

## **U.S. VENTURE, INC. TERMINALLING AGREEMENT**

### **GENERAL TERMS AND CONDITIONS**

These U.S. Venture, Inc. Terminalling Agreement General Terms & Conditions (the "General Terms") shall be applicable to all terminal, storage, blending and/or handling services of products by U.S. Venture, Inc., ("Terminal Owner"), and shall be deemed incorporated into each agreement for such services, whether or not the General Terms are explicitly incorporated into the applicable agreement addressing such services. The identity of the product owner, product(s), receipt and delivery locations, mode(s) of receipt and delivery, quantities, fees, necessary documents and any other special provisions applicable to the terminal, storage, blending, and/or handling services are set forth in the Special Provisions and Attachment 1 of the Terminalling Agreement. The Special Provisions, Attachment I and this Attachment II are collectively referred to herein as the "Agreement".

#### **I. Terminalling Services.**

- a. **Terminal.** The Terminal Owner will provide the terminalling services described in this Agreement at the Terminal.
- b. **Product.** The Terminal Owner will store and handle the petroleum products as provided on Attachment I for Product Owner (each a "Product"). Product will meet the quality standards set forth in the published products specifications, as well as applicable governmental laws and regulations, including but not limited to those governing Reid Vapor Pressure, VOC, sulfur content, mandated oxygenate levels, and octanes for finished Products of the applicable delivery pipeline(s) or ASTM standards as provided in Attachment 1 ("Product Specifications"). Product Owner shall be wholly responsible for ensuring compliance of its Products with the Product Specifications. Terminal Owner's Terminal tankage is operated as community storage with like Products from all Terminal Owner customers being stored in a fungible manner and Product Owner hereby agrees to such community storage. No segregated storage will be provided to Product Owner unless specifically agreed to in writing between Product Owner and Customer.
- c. **Fees.** The Product Owner will pay the Terminal Owner the fees for each Product as provided on Attachment I. All fees provided in this Attachment I (collectively, the "Base Fees") shall be effective from the Commencement Date through the anniversary of the Commencement Date, and shall be increased effective as of the first anniversary of the Commencement Date (the "Initial Escalation Date") and on each subsequent anniversary of the Initial Escalation Date by the greater of: (i) two and one-half (2.5%) percent; and (ii) the rate of increase, if any, in the "Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average not seasonally adjusted; All Items" as published by the U.S. Department of Labor, Bureau of Statistics (the "Index") and the Base Fees as adjusted shall be effective for the subsequent twelve (12) month period. For purposes of such adjustments, the "Base Index" shall be the index for the first calendar quarter of the previous calendar year and the "Current Index" shall be the Index for the first calendar quarter of the then-current year. The percentage change from the Base Index to the Current Index will be calculated to the third decimal place and applied to the applicable Base Fee to determine the change to such Base Fee in

accordance with the following formula, provided that in no event shall the operation of this Escalation provision result in any charges, applicable during any period beginning on or after the Initial Escalation Date that are less than the charges that were applicable at any time prior to such period:

$$\text{Current Index} - \text{Base Index} / \text{Base Index} \times \text{Base Fee} = \text{Change to Base Fee}$$

In the event the U.S. Department of Commerce no longer keeps or publishes the Index, the Parties agree to establish an alternative method of adjusting the Base Fees based on a currently published U.S. Government Index that reflects the rate of domestic inflation.

**d. Deliveries.**

- i. Pipeline Deliveries. Deliveries of Product to the Terminal made by pipeline shall be made in accordance with the following procedures: the Product Owner will notify the Terminal Owner's Scheduler as provided on the Special Provisions ("Scheduler") of proposed pipeline deliveries at the Terminal by sending scheduling requirement to the Scheduler by no later than the 20th day of the month preceding the month of such proposed pipeline deliveries. Changes to such proposed pipeline deliveries should be reported by the Product Owner to the Scheduler as soon as reasonably possible after the Product Owner receives a schedule from the pipeline company. The Scheduler will notify the Product Owner as soon as reasonably possible after each notice of proposed pipeline delivery either that it will accommodate such delivery or that the proposed delivery conflicts with a previously scheduled pipeline movement or use of available tankage at the Terminal. In the case of conflict, the Scheduler will advise the Product Owner of the next open dates that the Terminal can accommodate the proposed pipeline delivery. The Terminal Owner will use reasonable efforts to accommodate the Product Owner's proposed pipeline deliveries, taking into account the needs of the Product Owner, the Terminal Owner and other parties terminalling products at the Terminal. Deliveries of Product to the Terminal may be made 24 hours per day, 7 days per week.
- ii. Truck and Rail Deliveries. Deliveries of Product to the Terminal made by truck or rail shall be subject to Terminal Owner's prior approval, may be subject to additional fees and shall be made in accordance with the Terminal's operating procedures including the following: the Product Owner will notify the Scheduler of proposed truck or rail deliveries at the Terminal by sending scheduling requirement to the Scheduler by no later than the 15th day of the month preceding the month of such proposed truck deliveries. Changes to such proposed truck or rail deliveries should be reported by the Product Owner to the Scheduler as soon as reasonably possible. The Scheduler will notify the Product Owner as soon as reasonably possible after each notice of proposed truck or rail delivery either that it will accommodate such delivery or that the proposed delivery conflicts with a previously scheduled delivery or other Terminal operations. In the case of conflict, the Scheduler will advise the Product Owner of the next open dates that the Terminal can accommodate the proposed

