

GASOLOGY BUSINESS CONSUMER AGREEMENT

1. INTRODUCTION

Gasology, LLC ("**Gasology**", "**we**", "**us**", or "**our**"), a Delaware limited liability company, provides access to the Gasology's proprietary e-commerce motor fuel Gasology For Business Application ("**G4B App**") as defined herein and part of the Gasology Platform for the shopping, purchase, and receipt of motor fuel Products by the company identified in the Gasology Business Consumer New Account Registration Form, and if applicable, any of its Affiliates (collectively, "**Company**", "**you**", "**your**"), subject to your acceptance of and compliance with this Gasology Business Consumer Agreement ("**Agreement**"). This Agreement constitutes a legally binding agreement between Gasology and Company under which Company may establish a Gasology Business Consumer corporate account ("**Business Consumer Account**"), which Gasology makes available to Company through the G4B App, as set forth herein. Company's access to and use of the G4B App is subject to the terms of this Agreement, as this Agreement may be periodically modified or updated by Gasology in accordance with Gasology's Update Procedures whereby the most current version of this Agreement will always be available on the Gasology website at www.gasology.com/legal. Company is responsible for maintaining updated contact information through the G4B App and regularly reviewing notifications generated by Gasology in accordance with Gasology's Update Procedures. Company's continued use of the G4B App after the effective date of such updates shall constitute Company's acceptance and consent to such changes.

The G4B App is part of a combination of Gasology's e-commerce marketplace technology, data, web-based applications and mobile applications for the purchase and sale of motor fuel Products from Gasology Merchants to business consumers registered on the Gasology Platform. A principle function of the G4B App on the Gasology Platform is for Gasology Business Consumers to be provided with the ability to view, compare and purchase future delivery period Product offers from Gasology Merchants on the Gasology Platform in a manner that such Business Consumers need and want their Product, subject to the terms and conditions herein.

2. DEFINITIONS

- (a) **Defined Terms.** Except as may be updated or modified by a posting by Gasology on its website, the following terms, as may be used in this Agreement, shall have the meanings set forth below, and the defined terms herein below and elsewhere in this Agreement shall be subject to the rules of usage, as set forth below:

"**Active Account**" shall mean a Gasology user account in which the owner of the account: (i) has registered for and currently maintains an active personal user account, which requires the entry of certain personally identifiable information, (ii) is complying with the End User Terms, and (iii) has confirmed the mobile number and email provided during the registration process. Gasology's policies for the collection and use of any personal data to

establish an Active Account shall be as set forth on the Gasology Privacy Policy, available at www.gasology.com/legal, as may be periodically updated by Gasology in accordance with Gasology's Update Procedures.

"Affiliate" shall mean an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where "control" means having (i) more than fifty percent (50%) of the voting stock or other ownership interest, (ii) the majority of the voting rights of such entity, (iii) the ability to ensure that the activities and business of such entity are conducted in accordance with the wishes of the controlling entity or (iv) the right to receive (a) the majority of the income of that entity on any distribution by it of its income or (b) the majority of its assets on a winding up of the affairs of such entity.

"Application Data" shall mean all Business Consumer Account information, vessels information, Transactions and Transaction Charges, Product delivery and receipt information, invitations sent and received between parties, delivery costs, prices, search results and other information including general data and metadata gathered and displayed on the Platform.

"Authorized User" shall mean an individual authorized to use and link to Company's Business Consumer Account, or an individual that is authorized to use Gasology Platforms in connection with the Business Consumer Account.

"Business Day" shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Data Protection Law" shall mean all laws and regulations applicable to the Personal Data under this Agreement.

"End User Terms" shall mean the terms and conditions applicable to all Users of the Platform, available at www.gasology.com/legal, as such may be periodically updated by Gasology in accordance with Gasology's Update Procedures.

"G4B App" means Gasology's proprietary e-commerce motor fuel applications developed for use under the terms and conditions set forth herein by Gasology Business Consumers to access Gasology Platforms for the shopping, purchase and receipt of motor fuel Products and the related additional features and services of the application.

"Gasology Business Consumer" shall mean a registered Gasology business that has been given permission by Gasology to use the G4B App on the Platform.

“Gasology Driver App” shall mean Gasology’s mobile application or mobile website mobile.Gasology.com required for mobile use of the Gasology Platform, as may be suspended, updated or enhanced (including new versions thereof) by Gasology from time to time.

“Gasology Entities” shall mean Gasology, its Affiliates, and its and their officers, directors, consultants, contractors, agents, attorneys, employees, partners, and third-party service providers.

