

BROKER/CARRIER TRANSPORTATION AGREEMENT

This BROKER/CARRIER TRANSPORTATION AGREEMENT (this "Agreement") is made effective as of _____, 20__, by and between X1 Logistics, LLC, an Ohio limited liability company ("Broker") and _____ ("Carrier").

RECITALS

A. Carrier is a motor carrier of property duly authorized by the United States Department of Transportation (DOT), under Permit No. _____, (a copy of which permit is attached hereto and made a part hereof) to provide compensated transportation of property under contract for Shippers (consignors) and receivers (consignees) of general commodities, and holds itself out to the public as such, and in providing transportation services under contract, may assign motor vehicles and equipment for a continuing period of time for the exclusive use and benefit of Shippers and receivers and/or provide transportation services designed to meet the distinct needs of the Shippers and receivers served under contracts,

B. Broker is a transportation broker, duly authorized by the DOT under License No. 514643 to arrange for the transportation of property by motor carrier on behalf of shippers (consignors) or receivers (consignees) (herein, "Shippers") and for the purposes of contract sufficiently controls the arrangements for transportation of the commodities to be tendered to Carrier under this Agreement; and

C. Broker desires for Carrier to provide Broker and its Shippers with certain of their transportation special, distinct, varying and continuing transportation needs and Carrier desires to provide such transportation to Broker and Shippers subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises herein and intending to be legally bound, Broker and Carrier agree as follows:

1. **Term.** The terms and conditions of this Agreement commence on the date first written above, or on the date the first shipment is tendered and transported under this Agreement, whichever date is earlier. The initial term of this Agreement shall be for a period of one year, and shall be automatically renewed from year to year thereafter under the same terms and conditions. This Agreement may be canceled or terminated by either party at any time during the initial or any renewal term by the giving of at least 30 days prior written notice to the other party.

2. **Services.** Carrier and Broker agree that this Agreement shall govern any and all shipments tendered to Carrier for transportation by Broker during the term of this Agreement whether regulated or unregulated commodities in inter- or intra-state transportation. Carrier agrees to provide for transportation of Shipper's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws, regulations relating to the transportation of the freight covered by this Agreement and in conformity with generally accepted standards and practices of the transportation business.

3. Optional: [**Volume.** Subject to the terms, conditions and provisions of this Agreement, Broker agrees to tender a minimum of [_____] shipments per year to Carrier, and Carrier agrees to accept such tender, as well as any other shipments offered by Broker. Broker is not restricted from tendering freight to other motor carriers. Carrier is not restricted from providing transportation for other parties. If Broker fails to tender or cause to be tendered to Carrier the said minimum number of shipments, Broker shall pay to Carrier, as liquidated damages and not as a penalty, the sum of \$25.00 for each deficit shipment. If, in any manner or for any reason, this Agreement shall be terminated before the end of an annual period, the said minimum number of shipments shall be proportionately reduced.]

4. **Carrier's Service Standard.**

(a) Carrier will provide reasonable transportation services pursuant to this Agreement. Carrier will accept tender of shipments as directed by Broker, and transport and deliver such shipments promptly, efficiently, and safely. Carrier shall perform loading and unloading services as required by Shippers. Each shipment shall be evidenced by a bill of lading or other receipt issued by Shippers or Carrier. Such bill of lading or receipt is to be signed by Carrier and will show the kind, quantity and condition of commodities received and delivered by Carrier at the loading and unloading points.

(b) Carrier, at its sole cost and expense, shall furnish all necessary and appropriate equipment required for services needed or contemplated hereunder, and all equipment shall be properly licensed and maintained in clean condition, good repair and working order and never used for transportation or storage of any toxic, poisonous or waste product which may contaminate, degrade or adversely affect the quality or purity of any Shipper's freight. Carrier at its sole cost and expense shall employ for its services hereunder only competent and legally licensed drivers and personnel who shall be sufficiently and adequately trained in the care, safety and any response procedures applicable to shipments being handled and transported. Without the prior written consent of Broker, Carrier shall not cause or permit any shipment tendered hereunder to be brokered to or transported by any other motor carrier, or in substituted service by railroad or other modes of transportation.

(c) Carrier understands and agrees in performing services under this Agreement that time is of the essence in the pickup, transportation and delivery of individual shipments and that it agrees to meet all prearranged scheduled pickup and delivery appointments in strict accord with schedule of Broker's customers. Carrier shall provide a manager to coordinate and maintain daily communication with Broker to report on status or location of any shipment tendered under this Agreement.

(d) At all times during the term of this Agreement, Carrier shall have an maintain a "Satisfactory" safety rating with the Federal Highway Administration, U.S. Department of Transportation and, upon request of Broker, furnish evidence of such rating to Broker. Carrier shall immediately notify Broker upon receipt of any rating other than "Satisfactory."