delivery. The Product Owner shall advise each Carrier that has not as of the date of this Agreement unloaded Product at the Terminal that the Terminal Owner requires each Carrier to execute an access agreement prior to unloading Product at the Terminal, to comply with rules and procedures posted at the Terminal, and to undergo training regarding unloading at the Terminal. The Terminal Owner may exclude any Carrier from the Terminal who fails to execute or to comply with an access agreement, fails to comply with the rules and procedures posted at the Terminal, fails to attend or comply with training reasonably requested by the Terminal Owner, or, in the Terminal Owner's reasonable opinion, poses a significant risk of harm to the Terminal, its personnel, the public, or the environment.

iii. Deliveries of Product from the Terminal will be made to Carriers, including rail carriers, in accordance with the Terminal's operating procedures. The Product Owner shall notify Terminal Owner of the identity of the Carriers to which the Terminal Owner may deliver Products. Terminal Owner shall prepare and furnish to the Carriers copies of a bill of lading and other required shipping papers. In addition, Terminal Owner shall electronically transmit loading authorization and bill of lading information via Petroex, or other system, to the Product Owner. If delivery is made from the Terminal, Product Owner will require Carriers to be familiar with and sign the latest Terminal Owner Key Card Loading Agreement or similar access agreement prior to delivery of Product from the Terminal truck or rail loading rack. The Product Owner shall advise each Carrier that has not as of the date of this Agreement loaded Product at the Terminal that the Terminal Owner requires each truck Carrier to be familiar with and execute the latest Terminal Owner Key Card Loading Agreement or similar access agreement prior to loading Product at the Terminal, to comply with rules and procedures posted at the Terminal, and to undergo training regarding loading at the Terminal. The Terminal Owner may exclude any truck or rail Carrier from the Terminal who fails to execute or to comply with an access agreement, fails to comply with the rules and procedures posted at the Terminal, fails to attend or comply with training reasonably requested by the Terminal Owner, or, in the Terminal Owner's reasonable opinion, poses a significant risk of harm to the Terminal, its personnel, the public, or the environment. Deliveries of Product from the Terminal may be made 24 hours per day, 7 days per week.

e. **Quality.** The Product Owner warrants that Product delivered to the Terminal complies with the Product Specifications. The Terminal Owner may, upon sixty (60) days' advanced notice to the Product Owner, change the type or grade of Product handled at the Terminal due to limitations of the Terminal's facilities or permits, unless such change is required by government agencies within a shorter period of time in which case the Terminal Owner shall provide notice to Product Owner as soon as reasonably possible. PRODUCT OWNER SHALL INDEMNIFY, DEFEND AND HOLD TERMINAL OWNER AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS AND AGENTS ("TERMINAL OWNER INDEMNITEES") HARMLESS AGAINST ANY AND ALL CLAIMS AND LOSSES DUE TO DELIVERY OF NON-CONFORMING PRODUCTS BY PRODUCT OWNER, OR PRODUCT OWNER'S AGENTS OR REPRESENTATIVES. If Product Owner's Products do not meet the standards set forth

in the Product Specifications and are delivered into Terminal tanks, Product Owner shall be liable for all losses and damages incurred as a result thereof, including but not limited to losses and damages to Products of other community customers, including the loss of value and the costs reasonably incurred to bring the non-conforming Products into conformance with the Product Specifications, including blending or disposal and replacement of Products, and such losses and damages shall be considered direct and actual damages and not consequential, indirect or special damages. Terminal Owner shall not be responsible for determining quality of Product.

f. **Quantity.**

- i. Quantity determination will be made in accordance with American Society for Testing and Materials (ASTM) standards. The quantity of Product delivered to the Terminal will be determined by pipeline custody transfer meter readings. The quantity of Product delivered from the Terminal will be determined by Terminal Owner's truck rack and rail meter readings. All measurements shall be in accordance with API standards. All quantities, however measured, shall be corrected to 60°F, using Table No. 6B of ASTM-IP Petroleum Measurement Tables Designation D-1250-80 for light refined oil and residual fuel products, as amended from time to time.
- ii. At Product Owner's request a mutually acceptable independent inspector may be appointed to measure Product quantity. Product Owner will pay for the cost of the inspector. In the absence of any measurements by an independent inspector, the results of the measurements by the pipeline custody transfer meters and the truck rack or rail meters, as applicable, will be binding on both parties absent fraud or manifest error.