“Gasology Merchant” or **“Merchant”** shall mean an independent third-party motor fuel supplier and/or distributor registered as a “Merchant” on the Gasology Platform.

“Gasology Platform” or **“Platform”** shall mean the combination of Gasology’s e-commerce marketplace technology, data, web-based applications and mobile applications, including the G4B App, for the purchase and sale of motor fuel Products.

“Information Security Breach” shall mean an Information Security Incident that results in a determination by Gasology that information security was actually compromised on Gasology’s servers or systems, and that Company’s Linking Data was compromised.

“Information Security Incident” shall mean one or more occurrence related to assets or the environment indicating a possible compromise of policies or failure of controls, or an unmapped situation that can impact security.

“Linking Data” shall mean the data requested in the G4B App which is necessary for the authentication and verification of Users to be provided access by the Company’s Business Consumer Account, as set forth herein in Section 4(c)(i).

- (a) **“Merchant Performance Guarantee”** shall mean the unconditional and irrevocable guarantee contained in each Gasology Merchant Agreement of (i) the specific performance by each Merchant who enters into a Transaction on the Gasology Platform, of the due and prompt delivery of Product by such Merchant in volumes, amounts, prices and for specific time periods as contracted through the G4B APP; and (ii) the observance and fulfillment of all terms, conditions, covenants, agreements, indemnities, liabilities and obligations of any kind whatsoever with respect to such Transaction. The Merchant Performance Guarantee includes the “cost of cover” obligations on the Gasology Merchant, such that if the Gasology Merchant is for any reason unable to deliver Product to Company in accordance with the terms in this Agreement, such Gasology Merchant would be required to source the Product from another merchant and specifically perform with delivery of alternatively-sourced Product of the same or greater quality as the Product purchased, or, should the Gasology Merchant fail or refuse to perform, Company would have the right and option to source and secure the requisite Product from another

source, and should the Transaction Costs be higher, the Gasology Merchant shall be liable to Company of the cost of cover to secure the requisite Product.

“Person” shall mean a natural person or any entity (such as a partnership, company, association or corporation) considered as having many of the rights and responsibilities of a natural person.

“Personal Data” shall mean any information in connection with this Agreement that can reasonably be used to identify a Person, or that may otherwise be considered personal data.

“Product” shall mean a specific type, grade and specification of motor fuel offered for sale by Gasology Merchants on the Gasology Platform, for which a detailed schedule of such Products can be found at www.gasology.com/products, which may be periodically updated by Gasology in accordance with Gasology’s Update Procedures.

“Product Costs” shall mean the Transaction Charges for a Product, less the Gasology Fees payable by Merchant to Gasology in connection with such Product(s), as applicable.

“Transaction” shall mean any and all purchases of Product on the G4B App between a Gasology Merchant and the Company, under the terms of this Agreement. Company acknowledges that Gasology and the Gasology Platform, including the G4B App are e-commerce tools that facilitate the Merchant’s ability to offer Products for sale and the Company’s ability to purchase such Products offered by such Merchants, whereby Gasology is not a party to such a Transaction and that the respective Merchants provide performance guarantees for all Products transacted on the Gasology Platform. Gasology will assist Company in resolving Merchant performance for such Transactions, subject to the terms of this Agreement.

“Transaction Charges” shall mean the sum of all costs incurred on behalf of the Company by Authorized Users or Administrators of the Company’s Business Consumer Account, for the purchase of Product(s) and related services obtained through the use of the G4B App.

“Update Procedures” shall mean the procedures that Gasology will undertake to inform a User and/or Company of changes to this Agreement, the Gasology End User Terms of Service Agreement, related fees or other matters that, in Gasology’s sole discretion are deemed material. Gasology will notify affected Users via an email to the email associated with the User’s registration information of upcoming updates or changes, and when such changes will become effective. By continuing to access or use the G4B App after such changes have become effective, Users agree to be bound by such updates and changes.

“User” shall mean any Person that has completed or caused to have been completed the Gasology user registration process, accepted and agreed to the Gasology End User Terms

of Service Agreement, available at www.gasology.com/legal, and having an Active Account with Gasology.

- (b) **Rules of Usage.** Defined terms will be given their common and ordinary meanings when they appear uncapitalized in the text. Undefined terms will be given their common and ordinary meanings pursuant to custom and industry parlance. Unless the context in this Agreement otherwise clearly requires: (i) the definitions of terms will apply equally to the singular and plural forms of the terms defined; (ii) whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms; (iii) the words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation”; (iv) the verb “will” shall be construed to have the same meaning and effect as the verb “shall”; and (v) any definition of or reference to this Agreement will be construed as referring to such agreement as may be amended, supplemented, substituted, novated, assigned or otherwise modified (subject to any restrictions on such amendments, supplements, substitutions, novations, assignments or modifications set forth in this Agreement).