5. **Status and Function of Bill Lading.** Carrier and Broker recognize and acknowledge that an accepted practice of the transportation industry is the preparation of bills of

lading by companies tendering goods for transportation by carriers, and the tender of bills of lading to carriers at points of origin of shipments. Such bill of lading shall be evidence of receipt of such commodities by Carrier in good order and the kind, quantity and condition or as may be otherwise noted on the face of such receipt. To the extent that language contained in such bill of lading or receipt is in any way in conflict or inconsistent with the terms and conditions of this Agreement, this Agreement shall prevail. The terms and conditions of any freight documentation used by Broker, Carrier or any Shipper may not supplement, alter, or modify the terms of this Agreement. Carrier agrees that the preparation and acceptance of such bills of lading shall be for the sole purpose and function of a receipt for the goods and shall not of and/or by itself constitute a contract or contract of carriage between Carrier and either the company tendering the goods to it or the company receiving the goods from Carrier. Carrier's signature will evidence approval and acceptance of Shipper generated bill of lading. Absence of Carrier's signature does not evidence the contrary when goods tendered hereunder are transported by Carrier in performance of obligation under this Agreement.

6. Rates and Charges.

(a) Rates and charges for traffic moved under this Agreement shall be as agreed to between the parties hereto in writing and are to be contained in a rate schedule or memorandum of rates and charges mutually accepted and agreed to by Broker and Carrier, and attached to this contract as Appendix A. Rates may be established or amended verbally in order to meet specific shipping schedules or requirements, as mutually agreed, but such verbal agreement shall be reduced to writing within 10 working days of the movement of the involved freight, in order to be and/or remain binding between the parties.

(b) Any rates, charges, classifications and/or rules in tariffs filed or published by Carrier shall not apply to any such shipment; provided however, if, at any time during the term of this Agreement, the charges published in any tariff or tariffs which would, in the absence of this Agreement, be applicable to a shipment hereunder, are lower than the charges resulting from application of the terms of the terms, conditions and provisions of this Agreement, the terms, conditions and provisions of such tariff or tariffs shall be deemed to be incorporated herein and the charges resulting from the application thereof shall be applicable hereunder to such shipment.

(c) [Carrier represents and warrants that the rates and charges applicable to any shipment hereunder between locations are and, during the term of this agreement, shall be and remain, no higher than the charges that would be assessed by Trucker, whether pursuant to any disclosed or undisclosed contract with any shipper, consignor or other person with respect to a shipment of a like commodity, in like quantity and packaging, from any location in the same county as the origin of such shipment under this Agreement to any location in the same county as the destination of such shipment hereunder.]

7. **Payment Responsibility.** Carrier and Broker agree that Broker shall be solely responsible for the payment of all of Carrier's rates and charges under this Agreement and that Carrier shall not invoice or otherwise seek the collection of its charges from any other person for any particular shipment. Carrier agrees that a Shipper's payment of freight charges and fees to Carrier satisfies the Shipper's obligation for payment of any sums due Carrier.

8. **Invoice Procedure.** Carrier shall invoice directly to Broker all charges relating to a particular shipment. Broker shall pay (or cause to be paid) directly to Carrier, within 30 calendar days after receipt of invoices for transportation performed pursuant to this Agreement. Upon request of Broker, Carrier shall provide Broker with copies of signed bills of lading and delivery receipts as evidence of such services. Carrier shall retain proofs of pickup and delivery for at least one year from date of delivery. If a bill of lading was not provided at origin, a written and signed delivery receipt may be accepted as proof of delivery at Broker's option.

9. **Broker's Right of Set-off.** In the event of an overcharge, over collection, duplicate payment, or claim for loss, damage or injury filed with Carrier, Carrier agrees that Broker shall have the right to set-off an amount sufficient to cover the overcharge, over collection, duplicate payment of claim, and to deduct and withhold such amount from any freight charge payments due Carrier.

10. **Hazardous Materials.** Carrier and Broker shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 C.F.R. § 172.800 and § 173 et seq. to the extent that any shipments constitute hazardous materials. Carrier shall defend, indemnify and hold Broker harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of Carrier's failure to comply with applicable hazardous materials laws and regulations.

11. **Shipments Producing Claims, Rejections, Etc.**

(a) When a shipment is partially or wholly refused or rejected by the receiver, or Carrier is unable to deliver it for any reason, Carrier shall notify Broker and the shipper in order to receive disposition instructions. Until such disposition instructions are received, Carrier must place the shipment in a public warehouse under Broker's name or in its terminal or storage facility under reasonable security and provide written notice of such act to Broker. Carrier shall have no right to sell, auction or otherwise dispose of any property tendered to it but which is undeliverable, without providing written notice of such intent to Broker and to Shipper at least 30 days in advance of such sale, auction or other disposition.

(b) Carrier shall have no right to assert any lien on or against any property transported under this Agreement. However, should a consignor or consignee notify Broker of a claim for loss or damage to property transported hereunder, Carrier agrees that Broker, and consignor/consignee shall have the right to set-off an amount sufficient to cover such claim and to deduct and withhold such amount from any payments due Carrier.

