



### Transportation Agreement

**THIS TRANSPORTATION AGREEMENT** (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between Mears Fertilizer, Inc. (now known as MFI), and \_\_\_\_\_ (now known as Provider). MFI and Provider are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

**WHEREAS**, MFI desires to hire Provider to perform motor carrier transportation services for MFI in accordance with the terms and subject to the conditions of this Agreement; and

**WHEREAS**, Provider desires to perform transportation services for MFI in accordance with the terms and subject to the conditions of this Agreement;

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the mutual agreements and provisions hereinafter set forth, the Parties hereby mutually agree as follows:

- 1. Term** – This Agreement shall remain in full force and effect starting from the date above until termination of Agreement. Either party may terminate this Agreement at any time, with or without cause, verbally or in writing, effective immediately.
- 2. Operating Authority** – Provider represents and warrants that it currently has in effect the appropriate operating authorities, if any be required, from the appropriate regulatory agencies to furnish services hereunder as a contract Provider, and Provider agrees to maintain such operating authorities, where required, in effect during the term of this Agreement.
- 3. Scope of Agreement** – Provider is duly registered with the Department of Transportation pursuant to 49 U.S.C. 13901, and will provide lawful and responsible transportation services to MFI under contract. MFI will tender to Provider freight for transportation. Provider shall be an independent contractor of MFI. As between the Parties, Provider shall have the sole and exclusive responsibility for the costs and over the manner in which its employees and/or independent contractors perform the transportation services, including the equipment provided.
- 4. Non-Exclusivity** – This Agreement shall not constitute an exclusive arrangement. MFI shall remain free to engage other persons or entities to perform shipping and transportation services. Provider shall remain free to perform shipping and transportation services for any other person or entity.
- 5. Safety; FMCSA Compliance** – In the performance of this Agreement, Provider shall, at no additional cost to MFI, comply with MFI's safety rules and regulations onsite, including wearing closed toe and closed heel style shoes onsite and eye protection in the warehouse, and comply with all applicable laws, rules, regulations, and ordinances of any nature whatsoever, including but not limited to: Employment discrimination, wage and hour, drug-free workplace, OSHA, Motor Vehicle Safety, weight limits and environmental laws. **Provider has a duty to monitor all weight regulations and no driver shall leave MFI's property or projects with an overweight or unsecured load. Provider shall also securely fasten a tarp to all flatbed/step-deck loads.**
- 6. Rates, Charges, and Payment Terms** – MFI shall send a rate confirmation to Provider via email/fax after load has been verbally booked between the Parties. Rate, including adjustments made for deductions and/or assessorial charges shall appear on rate confirmation. Provider shall invoice MFI, and MFI payment terms are Net 30 days. Attached are Appendices A and B, showing schedule of rates and possible assessorial charges, including detention time guidelines.
- 7. Receipts, and Bills of Lading** – Each shipment shall be evidenced by a receipt in a form specified or approved by MFI, which shall be signed by Provider or an agent or employee of Provider, showing the kind and quantity of property received by Provider at origin, but the absence or loss of any such receipt shall not relieve Provider of its obligations and responsibilities with respect to any shipment made hereunder. In the event that MFI elects to use a Bill of Lading (BOL), manifest, or other form of freight receipt or contract, any terms, conditions, and provisions of such BOL, manifest, or other form shall be subject to and subordinate to the provisions of such BOL, manifest, or other form and this Agreement, the terms, conditions, and provisions of this Agreement shall govern. Neither employees nor agents of MFI, nor employees, drivers, agents, and/or contractors of Provider are authorized to vary the terms and conditions of this Agreement by signing and/or accepting any such BOL, manifest, freight receipt, or other similar document. Upon delivery of each shipment made hereunder, Provider shall obtain a receipt, in a form specified or approved by MFI, showing the kind and quantity of property to the consignee of such shipment at the destination

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specified by MFI and the time of such delivery, and Provider shall cause such receipt to be signed by such consignee or by an agent or employee of such consignee at such destination. Receipts and BOL shall be used by the Provider for documenting pick-up and delivery of freight. Either Party, at its option, may supply any document required by or referenced in this Agreement in either paper or electronic form, including, but not limited to, and electronically imaged, faxed, photocopied, or online posted version, and any such version shall be sufficient for all purposes under this Agreement.