3. ACCOUNT ADMINISTRATION

- (a) **Company Registration and Access to G4B App.** Upon execution of this Agreement, Gasology will establish a Business Consumer Account for Company that will enable Company to access Gasology’s browser-based online registration for the G4B App (“**Registration**”). Gasology’s contact with Company shall be by way of any individual representative designated by Company as an “administrator” through the Registration (“**Administrator**”). In addition the Registration will enable Company to (a) invite and authorize users (“**Authorized Users**”) and establish permissions on the G4B App, (b) add and remove Administrators, and (c) manage and update Company payment methods, treasury information and other related information on file regarding Company. Gasology agrees to use commercially reasonable efforts to provide the G4B App to Company as set forth herein.
- (b) **Administration.** Company shall appoint a primary Administrator but may also appoint other authorized Administrators at its discretion. Company agrees to (a) maintain all G4B App Administrator login credentials in confidence, (b) only permit an authorized Administrator to access the Administrator sections of the G4B App, and (c) update as necessary all information of the primary Administrator and other authorized Administrators to ensure that it is current, accurate, and complete. Company shall be responsible for all activity that occurs under its G4B App Administrator login credentials.
- (c) **Authorized User and Administrator Updates.** It is Company’s sole responsibility to keep and maintain an accurate list of current Authorized Users and Administrators authorized

{H0059127.2}

to purchase motor fuel Product purchases to Company's Business Consumer Account. Gasology may in its discretion periodically review the current list of Authorized Users and Administrators, as may be the case, to maintain and support the Gasology Platform and to ensure compliance with this Agreement.

(d) **Responsibility for User Activity.** Company agrees that Company is responsible for all Transaction Charges incurred by Authorized Users and Administrators via the Company's Business Consumer Account, regardless of whether or not such Transaction Charge received appropriate internal approvals from the Company. Further, Company agrees that Gasology shall not be responsible for Transaction Charges incurred by an Authorized User or Administrator, as may be the case, after Company has attempted removal of such Authorized User or Administrator from the Business Consumer Account to the extent Company provides incomplete or inaccurate Authorized User or Administrator removal information via the G4B App. Finally, as between Company and Gasology, Company shall be responsible for the Transaction Charges incurred due to fraudulent or other unpermitted activity on the part of an Authorized User's or Administrator's use of the Business Consumer Account to access Gasology Platforms. Company shall notify Gasology promptly upon discovery of any fraudulent or unpermitted activity occurring under Company's Business Consumer Account.

(e) **Restrictions.** Company agrees to use the Business Consumer Account and G4B App solely as set forth in this Agreement. Company shall not, and shall not authorize others to, (a) decompile, disassemble, reverse engineer or otherwise attempt to derive the source code or underlying technology, methodologies or algorithms of the G4B App, Gasology Platform or any application related thereto, except to the extent specifically allowed by applicable law, (b) sublicense, lease, rent, sell, give or give access to, or otherwise transfer or provide the G4B App or the Gasology Platform to any unaffiliated third party, (c) upcharge, increase or otherwise modify the Transaction Charges for any usage of the Gasology Platform, or (d) impose any additional fees or charges on an Authorized User or Administrator related to use of the G4B App or the Gasology Platform. Gasology reserves all rights not expressly granted to Company, including Authorized Users and Administrators, under this Agreement.

4. USAGE OF G4B APP.

(a) **Access to G4B App.** Upon execution of this Agreement, Gasology will use commercially reasonable efforts to enable Company to access the G4B App which will enable Company to (a) create and maintain a Business Consumer Account, (b) view a current list of all Authorized Users and Administrators with access to the Company's Business Consumer Account, (c) add and remove Authorized Users to the Company's Business Consumer Account, (d) disable any or all current Authorized Users from the Business Consumer

Account, and (e) authorize Users to have the ability to buy Products on the G4B App on behalf of the Company, and (f) authorize Users to perform other functions on the G4B App.

(b) Active Account Required.

- (i) Active Account. Company acknowledges and agrees that in order for an individual to be considered an Authorized User on G4B App, such individual or the Person for which such individual is acting, must have an Active Account at all times in which they intend to use the G4B App.
- (ii) Violations. Company acknowledges that certain Authorized Users may be suspended or banned from use of the Gasology Platform due to violations of the End User Terms (“Violations”), and that Gasology shall have no obligation or liability related to an Authorized User that is unable to obtain or maintain an Active Account due to Violations. In the event that an Authorized User’s Active Account is suspended or terminated pursuant to the End User Terms, such Authorized User’s access to the Company’s Business Consumer Account shall also be immediately suspended.

