

## **Washington State Exempt Fuels Agreement (Retail Agriculture and Transportation)**

This Washington State Exempt Fuels Agreement (Retail Agriculture and Transportation) (the "Agreement") is entered into effective as of \_\_\_\_\_ ("Effective Date"), by and between CHS Inc. ("CHS") and \_\_\_\_\_ ("Customer").

### **Background:**

The State of Washington Department of Ecology ("Department"), as directed by the Washington Climate Commitment Act and the regulations promulgated thereunder ("CCA"), requires certain businesses to obtain allowances for their covered greenhouse gas emissions. Qualifying obligated parties under the CCA may, however, claim an exemption for, among other things, motor vehicle fuel or special fuel used exclusively for (i) agricultural purposes by a farm fuel user, or (ii) for transporting agricultural products on public highways prior to January 1, 2028 (collectively, "CCA Exempt Fuels"). For the purposes of these requirements, the CCA defines:

"Agricultural purposes" as the performance of activities directly related to the growing, raising, or producing of agricultural products; and

"Farm fuel user" as: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation serviced, and crop harvesting services.

As a condition to purchasing CCA Exempt Fuels, customers are required by CHS Inc. ("CHS") to provide and maintain in effect this Agreement, comply with the obligations set forth in this Agreement and otherwise demonstrate to CHS's satisfaction that the product purchased is used for a purpose for which an obligated party may treat the product as a CCA Exempt Fuel under the CCA and as qualifying for an exemption (a "Clean Fuels Program Exempt Fuel") under the Clean Fuels Program and regulations promulgated thereunder ("Clean Fuels Program"). For purposes of this Agreement, CCA Exempt Fuels and Clean Fuels Program Exempt Fuels may be referred to as "Exempt Fuels".

### **Agreement:**

For good and valuable consideration, the receipt and sufficiency are hereby acknowledged, the parties hereto agree as follows:

1. Any purchase of Exempt Fuel from CHS is conditioned upon Customer entering into, maintaining in effect, and complying with the terms of this Agreement. Except as expressly set forth herein, the provisions of this Agreement shall not govern Customer's purchases of fuels that are not treated as Exempt Fuels hereunder ("Non-Exempt Fuels").

2. Customer represents, warrants and agrees as follows:

a. All purchases by Customer under the account(s) referenced below on and after the Effective Date referenced above were used or will be used exclusively for a purpose that would qualify as an Exempt Fuel under the CCA and Clean Fuels Program, and, of those gallons of Exempt Fuel, all dyed diesel purchases were used or will be used exclusively for agricultural purposes by a farm fuel user as contemplated under the CCA and Clean Fuels Program. Customer agrees it will not resell any fuels purchased as Exempt Fuel and will not use such fuel for any purpose that would cause such fuel to be considered not an Exempt Fuel under the CCA or Clean Fuels Program.

b. Customer must provide to CHS a completed Washington State Department of Revenue Farmer's Certificate for Wholesale Purchases and Sales Tax Exemptions (Form 27 0036 or its successor) (the "Sales Tax Exemption Certificate") if Customer is claiming the fuel will be used for an agricultural use that would make it qualify as an Exempt Fuel.

c. If Customer is claiming Exempt Fuel is used for transporting agricultural products on public highways (before January 1, 2028), Customer must, in addition to all other Data (defined below) hereunder, provide to CHS at the time of purchase or thereafter when requested: (A) the transaction dates, (B) the shipper of the agricultural product, (C) the consignee of the agricultural product, (D) the origin, destination and mileage traveled, (E) the agricultural product shipped, (F) the fuel type and (G) the gallons of Exempt Fuel used

d. Customer: (i) is the end user of all products purchased under the account(s) referenced in this Agreement, (ii) consents to the collection of this Agreement, the Sales Tax Exemption Certificate, the Verification Certificate (defined below), data regarding Customer's purchase of Exempt Fuels, and all other information (including, without limitation, personally identifiable information) regarding the transactions that CHS or its suppliers believe are necessary or appropriate to support the ultimate obligated party's effort to treat the products as Exempt Fuels under the CCA and Clean Fuels Program ("Data"), (iii) authorizes CHS and its suppliers to