**8. Substitute Services** – Unless contracted as a broker with MFI, Provider may not broker loads. Provider agrees not to sub-contract, double broker, interline, or to use “substitute services” by rail or motor carrier without the specific approval of MFI. If for any reason this is done without permission, Provider shall be liable for any cargo loss, damage, or injury to the same extent as if Provider performed the service.

**9. Provider Operations** – Provider shall, at its sole cost and expense, furnish all fuel, oil, tires, and other parts, supplies and equipment necessary or required for the safe and efficient operation and maintenance of the motor vehicles and related equipment furnished by Provider for the performance of its obligations hereunder, hereinafter collectively designated as “Equipment.” Provider shall pay all expenses of every nature, including the expense of road service and repair, in connection with the use and operation of the Equipment and shall, at its sole cost and expense, at all times during the term of this Agreement maintain the Equipment in good repair, sound mechanical condition and appearance. Provider, at its sole cost and expense, shall utilize in the operation of the Equipment only legally licensed personnel.

**10. Indemnification** – Provider shall indemnify and hold harmless MFI from and against all loss, damage, fines, expense, actions, and claims of injury to persons, including injury resulting in death, and damage to property where such loss, damage or injury is proximately caused by acts or omissions of Provider, its agents or employees, and arising out of or in connection with the discharge of duties and responsibilities of Provider as specified in this Agreement, unless such injury or damage is caused or contributed to by the negligence of MFI, its agents or employees, or is beyond the control of Provider. MFI shall indemnify and hold harmless Provider from and against all loss, damage, fines, expense, actions and claims for injury to persons, including injury resulting in death, and damage to property, including Equipment of Provider, where such loss, damage, or injury is proximately caused by acts or omissions of MFI, its agents or employees, or the inherent vice or nature of the property tendered to Provider for transportation hereunder.

**11. Insurance** – Provider shall maintain during the term of this Agreement the Federal minimum insurance amounts allowed for (a) workers’ compensation insurance, as required by applicable state law, (b) automobile and property damage liability insurance, (c) cargo insurance to cover damage to or loss of cargo, and (d) general liability insurance required pursuant to 49 U.S.C. 13906. The required insurance shall cover the entire geographic scope in which the Provider will operate under this Agreement and, as applicable, be “Broad Form.” Upon request, Provider will furnish MFI with a current certificate of insurance from a reputable insurance company evidencing such insurance minimums and will list MFI as an additional named insured to the cargo policy. Provider will request that its insurance company provide 30 days advance notice to MFI prior to cancellation of such insurances. Freight claims must be filed in accordance with the requirements set forth 49 CFR § 370.3. Neither Party waives any right to subrogation it or its insurers may have arising out of services provided pursuant to this Agreement.

**12. Refused/Rejected Shipment** – If the consignee refuses the lading tendered by Provider, Provider must let MFI know immediately. Provider assumes possession of tendered lading, and will work one on one with MFI to determine the best course of action.

**13. Hazardous Materials** – MFI shall identify any loads that contain Hazardous Materials, as defined in the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq., as amended, and the regulations of the U.S. Department of Transportation made thereunder, immediately to Provider, and Provider shall either: (i) decline such load, or (ii) accept such load on terms and conditions identified by MFI in such acceptance. If Provider accepts such load, Provider represents and warrants that it is fully qualified and authorized to transport Hazardous Materials in the United States, and shall provide MFI with required documentation stating as such. Provider and MFI certify that they are familiar with U.S. laws and regulations applicable to transportation of Hazardous Materials and that they will comply with all such laws and regulations. Provider further certifies that its employees, including drivers, have been trained and instructed in the proper method of transporting Hazardous Materials. Upon Provider request, MFI will provide a copy of the Safety Data Sheet for the Hazardous Materials.