(c) Company Business Consumer Account Linking.

- (i) Linking Mechanics. In order to enable a proposed Authorized User to securely establish a link to a Company’s Business Consumer Account, Company must use the G4B App to send a Gasology generated email invitation to the proposed Authorized User by providing the proposed Authorized User’s: (i) full name, (ii) Company-issued email address, and (iii) all other mandatory information requested in the G4B App (“**Linking Data**”), which is necessary for authentication and verification purposes.
- (ii) Accuracy. Company shall ensure that Linking Data is accurate and complete, and Gasology shall not be liable to Company, an Authorized User, a proposed Authorized User or any other party with respect to inaccurate or incomplete Linking Data supplied by Company.
- (iii) Unlinking. Company may unlink an Authorized User from the Company’s Business Consumer Account at any time by Company unlinking such Authorized User through the G4B App.
- (iv) Restrictions. Company agrees and shall cause each of its Authorized Users linked to their Business Consumer Account to use the G4B App solely as set forth in this Agreement and the End User Terms.

(d) Responsibility for User Activity. Gasology reserves the right to suspend Company’s participation in the G4B App and that of any Authorized Users for violations of this

{H0059127.2}

Agreement or the End User Terms. In the event that an Authorized User's Active Account is suspended or terminated pursuant to the terms of this Agreement or the End User Terms, such Authorized User's access to the G4B App shall also be suspended.

5. TRANSACTION CHARGES AND PAYMENTS

- (a) **Transaction Charges.** All Transaction Charges shall be paid by Company in the ordinary course of use of the G4B App through the Gasology payment methods (credit card, debit card, or ACH) that have been established by the Company and setup in the Company's Business Consumer Account, unless Company has been provided with Merchant On Account terms, in which case Company shall be invoiced and shall remit all related Transaction Costs to the respective Gasology Merchant in accordance with Merchant On Account Terms.
- (b) **Taxes.** Unless otherwise indicated on the G4B App receipt, all Transaction Charges, each to the extent applicable, are INCLUSIVE of applicable excise and sales taxes. Unless otherwise indicated, Gasology Merchants are responsible for reporting and remitting all such taxes assessed on such Transaction Charges to the respective tax reporting authorities as required, including, but not limited to, all excise, sales, use, VAT or similar taxes. Gasology will provide a notification to Users of the Platform that certain tax calculation may vary from the taxes displayed on the Platform and that the User shall be responsible for any additional taxes that may be due on the date of delivery.
- (c) **All Sales Final.** All Transactions incurred on the G4B App are deemed firm and final, and all payments are nonrefundable except as may be expressly provided otherwise herein. Each party shall be responsible for its costs and expenses associated with its performance under this Agreement.
- (d) **Merchant Performance Guarantee.** In order to ensure the best possible outcome to all parties participating in the Platform, each Gasology Merchant, by entering into a Transaction on the Platform, is providing a Merchant Performance Guarantee in form and substance as herein defined. Company acknowledges that the Gasology Merchant shall be the primary obligor with respect to each such Merchant Performance Guarantee, and that Company will be the third party beneficiary of such Merchant Performance Guarantee, and Company further stipulates and acknowledges that the obligations of Gasology with regard to any such Merchant Performance Guarantee shall be limited to the performance of the Gasology Resolution Services, as provided in Section 5(e) below.
- (e) **Gasology Resolution Services.** In the event that a Gasology Merchant fails to perform under its Merchant Performance Guarantee, Gasology shall provide Company with access

to Gasology Resolution Services in which Gasology will assist in seeking to achieve Company satisfaction pursuant to the terms of this Agreement and the relevant Gasology Merchant Agreement. Gasology reserves the exclusive right to determine the appropriate methodology, amount and extent of services in its sole discretion. In no event, however, shall Gasology be responsible for a Gasology Merchants' failure to perform its Merchant Performance Guarantee, or any other obligation in connection with a Transaction. Company stipulates and agrees that the sole obligation of Gasology shall be to provide such Gasology Resolution Services to Company, without cost to Company, provided in no event shall Gasology be liable or responsible for the outcome of such Gasology Resolution Services. Company shall retain all rights to enforce the Merchant Performance Guarantee outside of the Gasology Resolution Services, provided that Company shall release, indemnify, defend and hold Gasology harmless from all loss, costs or expenses, including reasonable attorneys' fees, related to any disputes with a Gasology Merchant that is to be resolved outside of the Gasology Resolution Services herein provided.