transfer the Data, including without limitation this Agreement, the Verification Certificate, and the Sales Tax Exemption Certificate, to their respective suppliers and auditors and the Department to the extent CHS or such supplier believes it is necessary or appropriate to support any claim or potential claim by the ultimate obligated party that products are Exempt Fuels under the CCA and Clean Fuels Program, (iv) agrees CHS has no liability for the accuracy, security or loss of any Data transferred or shared with the parties in (iii) above, and (v) has obtained all authorizations necessary to make the representations set forth in this clause. For additional information on how CHS manages your personal information please see <https://www.chsinc.com/privacy-policy>.

e. Customer may not purchase Non-Exempt Fuels on the account(s) referenced below, all Non-Exempt Fuels must be purchased from CHS under separate Non-Exempt Fuel accounts.

f. Customer will immediately notify CHS at the following address: 1200 Snake River Ave, Lewiston, ID 83501, any time it believes gallons purchased by Customer as Exempt Fuels may no longer qualify as an Exempt Fuel under the CCA or Clean Fuels Program or otherwise not comply with the terms of this Agreement.

g. At least once a calendar year, or more frequently as required by CHS, Customer will sign and deliver to CHS such documentation as may be reasonably requested by CHS, including, without limitation, a certificate (a "Verification Certificate") to verify certain information relating to the quantities, uses and sales of fuels purchased from CHS as Exempt Fuels.

3. If CHS sells to Customer any fuels designated as an Exempt Fuel and the fuel ceases to qualify as an Exempt Fuel or CHS is denied an exemption or is not otherwise able to recover costs charged by its suppliers for compliance with the CCA or Clean Fuels Program as a result of an inaccuracy in Customer's representations, breach of any covenants in this Agreement or any other action or inaction by or attributable to Customer (each gallon of such fuel referred to herein as an "Invalid Gallon"), CHS will assess to Customer an administrative fee of \$0.10 per Invalid Gallon, together with an additional charge per Invalid Gallon reasonably estimated by CHS to equal the difference between (a) the price of such Exempt Fuel on the same day and at the same location purchased, and (b) a similar type and grade of fuel that was sold as not an Exempt Fuel on the same day and at the same location purchased. The remedies set forth in this **Section 3** are in addition to, and not in lieu of, any other remedies available to CHS under this Agreement, any other agreement between CHS and Customer or applicable law (including, without limitation, those remedies available under **Section 4**, below).

4. Customer agrees to indemnify, protect, defend and hold CHS harmless from and against any and all claims, actions, losses, costs and expenses (including, without limitation, compliance costs and expenses, reasonable attorneys' fees or costs of investigation and accounting under the CCA, the Clean Fuels Program and the Reporting of Emissions of Greenhouse Gases Rule (WAC 173-441) (the "GHG Reporting Rule")), fines and penalties (including, without limitation, noncompliance penalties under the CCA, the Clean Fuels Program and the GHG Reporting Rule), arising directly or indirectly from Customer's failure to adhere to its obligations under this Agreement, any misrepresentation of Customer set forth in this Agreement or any Data, any action or inaction by Customer that would cause fuels sold to Customer as Exempt Fuels to not qualify as an Exempt Fuel, any other failure of Customer to comply with any laws, rules and regulations applicable to Exempt Fuels. The remedies set forth in this **Section 4** are in addition to, and not in lieu of, any other remedies available to CHS under this Agreement, any other agreement between CHS and Customer, or applicable law (including, without limitation, those remedies available under **Section 3**).

5. Customer acknowledges that: (a) the price difference, if any, between Exempt Fuels and fuels that are not considered an Exempt Fuel (and the amount of any rebates, if any, offered by CHS from time-to-time for Exempt Fuels) will be determined by CHS in its sole and absolute discretion, may not occur, and, if it does occur, may vary from purchase to purchase, and may depend on many factors, including, without limitation, availability of rebates or discounts from CHS's suppliers, market conditions, and the sufficiency of documentation provided by Customer, (b) CHS would not consider selling Exempt Fuels to Customer unless Customer provides to CHS the Sales Tax Exemption Certificate and agrees to the terms and conditions set forth in this Agreement, and (c) the Customer has received good, valuable and sufficient consideration for the representations, warranties and agreements of Customer set forth in this Agreement.