- g. **Terminal Operations.** Control and operation of the Terminal will rest exclusively with the Terminal Owner. The Terminal Owner will be an independent contractor with respect to all services it provides under this Agreement. The Terminal Owner may suspend operations at the Terminal if the Terminal Owner reasonably believes that any person, equipment, or the environment is at risk of injury or damage. This Agreement is made as an accommodation to the Product Owner, and in no event will the Terminal Owner's services be deemed to be those of a public utility or common carrier. If any action is taken by a governmental authority to declare the Terminal Owner's services those of a public utility or common carrier, the Terminal Owner may by notice to the Product Owner terminate this Agreement on the effective date of such action. Product Owner acknowledges that, from time to time, Terminal Owner may be required to perform routine maintenance or emergency repairs of the Terminal. Terminal Owner will conduct the maintenance and/or emergency repairs as soon as practicable and shall, as promptly as practicable after determining that such maintenance and/or repairs will be performed, provide Product Owner advanced written notice of Terminal Owner's intent to perform such maintenance and/or repairs and the planned or emergency outages and/or reduction in storage, handling, and/or blending services expected as a result thereof.

- h. **RVP/VOC Blend Down.** In order to reduce gasoline RVP or VOC levels at the Terminal by the date required by Law, the Terminal Owner may require that gasoline the Product Owner delivers to the Terminal have an RVP or VOC less than the current RVP or VOC allowed by Law.
- i. **Tank Turns.** If the Product Owner fails to remove any Excess Product from the Terminal within twenty (20) days of receipt of notice from the Terminal Owner that such Excess Product is in the Terminal, the Product Owner will pay the Terminal Owner an additional charge of \$0.0275 per Barrel of Excess Product per day until such Excess Product is removed. If the Product Owner requires storage, a separate agreement will be required. For purposes of this Section I.i, "Excess Product" shall mean, as of the date of determination and with respect to each Product, the positive difference, if any, of (i) the number of Barrels of Product Owner's Product at the Terminal minus (ii) the product of (A) (x) the aggregate quantity of such Product (in Barrels) throughput by Product Owner at the Terminal during the immediately preceding one hundred and eighty (180) days divided by (y) one hundred and eighty (180) and (B) ten (10).
- j. **Removal of Product.** Within fifteen (15) days after the termination of this Agreement, the Product Owner will promptly remove all Products from the Terminal. If any Product remains in the Terminal after the fifteenth (15th) day after the termination of this Agreement, the Product Owner will remain obligated to comply with the terms of this Agreement until all Products is removed, and Product Owner will pay an additional holdover charge of \$0.0275 per Barrel per day of Product remaining in the Terminal until all of the Product Owner's Products is removed. If the Product Owner fails to remove all Products from the Terminal within thirty (30) days of the termination of this Agreement, the Terminal Owner may sell the Product on any terms that are commercially reasonable. The Terminal Owner may withhold from the proceeds of the sale an amount necessary to satisfy any amounts due under this Agreement and any reasonable and documented costs actually incurred by the Terminal Owner in connection with the sale.
- k. **Negative Inventory Balance.** If the Product Owner has a negative inventory balance as of the date of termination or expiration of this Agreement, the Product Owner will within thirty (30) days of such date either (a) supply the Terminal Owner with a quantity of Product equal to the negative inventory balance by pipeline allocation; or (b) pay the Terminal Owner for the quantity of Product equal to the negative inventory balance at the daily posted price for the applicable index set forth on Attachment I on the effective date of negative inventory plus the actual cost of transportation to the Terminal, including any applicable pipeline tariffs and fees.
- l. **Custody Transfer Point.** For deliveries to the Terminal, the Product Owner shall be deemed to have custody, control and responsibility for Product: (i) in the case of delivery from a pipeline, until the Product enters the Terminal Owner's pipeline receiving flange; (ii) in the case of delivery from a tank truck or rail car, until the Product passes the last flange of the tank truck's or rail car's delivery equipment, as applicable; and, (iii) in the case of a book or in-tank transfer, until such time and day and in the tank specified in the relevant transfer documents between Terminal Owner and Product Owner or as agreed between the parties prior to such transfer being effected,

provided that custody, control and responsibility shall not transfer to Terminal Owner prior to confirmation of the transfer by Terminal Owner. For deliveries from the Terminal, Product Owner shall be deemed to have custody, control and responsibility for Product: (i) in the case of delivery into a pipeline, when the Product passes the Terminal Owner's pipeline delivery flange; (ii) in the case of delivery to a tank truck, when the Product passes the outlet flange of Terminal Owner's hose (in the case of top loading) or as the Product passes the inlet flange of the tank truck (in the case of bottom loading); (iii) in the case of delivery to a rail car, when the Product passes the outlet flange of the Terminal Owner's hose (in the case of top loading) or as the Product passes the inlet flange of the railcar (in the case of bottom loading); and, (iv) in the case of a book or in-tank transfer, such time and day and in the tank specified in the relevant transfer documents between Terminal Owner and Product Owner or as agreed between the parties prior to such transfer being effected.