- (f) **On Account Terms.** Certain Gasology Merchants may have been pre-qualified by Gasology to offer On Account payment terms to Gasology Business Consumers. Each such pre-qualified Merchant may offer such On Account terms, at each Merchant's sole discretion, to some of their business consumer accounts. In the event that Company is offered such On Account terms by a Gasology Merchant, the choice to elect to use any such terms by the Company is in the sole discretion of the Company. In the event that such On Account terms are offered by a Gasology Merchant to Company and Company elects to purchase Product on the G4B App under such On Account terms, the respective Merchant shall invoice Company directly for any Product Transactions initiated by the Company with such Merchant and the related payment for such Transaction Charges by Company shall be remitted directly by Company to the respective Merchant in accordance with the On Account terms offered and accepted by and between the respective Merchant and Company.
- (g) **Suspension.** Gasology reserves the right to immediately suspend Company's Business Consumer Account and all Authorized Users and Administrators in the event of any unpaid Transaction Charges by Company due for Transactions on the G4B App. Gasology further reserves the right to pursue any and all remedies available to it under applicable law, including reporting Company to applicable credit reporting agencies, in the event of any unpaid Transaction Charges hereunder. Reestablishing a Company's G4B App access after full payment such outstanding charges shall be at Gasology's sole discretion. All late payments shall accrue simple interest on the sum due from the date of such payment, at the lower of 3% per month or the maximum rate allowed by applicable law.

6. PRIVACY AND DATA SECURITY.

{H0059127.2}

- (a) **Roles of Parties.** Each party is an independent controller of the Linking Data. Company will provide Linking Data to Gasology, as required for the use of the G4B App, as provided in Section 4(c) of this Agreement.
- (b) **Lawfulness.** Company acknowledges that the linking process described in Section 4(c) above requires a verification email to be sent to each Authorized User using the Linking Data, and Company agrees where necessary to have a legal basis for such processing and to inform the Authorized Users. Company consents to Gasology emailing such Authorized Users for the purpose of linking and establishing the Company's Business Consumer Account within the Authorized Users' Active Account.
- (c) **Security.** Gasology shall promptly notify Company in the event that Gasology learns or has reason to believe that an Information Security Incident has occurred in relation to the Linking Data. The notification will include: (1) the nature of the breach of security measures; (2) the types of potentially compromised Linking Data; (3) the duration and expected consequences of the Information Security Incident; and (4) any mitigation or remediation measures taken or planned in response to the Information Security Incident. Upon any such discovery, Gasology will (a) take all reasonable steps to investigate, remediate, and mitigate the effects of the Information Security Incident, and (b) provide Company with assurances reasonably satisfactory to Company that such Information Security Incident will not recur. Additionally, if and to the extent any breach by Gasology occurs in connection with an Information Security Incident as a result of a negligent act or omission of Gasology, and if Company reasonably determines that notices (whether in Gasology's or Company's name) or other remedial measures are warranted, Gasology will, at Company's request and at Gasology's cost and expense, undertake the aforementioned remedial actions.
- (d) **Damages.** Damages arising from Gasology's breach of this "Privacy and Data Security" section shall be subject to the limits of liability set forth in Section 13, except to the extent that such breach was caused by the gross negligence or willful misconduct of Gasology.

7. TERM AND TERMINATION

The term of this Agreement commences upon electronic acceptance of such terms as facilitated by the G4B App and continues until terminated in accordance with the terms of this Agreement. Unless earlier terminated under the terms hereof, either party may terminate this Agreement for any reason upon five (5) calendar days written notice to the other party. Such termination will not affect any previously agreed to Transaction on the Platform by Company and Company is obligated to perform all outstanding Transactions, and such Transactions shall remain subject to the terms of this Agreement, even after this

Agreement terminates. Further, Company stipulates and agrees that all outstanding payment obligations of this Agreement shall expressly survive the termination of this Agreement.