6. Customer agrees to cooperate with CHS, its suppliers, their respective auditors and the Department in any review of the transactions contemplated hereunder and Customer will provide such other information and sign such other documentation as reasonably requested by CHS to support the matters set forth herein and any claim for any exemption based, all or in part, on the statements set forth herein.

7. This terms of this Agreement shall continue in effect until terminated by a mutually signed agreement of CHS and Customer. The provisions of **Sections 2.(d), 3, 4, 6, 7, 9 and 12** shall survive revocation or termination of this Agreement.

8. Entering into this Agreement does not constitute an offer or agreement to sell fuel or other product by CHS to Customer. The terms set forth herein are additional terms relating to the sale and use of Exempt Fuels and do not replace or supersede any agreement between CHS and Customer relating to the purchase and sale of fuels or products.

9. The provisions of this Agreement shall be governed by the internal laws of the State of Washington, without regard to any conflicts of laws provisions. Except as set forth in this Agreement, all capitalized terms shall have the meaning set forth in the CCA. Customer may not alter or amend this Agreement, except by a written document signed by Customer and CHS. CHS is relying on the representations, warranties and terms set forth herein, and shall be entitled to enforce the terms hereof. The failure or delay on the part of CHS or Customer in exercising any of their respective rights, powers, or privileges hereunder shall not operate as a waiver, unless such waiver is made by a writing executed by such person or entity and delivered to the other. The provisions of this Agreement will be binding upon and inure to the benefit of CHS and Customer and their respective successors and assigns. Any dispute between CHS and Customer concerning any matter whose arbitration is not prohibited by law at the time the dispute arises shall be submitted to arbitration in accordance with the Arbitration Rules of the American Arbitration Association then in effect. Except to the extent prohibited by applicable law, Customer agrees any dispute must be brought only in its individual capacity and not as part of any class or group of similarly situated persons. Any term or provision of this Agreement that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable. In all such cases, the parties shall use their reasonable best efforts to substitute a valid, legal and enforceable provision that, insofar as practicable, implements the original purposes and intents of this Agreement.

10. Customer specifically acknowledges and agrees that nothing contained in this Agreement shall ever be construed as an agreement to sell fuel, an offer to sell fuel or to enter into an agreement to sell fuel, or except as expressly set forth herein to modify any of the terms and conditions set forth in an existing agreement between CHS and Customer. Customer also specifically acknowledges and agrees that nothing in this Agreement is intended, nor shall ever be construed, to constitute a waiver by CHS of any rights CHS has under any agreement between Customer and CHS.

11. To the extent Customer has purchased any Exempt Fuel from CHS between January 1, 2023 and the date of this Agreement ("Prior Purchases"), Customer represents that the representations of Customer with respect to Exempt Fuels hereunder are true and correct with respect to such Prior Purchases, and all covenants of Customer hereunder shall equally apply to such Prior Purchases, as if this Agreement was in full force and effect on January 1, 2023.

12. Except as set forth in this Agreement, all capitalized terms shall have the meaning set forth in the CCA. The undersigned hereby represents and warrants that he or she is authorized to make this submission as, or on behalf of, the Customer. The undersigned Customer certifies under penalty of law that he or she has personally examined, and is familiar with, the statements and information submitted in this document. The undersigned Customer certifies that the statements and information are, to the best of his or her knowledge and belief, true, accurate, and complete. The undersigned Customer certifies that he or she is aware that there are significant penalties for submitting false statements or information, and for omitting required statements or information, including the possibility of fine or imprisonment. By signing below, the undersigned Customer agrees that Customer agrees to and is bound by the statements set forth herein.

CUSTOMER: _____	CHS: CHS Inc.:
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____

Customer Accounts:

Account Name: \_\_\_\_\_ Account Number: \_\_\_\_\_

Account Name: \_\_\_\_\_ Account Number: \_\_\_\_\_