- m. **Tank Bottoms and Linefills.** Product Owner shall be responsible for providing its pro-rata share of tank bottoms and linefills at the Terminal. Such pro-rata amount is based on Product Owner's volumetric throughput, calculated quarterly, as compared to the total throughput by all Terminal Owner customers at such Terminal. In the event Product Owner has no throughput history at a Terminal, Product Owner shall provide a good faith volume forecast which shall become the basis for the calculation contemplated under this Section I.m. Unless otherwise agreed to by the Parties, tank bottoms and line fill allocations at a given Terminal will be released in advance of the termination of this Agreement only when all of the following events occur: (i) Product Owner notifies Terminal Owner, in writing, that it intends to discontinue utilizing such Terminal for the throughput of its Products; (ii) Product Owner has paid in full all outstanding invoices due to Terminal Owner; and (iii) Product Owner has fully satisfied any minimum volume obligations to Terminal Owner for the remaining term of this Agreement.
- n. **Accounting Provisions and Documentation.** Terminal Owner shall furnish Product Owner the following reports covering services hereunder involving Product Owner's Products: (i) within fifteen (15) days following the end of the month, a statement showing, by Product, Product Owner's monthly deliveries into the Terminal, Product Owner's monthly receipts from the Terminal, calculation of all Product Owner's monthly storage and handling fees, Product Owner's opening inventory for the preceding month, appropriate monthly loss allowance adjustments, and Product Owner's closing inventory for the preceding month; (ii) a copy of any meter calibration report, to be available for inspection by Product Owner at the Terminal following the calibration; (iii) upon receipt at the Terminal, a hard copy bill of lading to the carrier for each truck, barge, or rail delivery and upon request only, a hard copy bill of lading to the Product Owner's accounting group (and upon each truck receipt at the Terminal, bill of lading information will be sent electronically through General Electric Information Services Petroex System or other mutually agreeable system; and (iv) transfer documents for each in-tank transfer.
- o. **Electronic Data Exchange.** Electronic Data Interchange (EDI), or similar electronic data interchange systems approved by the America Petroleum Institute (API) in the future shall be deemed to be acceptable and satisfactory documentation for invoicing, proof

of delivery, and as a requirement for payment where the specific terms of this Agreement call for payment upon receipt of formal, hard copy documents or in any other case. Product Owner shall pay for the services delivered by Terminal Owner as provided in the Agreement upon receipt of EDI information electronically, by facsimile or by any other commercially reasonable means in accordance with Section 5 of the Special Provisions.

## II. Other Product Services.

- a. **Additive.** Any generic gasoline additive supplied by the Terminal Owner will be registered in accordance with 40 C.F.R. 80.141. Unless otherwise directed by the Product Owner in writing, the Terminal Owner will inject any gasoline additive at the minimum concentration specified in the manufacturer's registration statement. The Terminal Owner will maintain volumetric additive reconciliation records as required by Law. The Product Owner will be billed per Gallon through the Terminal Owner's truck rack, per load for the additive fees, as further set forth in Attachment I. If Product Owner purchases fuel through a third party, Product Owner shall notify the third party of the assessment of the additive fees. If fuel is purchased from the Terminal Owner it will be billed per bill of loading through the truck rack.
- b. **The Terminal Owner's Responsibilities.** The Terminal Owner shall monitor the additive injection as required to assure compliance with EPA regulations including preparing the volumetric additive reconciliation and the Terminal Owner shall maintain records required of the terminal operator to comply with the EPA regulations, with regard to additives. The Terminal Owner shall be responsible for fines or penalties incurred by the Terminal Owner arising from its negligence in failing to inject the specified amount of additive into the Product Owner's gasoline and diesel, failing to calibrate the additive injection equipment as required or failing to maintain the required additive injection records.
- c. **The Product Owner's Responsibilities.** The Product Owner shall be responsible for compliance with all applicable current and futures laws and regulations of the EPA pertaining to diesel. The Product Owner shall be responsible for fines or penalties incurred by the Product Owner arising from its failure to comply with EPA laws and regulations.

## III. Payment and Default.

- a. **Invoicing.** The Terminal Owner will invoice the Product Owner monthly, in arrears, for any amounts owed by the Product Owner to the Terminal Owner under this Agreement. The Product Owner will pay the amount of each invoice by ACH debit, without setoff or deduction, ten (10) days from the date of the invoice. If the payment date falls on a Saturday or U.S. bank holiday other than Monday, payment shall be made on the preceding banking day. If the payment date falls on a Sunday or a Monday U.S. bank holiday, payment shall be made on the succeeding banking day. The Product Owner will be assessed a late charge of one and one-half percent (1.5%) interest per month (or the highest rate permitted by Law, whichever is less) for any invoice not paid within ten (10) days of the date of the invoice. The Terminal Owner's acceptance

of payment for any service performed after the expiration or termination of this Agreement will not be deemed a renewal of this Agreement.