8. PROPRIETARY RIGHTS

- (a) **License to Marks; Restrictions.** The term "Marks" shall mean the trademarks, service marks, trade names, logos, slogans and other identifying symbols and indicia of either Company or Gasology, each a "**Licensor**". Each Licensor hereby grants the other party (Gasology or Company, respectively), each a "**Licensee**", solely during the Term, a limited, royalty-free, worldwide, non-exclusive, non-transferable, non-assignable license, without the right to sublicense, to use and display the Licensor's Marks. All use of a Licensor's Marks by Licensee will be in the form and format approved by Licensor, and Licensee will not modify Licensor's Marks without Licensor's prior written consent. All goodwill related to Licensee's use of Licensor's Marks shall inure solely to the benefit of Licensor. Marks will at all times remain the exclusive property of Licensor. Except as expressly set forth herein, Licensor does not, and shall not be deemed to, grant Licensee any license or rights under any intellectual property or other proprietary rights. All rights not granted herein are expressly reserved by Licensor. Licensor hereby grants Licensee the right to display Licensor's Marks throughout the Term in accordance with this Section: (i) on Licensee's website, and (ii) in any list of companies describing with whom Licensor has engaged in similar commercial, marketing or promotional activities, as long as such use is in compliance with Licensor's brand guidelines, if any. This right to use Licensor's Marks shall not require prior written approval and shall continue after this Agreement is terminated, unless Licensor provides Licensee with written notice that Licensor is terminating such right.
- (b) **No Development.** EACH PARTY ACKNOWLEDGES AND AGREES THAT THERE SHALL BE NO DEVELOPMENT OF TECHNOLOGY, CONTENT, MEDIA OR OTHER INTELLECTUAL PROPERTY BY EITHER PARTY FOR THE OTHER PARTY PURSUANT TO THIS AGREEMENT. Any development activities relating to any technology, content, media or other intellectual property must be the subject of a separate written agreement between Gasology and Company prior to the commencement of any such activities.
- (c) **Ownership.** Gasology and its Affiliates are and shall remain the owners of all right, title and interest in and to the G4B App, Gasology Platform, all other Gasology applications, and Gasology Personal Data (including, without limitation, Application Data) including any updates, enhancements and new versions thereof, all data related to the use of the G4B App and Gasology Platform(s), and all related documentation and materials provided or made available to Company or any proposed or current Authorized User in connection with this Agreement.

- (d) **No Publicity.** Other than as expressly set forth herein, neither party may use or reference the other party's name, logo, trademarks or service marks in a press release or otherwise without the prior consent of such other party in each instance.

9. CONFIDENTIALITY.

The term "**Confidential Information**" shall mean any confidential or proprietary business, technical or financial information or materials of a party ("**Disclosing Party**") provided to the other party ("**Receiving Party**") in connection with this Agreement, whether orally or in physical form. However, Confidential Information shall not include information (a) previously known by Receiving Party without an obligation of confidentiality, (b) acquired by Receiving Party from a third party which was not, to Receiving Party's knowledge, under an obligation of confidentiality, (c) that is or becomes publicly available through no fault of Receiving Party, or (d) that Disclosing Party provides written permission to Receiving Party to disclose, but only to the extent of such permitted disclosure. Receiving Party agrees that (a) it will use Confidential Information solely for the purposes permitted under this Agreement and (b) it will not disclose the Confidential Information to any third party other than Receiving Party's employees or agents who are bound by obligations of nondisclosure and restricted use at least as strict as those contained herein. In the event Receiving Party receives a subpoena, administrative or judicial order, or any other request for disclosure of any Confidential Information of Disclosing Party, Receiving Party will give Disclosing Party prompt written notice of such subpoena, order or request and allow Disclosing Party to assert any available defenses to disclosure. Receiving Party will protect the Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event using less than a reasonable standard of care.

10. DISPUTE RESOLUTION.

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana, with venue being in New Orleans, Louisiana. Only in the event that Merchant shall request to Gasology in writing the application of different law, the parties agree in advance to use the substantive laws of either Texas or New York (in that order), and in such event venue shall correspond to the applicable law, such that venue will be in either Houston, Texas, or New York City, applicable. Any choice of law shall be without regard to the state's choice or conflict of law provisions. Any dispute, controversy, or any claim arising out of or relating to this Agreement, or the interpretation, enforceability, performance, breach termination or validity thereof, including, without limitation, this arbitration clause, must be solely and finally settled by confidential arbitration in in the applicable venue as specified above, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. An award rendered in connection with arbitration pursuant to this Section shall be final and binding upon the parties, and any judgment upon such an award may be entered and enforced in any court of competent

jurisdiction. No provision of this Section limits the rights of a party to this Agreement to obtain provisional, injunctive, or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any arbitration.

- (b) Neither party has the right to arbitrate on a class action basis any dispute, controversy, or claim arising out of or relating to this Agreement, or the interpretation, enforceability, performance, breach, termination, or validity hereof, including, without limitation, this arbitration clause.