**14. Legal Restraint or Force Majeure** – In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the running of all periods of time mentioned herein and the performance of all obligations required herein shall be suspended during the continuance of such interruption, and such Party shall promptly notify the other Party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. Provider shall be permitted an extension period

equal to the period of suspension to complete shipments adversely affected by the suspension. No liability shall be incurred by either Party for damages resulting from such suspensions.

**15. Compliance with Laws and Regulations** – The Parties shall at all times comply with all applicable federal, state, municipal, and provincial laws, rules, and regulations including, but not limited to, the federal and state safety regulations. To the extent this Agreement or any services provided hereunder shall conflict with such laws, rules, and regulations, this Agreement and the services provided hereunder shall be modified to comply with such laws, rules, and regulations, and the Parties shall not be deemed in breach of this Agreement or suffer any liability or penalty for compliance with such laws, rules, and regulations. In the event Provider, through no fault of its own, is delayed or removed from service by or because of an inspection by any body politic, Provider shall not be deemed in breach of this Agreement, nor shall it suffer any liability or penalty under the terms of this Agreement.

**16. Governing Law** – This Agreement shall be binding upon the successors and assigns of the Parties hereto; provided, however, that Provider may not assign this Agreement without prior consent of MFI.

**17. Back-Solicitation** –

(i) Provider shall not knowingly, directly or indirectly, solicit freight shipments from any customer of MFI when such shipments were first tendered to Provider by MFI, or when such customers of MFI were first introduced to Provider. Customers of MFI are defined as:

Any shipper, consignor, or consignee doing business with MFI.

(ii) In the event of breach of this provision, MFI shall be entitled, for a period of one year following delivery of the last shipment transported by Provider under this Agreement, to a commission of ten percent (10%) of the gross transportation revenue including assessorial charges (as evidence by freight bills) received by Provider for the transportation of said freight as liquidated damages. Additionally, MFI may seek injunctive relief and in the event MFI is successful, Provider shall be liable for all costs and expenses incurred by MFI, including, but not limited to, costs, expenses, and reasonable attorney fees.

**18. Confidentiality** –

(i) In addition to confidential information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight rates, amounts received for booking services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics required shared or learned between the Parties and their customers shall be treated as confidential, and shall not be disclosed or used by a Party for any reason without the prior written consent of the other Party.

(ii) In the event of violation of section 18(i) above, the Parties agree that the remedy at law, including monetary damages, may be inadequate and the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which the violating Party shall be liable to the prevailing Party for all costs and expenses incurred by the prevailing Party, including, but not limited to costs, expenses, and reasonable attorney fees.

**19. Modification – This Agreement shall not be modified or altered unless mutually agreed to in writing and signed by both Parties. Please initial all pages, sign and date, and send back via fax/email.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by a duly authorized officer effective as of the date first above written.

**PROVIDER**

**Mears Fertilizer Inc.**

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

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**INFORMATION FOR NOTICES**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

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**Appendix A**  
**Schedule of Rates/Assessorial Charges**

**PALLETIZED/LIQUID LOADS**

- ❖ **Load Rate** – Load rate is the “all in” verbally agreed upon rate for transporting goods from point A to point B. Rate varies by lane, and will be itemized out for various assessorial charges (ie Tarp Charge, Drop Charge, etc) on rate confirmation sent to Provider. This charge will be divided for split loads according to load description (ie: pallet count, weight, or other deciding factors) and will reflect as such on rate confirmations.
- ❖ **Tarp Charge** – \$25 – is itemized on rate confirmation, where applicable, and is already added into the total load rate that is verbally given by MFI when load is booked with Provider. This charge will be divided equally between drops on split shipments, and will reflect as such on rate confirmations.
- ❖ **Pallet Jack** – \$25 – is itemized on rate confirmation, where applicable, and is already added into the total load rate that is verbally given by MFI when load is booked with Provider. This charge will be divided equally between drops on split shipments, and will reflect as such on rate confirmations.
- ❖ **Drop Charge** – \$50 – is itemized on rate confirmations, where applicable, divided equally on rate confirmations, and is already added to the total load rate that is verbally given by MFI when load is booked with Provider.
- ❖ **Detention Time** – \$25 per hour – is given **after** the first 3 hours at a location that requires pickup/delivery appointment, only a **maximum** of 6 detention hours will be paid, and in/out times need to be noted on BOL and confirmed by Receiver/Shipper by signature. Provider must notify MFI when Provider is approaching the time to mark the beginning of detention time. **Detention time shall not be paid for waits at “First Come First Served” shipping/receiving locations.**
- ❖ **Reconsignment** – Provider must notify MFI immediately with any indiscretion between rate confirmation and BOL. If over 50 miles, reconsignment rate will be determined verbally by MFI based on the scope of pick up/delivery situation, and a revised and updated rate confirmation sent to Provider with correct rate and delivery information included.