- b. **Default.** A party hereto will be in default if it (i) fails to pay any amounts due to the other party when due, and fails to cure such default within two (2) business days of a written notice from the non-defaulting party, (ii) breaches this Agreement, other than for failure to pay, and fails to cure such default within ten (10) days of a written notice from the non-defaulting party, (iii) becomes insolvent or (iv) files or has filed against it a petition in bankruptcy, for reorganization, or for appointment of a receiver or trustee. In the event of default, the non-defaulting party may terminate this Agreement upon notice to the defaulting party. The Terminal Owner will have a warehouseman's lien upon any Product in the Terminal for any amounts owed to the Terminal Owner hereunder which have not been paid when due (whether incident to the Product then in the Terminal or otherwise). If a warehouse receipt is required under Law for such a lien to arise, this Agreement will be deemed to be the warehouse receipt for all Products at the Terminal.

#### IV. Liability.

- a. **Force Majeure.** No party will be in default or liable for any failure to perform (other than payment of money) if its failure to perform is caused by acts of God, acts of government, acts of public enemies, acts of terrorists, accidents, explosions, fire, flood, abnormal heat or cold, strikes, labor disputes, civil unrest, war, breakdowns of machinery, shortages of power or other similar events beyond such party's reasonable control. If the Terminal Owner is unable to perform because the Terminal and/or pipelines with direct access to the Terminal are damaged or destroyed, the Terminal Owner may elect to repair the Terminal or terminate this Agreement. The Terminal Owner will notify the Product Owner of its election within a reasonable time of the damage or destruction, not to exceed thirty (30) days.
- b. **Title and Limitation of Liability.** Title to Product will not pass to the Terminal Owner, and the Terminal Owner will not be liable as an insurer of Product. Both Parties acknowledge that this Agreement represents a bailment of Products by Product Owner to Terminal Owner and not a consignment of Products. The Terminal Owner will not be liable to the Product Owner for chemical deterioration of Product caused by it sitting in storage for longer than six (6) months. The Terminal Owner will not be liable to the Product Owner for damages in excess of the replacement cost of damaged, lost, or destroyed Product. The Terminal Owner will only be liable to the Product Owner for damaged, lost, or destroyed Product to the extent that the damage, loss or destruction is caused by the failure of the Terminal Owner to use reasonable care in the storage and handling of the Product. Neither party will be liable for other party's lost profits, lost business opportunities, or other indirect, special, incidental, punitive, or consequential damages in connection with this Agreement. Except as expressly provided in this Agreement, neither the Terminal Owner nor the Product Owner makes any representations or warranties, express or implied including, without limitation, any implied warranty of merchantability or fitness for a particular purpose. Except as otherwise provided for in this Agreement, the remedies of the parties hereto herein



provided for shall not be exclusive, but shall be cumulative and shall be in addition to all other remedies in favor of the parties hereto, at Law or equity.

c. **INDEMNIFICATION.**

- i. *Except as otherwise expressly provided in the General Terms, the Terminal Owner will indemnify, defend, and hold harmless the Product Owner, its parents and affiliates, and its and their respective officers, directors, employees, agents, and other representatives from and against any claims, actions, judgments, liabilities, losses, costs, damages, fines, penalties and expenses (collectively, "Liabilities") in connection with this Agreement to the extent arising from: (a) the negligence or willful misconduct of the Terminal Owner, its employees, agents, contractors, and other representatives; and (b) the failure of the Terminal Owner to comply with the terms and conditions of this Agreement.*
- ii. *The Product Owner will indemnify, defend, and hold harmless the Terminal Owner, its parents and affiliates, and its and their respective general partners, officers, directors, employees, agents, and other representatives from and against any Liabilities in connection with this Agreement to the extent arising from: (a) the negligence or willful misconduct of the Product Owner, its employees, agents, contractors, Carriers and other representatives; and (b) the failure of the Product Owner to comply with the terms and conditions of this Agreement.*
- iii. Except as otherwise expressly provided in the General Terms, in the event of the joint or concurrent negligence or willful misconduct of Product Owner and Terminal Owner, the liability of the parties shall be comparative with each party indemnifying the other in proportion to their percentage of negligence or willful misconduct allocated to each such party.
- iv. The indemnities expressed in this Agreement will survive the expiration or termination of this Agreement.