11. WARRANTIES; DISCLAIMER.

- (a) **Mutual Warranties.** Each party hereby represents and warrants to the other party that (a) it has full power and authority to enter into this Agreement and perform its obligations hereunder, (b) such party's acceptance of this Agreement, as well as such party's performance of the obligations set forth in this Agreement, does not and will not violate any other agreement to which such party is a party, (c) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its origin, and (d) is in compliance and shall remain in compliance during the Term, with all applicable local, city, state, federal, national, and international laws, rules and regulations, including those relating to data protection, privacy, identity theft, data breach, consumer protection, and data security, and any applicable industry standards relating to privacy and data security.
- (b) **Company Warranties.** Company represents and warrants that (a) Company has all rights and consents, where necessary, to provide Gasology with Company Personal Data and any other information provided to Gasology hereunder; (b) Company will use Application Data solely for legitimate business purposes including business expense, processing, accounting, and budgeting purposes; (c) Company has all rights and permissions necessary to provide Gasology with the Linking Data and any other information provided to Gasology hereunder in connection with the Gasology Platform; and (d) Company has obtained legally-adequate consent from Authorized Users and Administrators as necessary to provide Gasology with any personally identifiable information in connection with the Gasology Platform; (e) Company will only share and provide access to Application Data to Company personnel who have a business need to access such Application Data; (f) Company will not, and will ensure that its Authorized Users, Administrators and representatives will not, disclose Application Data to any third party, unless expressly authorized in writing by Gasology, and who are in each case bound by privacy and security obligations regarding Gasology Personal Data at least as restrictive as those contained herein; (g) Company will not rent or sell Application Data for any purpose not authorized by Gasology; and (h) Company will not use Application Data in any way that harms Gasology or benefits a competitor of Gasology; and (i) Company's Marks, as may be provided to Gasology pursuant to this Agreement, do not and will not infringe or otherwise violate the intellectual property rights, rights of publicity or other proprietary rights of any third party. Company hereby represents that the individual accepting the

terms of this Agreement is authorized by Company to bind, and does hereby bind, Company to the terms hereof.

- (c) **Disclaimer.** EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED HEREIN, GASOLOGY PROVIDES THE GASOLOGY PLATFORM AND G4B APP "AS IS" AND WITHOUT WARRANTY, EXPRESS OR IMPLIED. GASOLOGY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE GASOLOGY PLATFORM, G4B APP AND OTHER APPLICATIONS WILL MEET COMPANY'S REQUIREMENTS OR THAT THE OPERATION OF THE GASOLOGY PLATFORM, G4B APP AND/OR OTHER APPLICATIONS WILL BE UNINTERRUPTED OR ERROR FREE. GASOLOGY HEREBY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (A) ANY IMPLIED OR STATUTORY WARRANTIES COVERING THE GASOLOGY PLATFORM, THE G4B APP OR ANY OTHER APPLICATION, AND (B) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY ACKNOWLEDGES AND AGREES THAT THE GASOLOGY PLATFORM IS A TECHNOLOGY SERVICE THAT ENABLES ACCESS TO PURCHASE MOTOR FUEL PRODUCTS PROVIDED BY INDEPENDENT THIRD-PARTY PROVIDERS. GASOLOGY IS NOT A MOTOR FUEL PROVIDER. GASOLOGY DOES NOT GUARANTEE AVAILABILITY OR QUALITY OF MOTOR FUEL PRODUCTS, ON-TIME DELIVERIES THEREOF, OR ANY OTHER ASPECTS OF THE PRODUCTS OR THE SERVICE LEVELS RELATED TO INDEPENDENT MOTOR FUEL PROVIDERS THAT MAY BE OBTAINED VIA THE GASOLOGY PLATFORM.

12. INDEMNIFICATION.

- (a) Company (the "**Indemnifying Party**") will indemnify, defend and hold harmless Gasology and its Affiliates and their respective directors, officers, employees, agents, successors and assigns (collectively, the "**Indemnified Party**"), against all claims, damages, losses and expenses (including reasonable outside attorney fees) with respect to any claims arising out of or related to (a) a breach (or claim that, if true, would be a breach) of any of the Indemnifying Party's obligations in this Agreement; (b) the infringement of a third party's intellectual property rights by the Indemnifying Party's acts or omissions, except in the case where any such infringement claims results from an Indemnified Party's use of such intellectual property rights in violation of any permission granted by the Indemnifying Party; and/or (c) any other third party claims made against the Indemnified Party due to the negligent acts or omissions (or claims of negligent acts or omissions) of the Indemnifying Party.
- (b) The Indemnified Party shall provide prompt notice to the Indemnifying Party of any potential claim subject to indemnification hereunder. The Indemnifying Party will assume the defense of the claim through counsel designated by it and reasonably acceptable to the Indemnified Party. The Indemnifying Party will not settle or compromise any claim, or consent to the entry of any judgment, without written consent of the Indemnified Party, which consent will not be unreasonably withheld. The Indemnified Party will reasonably

cooperate with the Indemnifying Party in the defense of a claim, at Indemnifying Party's expense.

