under this Contract and Contractor fails to give Sunoco prompt and reasonable assurances of its ability to perform.

19.2. Except as provided in this Section, Sunoco will provide Contractor with written notice of its intent to terminate this Contract, under Section 19.1, five (5) days before actually putting the termination into effect. If Contractor has begun its curative action and has made progress satisfactory to Sunoco within the five (5) days, Sunoco may so notify Contractor and the termination will not take effect. Otherwise, the termination shall take effect after five (5) days without further notice or opportunity to cure. If Sunoco terminates this Contract for default, no further payment shall be due to Contractor and Sunoco will have the right to take over the Work, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Work by whatever method it deems expedient, including accepting assignment of any or all outstanding purchase orders or subcontracts. Sunoco may terminate this Contract without prior notice or an opportunity for Contractor to cure the default, if the default involves risk of personal injury or property damage, violation of Sunoco's Safety and Security Requirements, environmental issues or violations of any applicable laws, codes, regulations or other standards applied by any governmental entity having jurisdiction over the Work.

19.3. Sunoco may, upon five (5) days' written notice to Contractor, terminate this Contract for its convenience in whole or in part at any time without cause for such termination. After issuance of said written notice, Contractor shall terminate the Work as instructed by Sunoco. If Sunoco terminates this Contract for convenience, Contractor shall receive, as its sole and exclusive remedy, payment for the Work performed up to the date of the termination and all reasonable documented wind-up costs, including, without limitation, the costs of canceling open purchase orders and demobilizing from the project site. Contractor shall use reasonable efforts to mitigate wind-up costs. Contractor shall not be entitled to recover any amounts for unabsorbed overhead, anticipated profits on the unperformed portion of the Work, or lost opportunity. After receiving a notice of termination for convenience, Contractor shall place no further orders for material or equipment, issue no further subcontracts, and shall stop Work on the date given in the notice. Contractor shall consult with Sunoco regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to Sunoco. Contractor shall likewise consult with Sunoco to decide what actions should be taken to protect Work in place and equipment or materials that have been delivered and not yet installed, and to render the project site safe.

19.4. If this Contract is terminated for cause, and it is later determined by the final order or judgment of a court of competent jurisdiction, arbitration entity or administrative proceeding of any type that Contractor was not in default, the parties agree that the termination shall then be considered a termination for convenience and Contractor shall receive, as its sole and exclusive remedy, those costs as set forth in Section 19.3.

19.5. Sunoco reserves the right to suspend the Work of Contractor at any time in Sunoco's sole discretion. Sunoco shall give Contractor written notice of such suspension of Work. Sunoco agrees to pay Contractor for Work performed and obligations incurred prior to the suspension and for costs that Contractor directly incurs in suspending the Work, provided that Sunoco has authorized such payments in advance. In no event shall Sunoco be liable for any costs, claims, damages or liabilities whatsoever of Contractor or its subcontractors including, without limitation, consequential, special or indirect damages, loss of anticipated profit or reimbursement, relating to unperformed Work.

## 20. DISPUTE RESOLUTION.

20.1. If Contractor disagrees with any action or decision by Sunoco, or any claim or dispute otherwise arises involving this Contract, Contractor shall proceed with the Work, without interruption or delay, shall follow Sunoco's directions, and may bring a claim as provided in this Section. Contractor's failure to proceed with the Work as directed during the pendency of any claim or dispute shall constitute a material breach of this Contract.

20.2. The parties agree that any dispute that cannot be resolved amicably shall first be submitted to mediation before a mutually acceptable mediator, prior to either party's resorting to legal action. If the mediation has not concluded within 60 days of the initial demand for mediation, either party may then pursue litigation in accordance with this Section, without further recourse to mediation. If the parties are unable to agree upon a mediator within thirty (30) days after either notifies the other in writing of its intent to mediate, the mediator shall be appointed by the

American Arbitration Association located in closest proximity to the project. Each party will bear its out-of-pocket costs of the mediation; all other costs of the mediation, e.g., mediator fees and related charges, will be shared equally. If the parties are unable to agree upon a site, the mediation will be held at a location selected by the mediator. A request for mediation will immediately suspend the running of any statute of limitations, until the mediation is completed or abandoned by either party, upon giving written notice to the other.

**20.3. All disputes not resolved by mediation shall be decided by litigation in the federal or state courts of Philadelphia County. BOTH PARTIES EXPRESSLY WAIVE THE RIGHT TO JURY TRIAL IN ANY LEGAL PROCEEDING IN ANY WAY ARISING OUT OF OR RELATED TO THIS CONTRACT, AND EXPRESSLY SUBMIT TO THE PERSONAL JURISDICTION OF THE COURTS NAMED IN THIS SECTION.**

**21. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to that state's otherwise applicable conflict of laws principles.

**22. AMENDMENTS.** No amendment, modification or supplement to this Contract shall be binding unless it is in writing, signed by authorized representatives of both parties. All notices under this Contract shall be in writing and addressed to Sunoco or Contractor as the case may be, and directed to the individual specified on the face of this Contract.

**23. WAIVERS.** No waiver by either party of any breach of any of the covenants or conditions herein contained shall be construed a waiver of any succeeding breach of the same or of any other covenant or condition.

**24. ASSIGNMENT.** Neither this Contract nor any claim against Sunoco arising directly or indirectly out of or in connection with this Contract shall be assignable by Contractor without Sunoco's consent in writing.

**25. SEVERABILITY.** If any provision, or any part thereof, of this Contract is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the remainder of such provision or any other provision hereof which shall remain in full force and effect.

**26. CAPTIONS.** Captions used in this Contract are not part of this Contract and are for convenience of reference only and shall not affect the meaning or construction of any of its provisions.

[SIGNATURE PAGE FOLLOWS]

This Contract has been executed by their duly authorized representatives on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**SELLER**

Company Name: \_\_\_\_\_

Authorized Representative's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**SUNOCO RETAIL LLC**

Authorized Representative's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_