- d. **Insurance.** The Terminal Owner will not insure the Product Owner's Product. If the Product Owner desires to insure the Product while it is in the Terminal Owner's custody, the Product Owner will bear the cost of such insurance, such insurance policies will waive subrogation rights against the Terminal Owner, and the Product Owner will provide the Terminal Owner with evidence of such waiver of subrogation. The Product Owner will obtain and maintain in full force and effect commercial or comprehensive general liability insurance on an occurrence form with a combined single limit of \$2,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, and sudden and accidental pollution, and the explosion, collapse, and underground exclusion will be deleted. The required policy will: (a) waive subrogation rights against the Terminal Owner and its parent, subsidiary, and affiliated companies; (b) name the Terminal Owner, its parent, subsidiary and

affiliated companies as additional insured's; (c) include an amendment stating the insurance is primary insurance with respect to the Terminal Owner, its parent, subsidiary and affiliated companies, and any other insurance maintained by the Terminal Owner, its parent, subsidiary or affiliated companies is excess and not contributory with this insurance. Product Owner will provide the Terminal Owner certificates showing evidence of the required insurance coverage as of the effective date of this Agreement. The required limit is a minimum limit and will not be construed to limit the Product Owner's liability. The cost of the required insurance will be borne by the Product Owner. At all times during the term of this Agreement, each party shall carry and maintain in force, workers' compensation and/or employer's liability insurance, as applicable, with policy limits equal to or greater than the statutory requirements of the state(s) in which the terminal(s) to which this Agreement is applicable are located. The Product Owner shall cause the Product Owner's Carriers and wholesalers and any other designee of the Product Owner with trucks or trucks and trailers (hereinafter, collectively, "Product Owner-Designated Trucks") to maintain, at their respective sole costs, insurance as set forth below and with companies satisfactory to the Terminal Owner that covers Product Owner-Designated Trucks withdrawing product from the Terminal Owner's terminal facilities on behalf of the Product Owner: (x) comprehensive general liability with a limit of liability of not less than \$5,000,000 per occurrence, bodily injury and property damage combined and (y) Automotive Liability for owned, hired and non-owned automotive equipment with a limit of liability of not less than \$5,000,000 per occurrence, bodily injury and property damage combined.

e. **Product Losses and Variations.**

- i. Product losses resulting once the Product passes the custody transfer point from the Terminal Owner to the Product Owner at the truck, vessel, or tank car owned or arranged for by the Product Owner as provided in Section I.I of this Agreement shall be the sole responsibility of the Product Owner. Terminal Owner shall not be liable for Product losses occurring while the Product is in the custody of Terminal Owner, including but not limited to evaporation, shrinkage, line loss, clingage, discoloration, contamination, damage to or destruction of, or for any other loss or damage to the Product handled hereunder, stored in the tankage, or while the Product is in the process of being received into, stored, or redelivered out of the tankage unless such loss or damage is caused by Terminal Owner's failure to exercise reasonable care in the handling, receiving, storing, and/or redelivering the Product. Subject to the foregoing, during such time as Terminal Owner remains the custodian of Product Owner's commingled product, Product Owner shall be charged a fixed loss allowance of one-quarter (0.25%) percent for gasoline and ethanol and 0.13% for diesel corrected to sixty degrees Fahrenheit (60°F) and Terminal Owner will absorb any loss of Product, including loss from evaporation or leakage, in excess of the fixed loss allowance. Terminal Owner will retain any inventory gains. The closing inventory of the prior month shall be the opening inventory for the following month. Terminal Owner is not required to make physical inventory measurements of commingled product in storage.

- ii. **Catastrophic Events.** Any individual Product loss caused by a Catastrophic Event shall be shared proportionately by the Product Owner with Persons having Product at the Terminal at the time of the loss, based on the volume each had in the Terminal at the time of the loss. The Terminal Owner shall have no responsibility or liability for such loss caused by a Catastrophic Event. Catastrophic Event is defined herein to mean: fires, lightning, storms, landslides, earthquakes, floods and other acts of nature, which losses can be insured for under a standard or endorsed policy of property fire and casualty insurance.
  
  - f. **Spills: Environmental Pollution.** In the event of any Product spill or other environmentally polluting discharge caused by the Terminal Owner's operation of the Terminal, clean-up and/or any resulting liability for such spills or discharges shall be the sole responsibility of the Terminal Owner. In the event of any Product spill or other environmentally polluting discharge caused by the Product Owner or by the operation of a tank truck and/or transport trailer, pipeline, rail car or barge delivering Product on the Product Owner's behalf; or a tank truck and/or transport trailer, rail car or barge receiving Product on its behalf, at its request or for its benefit, the Terminal Owner is authorized to commence containment or clean-up operations as deemed appropriate or necessary by the Terminal Owner or as required by any Governmental Authority, and the Terminal Owner shall notify the Product Owner immediately of such operations. All liability and reasonable costs of containment or clean-up shall be borne by the Product Owner except that, in the event a spill or discharge is caused by the joint negligence of both the Terminal Owner and the Product Owner or a delivering pipeline, barge, rail car, or a receiving tank truck and/or transport trailer, at the Product Owner's request or for its benefit, liability and costs of containment or clean-up shall be borne jointly by the Terminal Owner and the Product Owner in proportion to each party's negligence. The parties hereto shall cooperate for the purpose of obtaining reimbursement in the event that some third person shall be legally responsible for costs or expenses borne by the Terminal Owner and/or the Product Owner under this Section.
- V. **Definitions.** In addition to the definitions provided elsewhere in this Agreement, the following definitions will apply:
- a. "Barrel" means 42 Gallons.
  - b. "Carrier" means any railroad, trucker or trucking company, or Product Owner's customers storing, loading or offloading Product at the Terminal.
  - c. "Gallon" means 231 cubic inches temperature corrected to 60 degrees Fahrenheit.
  - d. "Law" means any and all laws, regulations, rules, ordinances, codes, orders and decrees affecting this Agreement of any local, state, federal governmental authority having jurisdiction.
  - e. "RVP" means Reid vapor pressure.