13. LIMITS OF LIABILITY.

OTHER THAN WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF BUSINESS OR PROFITS, SUFFERED BY THE OTHER PARTY OR ANY THIRD PARTY COLLECTIVELY ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF GASOLOGY OR COMPANY (OR THEIR AGENTS) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN WITH RESPECT TO (i) A PARTY'S INDEMNIFICATION OBLIGATIONS, (ii) DAMAGES ARISING FROM EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7 HEREIN, OR, (iii) DAMAGES ARISING FROM EITHER PARTY'S BREACH OF THE REPRESENTATIONS OR WARRANTIES SET FORTH IN SECTION 9 HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE COLLECTIVELY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES IN AN AMOUNT EXCEEDING THE GREATER OF (A) FIVE THOUSAND DOLLARS (\$5,000), AND (B) THE TOTAL AMOUNTS PAID OR PAYABLE BY A MERCHANT TO GASOLOGY HEREUNDER FOR PRODUCTS ORDERED AND/OR PURCHASED BY COMPANY IN THE TWELVE MONTHS PRECEDING THE INCIDENT THAT GAVE RISE TO THE LIABILITY.

14. MISCELLANEOUS.

- (a) Notices. Gasology may provide notices to Company by posting on the G4M App, email, or first-class mail. Company agrees to: (i) ensure that its contact and account information is current and correct, and (ii) promptly notify Gasology in writing of any changes to such information. Company acknowledges and agrees that Gasology will have no liability associated with or arising from Company's failure to maintain and supply Gasology with accurate contact information, including Company's failure to receive important information and updates about the services or this website. All notices to Gasology must be sent via recognized overnight courier or certified mail, return receipt requested, to: **General Counsel, Gasology, LLC, 935 Gravier Street, Suite 1100, New Orleans, Louisiana 70112.**
- (b) Entire Agreement. This Agreement sets forth the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous understandings and agreements between the parties, whether oral or written.
- (c) Press Release. Neither party will issue any press release regarding the Agreement unless mutually agreed upon in writing.

- (d) Non-Waiver. No waiver by either party of any breach by the other party of any of the representations, covenants, warranties, terms, or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof. No waiver shall have any effect unless it is specific, irrevocable and in writing.
- (e) Survivability. Any termination of this Agreement or suspension of access to the Platform will be without prejudice to the accrued rights of the parties as of the date of termination or suspension, and, additionally, Sections 8, 9, 10, 11, 12, 13, 14 of this Agreement will survive termination or suspension of the Agreement. If any provision of this Agreement is held or made invalid or unenforceable for any reason, such provision will not invalidate, void, or make unenforceable any other provision of this Agreement. The remaining terms and conditions shall remain in full force and effect, and the parties will negotiate in good faith to reform this Agreement in order to give effect to the original intention of the parties.
- (f) No Joint Venture. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties.
- (g) No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to create any rights, interests, obligations, or benefits, under this Agreement in any person other than the parties and their respective successors and permitted assigns.
- (h) Assignments. Company shall not assign, sublicense, or transfer the Agreement or any right or duty under the Agreement to another party, in whole or in part, without the prior written consent of the other party. Any assignment, transfer, or attempted assignment or transfer in violation of this Section 14(h) will be void and of no force or effect. Gasology may assign, sublicense or transfer this Agreement pursuant to any restructuring, merger, consolidation, amalgamation or purchase of all or substantially all of its assets.
- (i) Interpretation. Headings of sections are for convenience only and are not intended to affect the interpretation or construction of any other provision of the Agreement. Company has had an opportunity to obtain legal advice and to understand its risks in entering into this Agreement. No presumption shall arise or adverse inference be drawn by virtue of authorship, and each party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.
- (j) Amendments. Upon prior notice, which may be provided by email, Gasology may periodically change this Agreement in accordance with Gasology's Update Procedures.

- (k) Further Assurances. From time to time, and at any time during the Term of this Agreement each party will execute, acknowledge and deliver such documents and assurances, reasonably requested by any other party (in such form reasonably acceptable to the requested party) and will take any other action consistent with the terms of this Agreement that may be reasonably requested by a party for the purpose of effecting or confirming any of the Transactions contemplated hereby or thereby.

- (l) Imaged Documents and Counterparts. Any document generated by the parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically ("**Imaged Documents**"). By Customer clicking on a "Click to Sign" or similar button, Customer intends to create and Imaged Document. Imaged Documents may be introduced as evidence in any proceeding as if such were original business records and neither party shall contest the admissibility of Imaged Documents as evidence in any proceeding.