**Schedule 2**

**Dry/Liquid Operating Requirements**

1. Any accident with another vehicle or stationary object, or any material spill with MFI’s product must be reported to MFI immediately. Any accidents or spills must first be reported to the proper authorities.
2. . Provider shall sweep out all dry van trailers, securely fasten tarp to all flatbed loads, and take any and all necessary action to prevent material from escaping the truck. In the event Providers are caught illegally sweeping out dry van trailers on the roadside of either road leading up to MFI’s property, legal action will be taken pursuant to K.S.A. 21-5815. A copy of K.S.A. 21-5815 is attached.
3. Provider shall instruct and require all of its employees who come to MFI to comply with MFI’s site safety policy, including PPE requirements. PPE requirements include the following:

Job/Operation	Hazard Type	PPE Required
Driver	Foot Hazard – Impact	Full Coverage Shoes
Driver	Face/Eye Hazard – Impact and Dust	Safety Glasses

**Appendix B**  
**Schedule of Rates**  
**BULK HOPPERBOTTOM**

- ❖ **Load Rate** – Load rate is the verbally agreed upon rate for transporting goods from point A to point B. Rate varies by lane, and is reflected on rate confirmation sent to Provider.
- ❖ **Reconsignment** – Provider must notify MFI immediately with any indiscretion between rate confirmation and BOL. If over 50 miles, reconsignment rate will be determined verbally by MFI based on the scope of pick up/delivery situation, and a revised and updated rate confirmation sent to Provider with correct rate and delivery information included.

**Schedule 1**  
**Hopperbottom Operating Requirements**

1. Provider shall clean all hopperbottoms and securely fasten tarp to all loose loads or take any other necessary action to prevent material from escaping the truck. In the even Providers are caught illegally sweeping out hopperbottom trailers on the roadside of either road leading up to MFI’s property, legal action will be taken pursuant to K.S.A. 21-5815. A copy of K.S.A. 21-5815 is attached.
2. Any accident with another vehicle or stationary object, or any material spill with MFI’s product must be reported to MFI immediately. Any accidents or spills must first be reported to the proper authorities.
3. Provider shall instruct and require all of its employees who come to MFI to comply with MFI’s site safety policy, including PPE requirements. PPE requirements include the following:

Job/Operation	Hazard Type	PPE Required
Driver	Foot Hazard – Impact	Full Coverage Shoes
Driver	Face/Eye Hazard – Impact and Dust	Safety Glasses

**K.S.A. 21-5815 – Criminal Littering**

- (a) **Criminal Littering is recklessly depositing or causing to be deposited any object or substance into, upon, or about:**
- (1) Any public street, highway, alley, road, right-of-way, park, or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
  - (2) Any private property without the consent of the owner or occupancy of such property.
- (b) **Criminal Littering is an unclassified misdemeanor punishable:**
- (1) Upon a first conviction by a fine of not less than \$250 nor more than \$1,000;
  - (2) Upon a second conviction by a fine of not less than \$1,000 nor more than \$2,000; and
  - (3) Upon a third or subsequent conviction by a fine of not less than \$2,000 nor more than \$4,000.
- (c) **The provisions of K.S.A. 8-15,102, and amendments thereto, are excepted from the application of this section.**
- (d) **In addition to the fines in subsection (b), a person convicted of criminal littering shall be required to pick up litter for a time prescribed by and at a place within the jurisdiction of the court.**