- f. "Taxes" means all taxes, licenses, charges and similar levies, including any spill tax, pollution control tax, emission fee, value added taxes, sales tax, excise tax, or ad valorem tax.
- g. "VOC" means volatile organic compound.

**VI. Miscellaneous.**

- a. **Storage or Handling of Product Restrained.** If, while this Agreement is in effect, the Terminal Owner's use of all or part of the Terminal for the storage and handling of any Product shall be restrained or enjoined by judicial process, or restricted or terminated by any Governmental Authority, by right of eminent domain or by the owner of leased land, the Terminal Owner, upon being notified of such restraint, enjoinder, restriction or termination, shall notify the Product Owner and the Terminal Owner may terminate this Agreement and services on the effective date of said restraint, enjoinder, restriction or termination.
- b. **Notices.** Any notice made under this Agreement will be in writing either delivered by overnight courier to the relevant address set forth below, or by electronic mail to the email address indicated below. Either party may change their notice address or electronic mail address upon notice to the other party at least ten (10) days in advance of the effective date of the change.

**The Product Owner:**

The name and address provided in the Special Provisions

**The Terminal Owner:**

**U.S. Venture, Inc.**

**425 Better Way**

**Appleton, WI 54915**

**Attn: Chief Legal Officer**

**Email: [chieflegallofficer@usventure.com](mailto:chieflegallofficer@usventure.com)**

- c. **Compliance with Law.** Each party will comply with Law in all material respects in the performance of this Agreement. The Product Owner will provide the Terminal Owner with any information, documentation, or other materials as required by Law for the receipt, storage, and handling of Product. The Product Owner acknowledges that the Terminal Owner may have an obligation under Law to disclose information regarding Product to governmental authorities, parties handling Product, parties exposed to Product, and to the general public, and the Product Owner promptly will provide the Terminal Owner with any information required by Law for such disclosures. The Product Owner will prepare, file and maintain copies of all reports required by Law to be filed with any federal, state or local governmental authority concerning the receipt, storage, and handling of Product and the Product Owner promptly will provide a copy of any such reports to the Terminal Owner upon their preparation.
- d. **No Waiver.** No waiver by either party of any right hereunder at any time will serve to waive of the same right at any future date.

- e. **Amendment.** No amendment to this Agreement will be effective unless made in writing and signed by both parties.
- f. **Severability.** If any provision of this Agreement is partially or completely unenforceable pursuant to Law, that provision will be deemed amended to the extent necessary to make it enforceable, if possible. If not possible, then that provision will be deemed deleted. If any provision is so deleted, then the remaining provisions will remain in full force and effect.
- g. **Assignment.** This Agreement shall not be assigned by either party hereto without the prior written consent of the other party, except that either party may assign this Agreement to one or more of its respective affiliates without such consent. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the permitted successors, assigns and transferees of the parties.
- h. **Conflict of Interest.** Neither party will pay any commission, fee, or rebate to an employee of the other party or favor an employee of the other party with any gift or entertainment of significant value.
- i. **Governing Law; Consent to Jurisdiction.** *This Agreement will be governed and construed in accordance with the laws of the State of Wisconsin, without reference to the choice of law principles thereof. The parties mutually consent to the jurisdiction of the federal courts located in the Eastern District of Wisconsin, Green Bay Division, and state courts located in Outagamie County, Wisconsin and agree that any litigation concerning, related to or arising out of this Agreement and the negotiation of this Agreement will be brought only in a federal or state court mentioned hereinabove, and the parties agree that they will not raise any defense or objection or file any motion based on lack of personal jurisdiction, improper venue, inconvenience of the forum or the like in any case filed in the federal or state court mentioned hereinabove. The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in any such litigation.*
- j. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and part of one and the same document.
- k. **Entire Agreement.** This Agreement represents the entire agreement of the parties with respect to the matters addressed herein.
- l. **Construction.** References in this Agreement to "days," "months" or "years" will mean to calendar days, months and years unless otherwise indicated. The word "including" does not limit the preceding words or terms. All section titles and headings in this Agreement are merely for convenience, and will not limit in any way the interpretation of this Agreement. No provisions of this Agreement will be construed against or interpreted to the disadvantage of any party by reason of such party's having drafted such provision. Except as otherwise provided herein, the remedies provided in this Agreement are cumulative, not exclusive, and in addition to all other remedies in either party's favor at law or in equity.

- m. **Compliance Costs.** In the event the Terminal Owner is required by Law to incur any additional expense in order to provide the services contemplated under this Agreement, the Terminal Owner will provide notice of such expense to the Product Owner. The Product Owner will elect whether or not to pay its pro rata share of the expense within thirty (30) days (or a shorter period of time if necessary to receive the election prior to the effective date of compliance) of such notice. If the Product Owner elects not to pay its pro rata share of the expense, the Terminal Owner may terminate this Agreement as of the effective date of compliance.
- n. **Terminal Improvements, & Change in Title.** Except as otherwise agreed to in writing, the Terminal Owner will own all improvements to the Terminal, including those for which the Product Owner has made a financial contribution. If title to any Product at the Terminal is transferred to a third party, the Product Owner will nevertheless be deemed the owner of the Product for the purposes of this Agreement, and, without limitation of the foregoing, the Product Owner will remain responsible for any charges incurred under this Agreement.
- o. **Taxes & Assessments.** The Product Owner will pay all Taxes assessed against Product, all Taxes assessed against any other property of the Product Owner at the Terminal, and its pro-rata share of all Taxes assessed against the Terminal Owner (except for income, franchise and real estate taxes on the Terminal) with respect to the receipt, storage, handling, and disposal of Product, and the Product Owner agrees to promptly reimburse the Terminal Owner, upon receipt of invoice therefore. If requested by the Terminal Owner, the Product Owner will supply the Terminal Owner with a completed and signed original Notification Certificate of Gasoline and Diesel Fuel Registrant as required by the Internal Revenue Service's excise tax regulations.
- p. **Confidentiality.** Except as may be necessary to enforce their respective rights under this Agreement, as otherwise may be necessary to respond in any legal proceeding (including any deposition, interrogatory, subpoena, or civil investigative demand), or as otherwise provided in this Agreement, neither party hereto will disclose to any third party, other than the party's general partner, parents, and affiliates or its and their respective officers, directors, employees, agents, and other representatives, the terms and conditions of this Agreement. The confidentiality obligations of the parties will survive the expiration or termination of this Agreement for a period of two (2) years.
- q. **No Agency.** There is no agency, partnership, or joint venture being created by the existence of this Agreement. Neither party hereto shall represent itself to be the agent, servant or partner of the other.
- r. **Records and Audit.** Each party hereto shall maintain a true and correct set of records pertaining to all activities relating to its performance of this Agreement and all transactions related thereto. Each party hereto further agrees to retain all such records for a period of time not less than two (2) years after completion of performance under this Agreement. Either party hereto, or any representative or representatives authorized by either party hereto, may audit, copy, and inspect any and all such records of the other party hereto at any reasonable time or times during the term of

this Agreement and during the two (2) year period after completion of performance under this Agreement.

- s. **Cleaning Terminal Equipment.** If cleaning of the Terminal equipment, including tanks, is necessary (i) due to an agreed upon change in the Product to be stored and/or handled therein during the term of the Agreement, or (ii) upon termination of the Agreement and removal of Product, to restore the Terminal to the same condition as immediately prior to the Effective Date hereof, Product Owner agrees to reimburse Terminal Owner for the actual costs of such cleaning. Product Owner further agrees to reimburse Terminal Owner for its costs and collection and lawful disposal of any of Product Owners remaining Product, “slop” material and/or tank bottoms, and all waste material resulting from the cleaning operations. If water is found in tank(s) and determined by Product Owner that water must be drawn out of the tank(s), Product Owner agrees to reimburse Terminal Owner for actual cost of removal and disposal of water, unless such water in tank was caused by Terminal Owners failure to use reasonable care in receiving, handling, storing, and/or maintaining the Terminal.
- t. **Lien.** Product Owner warrants that it has title to the Product at the time it is delivered to the Terminal and that no third party claims an interest in the Product at the time it is delivered to the Terminal. In addition to any statutory lien for rent in Terminal Owner’s favor, Terminal Owner, as operator of the Terminal and Bailee of the Product, is hereby granted and has a continuing first and preferred lien on the Product (the “Collateral”) from the time of receipt until delivery to Product Owner to secure the payment of all sums due from Product Owner under this Agreement. Product Owner hereby authorizes Terminal Owner to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Product Owner, in each case where permitted by law, and to take any and all other actions necessary to secure its interest in the Collateral. In addition, Product Owner agrees that from time to time it will promptly execute and deliver all instruments and documents, and take all further action, that Terminal Owner may reasonably request as being necessary or desirable in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Terminal Owner to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Product Owner will execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as Terminal Owner may request as being necessary or desirable in order to perfect and preserve the security interests granted or purported to be granted. In the event of a default under this Agreement, Terminal Owner shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code, including, without limitation, the right to sell the Product at public or private sale upon five (5) days’ notice to Product Owner. Any statutory lien for rent is not hereby waived, this lien is in addition to any statutory or common law liens on the Product in favor of Terminal Owner.