12. Liability of Carrier.

(a) Carrier shall be liable to Broker, its Shippers or beneficial owners of the cargo, or their respective officers, directors, employees, affiliates, successors and assigns for the full value of actual loss, damage, or injury to freight, persons, business or other property, including expenses for delay, costs of recovery, cleanup or containment of any commodity, occurring while a shipment was in the possession or under the control of Carrier pursuant to this Agreement or resulting from Carrier's performance of or failure to perform the services provided herein. For purposes of this Agreement all liability standards and burdens of proof hereunder are governed by the common law applicable to common carriers, and by 49 U.S.C. § 14706, without waiver, release rate or other limitation of liability. The above strict liability standard and section of the United States Code will apply unless another degree of responsibility is called for by the terms and conditions herein, in which event this Agreement shall prevail. Full value of lost of damaged items shall mean any replacement cost established by trade sale or other invoice documentation, plus any additional transportation loss. Expenses of delay will include employee or equipment compensation, overtime and the like. Damages of delay may include loss or sale and profit. Carrier's failure to issue or sign the bill of lading will not avoid liability hereunder.

(b) Claims against Carrier for loss, damage, injury or delay to freight may be filed with Carrier by Broker, Shippers, parties to the bill of lading, or the beneficial owner of the freight. All filed claims shall be acknowledged, investigated and disposed of by Carrier in accordance with 49 C.F.R. § 1005, or any modification or amendment thereof.

13. Insurance of Carrier.

(a) Carrier shall comply with the financial responsibility requirements of the appropriate federal and state laws and regulatory agencies through which it is authorized to operate.

(b) Carrier shall maintain primary cargo insurance in an amount equal to the full value of the maximum quantity of goods expected to be transported at any one time under this Agreement, but in no event in an amount less than \$100,000 per shipment, to compensate Broker, its Shippers, or the beneficial owner of the goods for any and all loss, damage or delay to property which was placed in possession or control of Carrier in connection with transportation or other services under this Agreement.

(c) Carrier shall also maintain primary public liability and property damage insurance in an amount sufficient to cover any and all liability risks associated with its activities and operations in connection with transportation and other service under this Agreement, and in no event in an amount less than \$1,000,000.

(d) Carrier shall maintain worker's compensation coverage and comply with applicable federal and state employment laws for all personnel employed by Carrier in connection with its transportation operations and services under this Agreement.

14. Indemnification by Carrier. Carrier shall defend, hold harmless, and indemnify Broker and its customers, their officers, directors, employees, agents or representatives, from or

for, any and all liability or claims for loss or damage to any freight in the possession or control of the Carrier, in connection with transportation under this Agreement, and any and all liability or claims for personal injury or death or property loss or damage arising out of the acts or omissions of Carrier in providing transportation under this Agreement.

15. No Solicitation of Customers.

(a) Carrier and Broker agree that Broker, at great expense has developed a broad shipper/receiver customer, and vendor base. Carrier and Broker agree that disclosure of the Broker's customer's identity to Carrier constitutes valuable consideration. During the term of this Agreement and for a period of two years from the date of the termination of this Agreement, Carrier shall not, directly or indirectly solicit or do business of a transportation or warehousing nature with any of Broker's customers who are or were serviced by Carrier as a result of this Agreement unless otherwise agreed to in writing.

(b) Solicitation prohibited under this Agreement means participation in any conduct, whether direct or indirect, the purpose of which involves transportation of shipper traffic by the Carrier for which the Carrier does, or did in the past, provide transportation services for that shipper traffic under arrangements first made or procured by Broker. Solicitation includes conduct initiated or induced by Carrier, or accepted from or through others in any way related to or affiliated with the Carrier.

(c) If Carrier should perform services of a transportation nature for compensation for any Broker customer without prior documented authorization from Broker during said time period, in violation of this Agreement, Carrier shall pay to Broker within ten days of each such violation, an amount equal to 15% of all revenue invoiced Broker customers by Carrier.

16. Confidentiality. Carrier shall not utilize Shipper's or Broker's name or identity in any advertising or promotional communications without written confirmation of Shipper's or Broker's consent and the parties shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. This Section 16 shall survive the cancellation, termination or expiration of this Agreement.

17. Force Majeure. Neither party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, act of terrorism or the intervention of any government authority, or any other cause outside of the reasonable control of the Carrier or Broker, provided that the party so prevented uses its best efforts to perform under this Agreement and provided further, that such party provide reasonable notice to the other party of such inability to perform.

18. Resolution of Disputes/Venue/Limitation of Actions.

(a) If any dispute concerning any matter covered by the terms of this Agreement is alleged or agreed to be within the primary or exclusive jurisdiction of the Surface Transportation Board ("STB") or Department of Transportation ("DOT"), the dispute must be

submitted to the STB in the form of a complaint or declaratory action. The submission shall be in accordance with the provisions of 49 C.F.R. §§ 1111 or 1117 or any other applicable regulations, modifications or amendments thereof, and shall contain specific references to the terms of this Agreement that the party believes have been violated. Other than the filing of suit to protect against the running of any period of limitations set forth in this Agreement or applicable statute, neither party may take any court or arbitration action prior to the decision of the STB or DOT, and the decision of the STB or DOT shall be final and binding, subject to judicial review.

(b) In the event that a dispute is not asserted by either party to be within the exclusive or primary jurisdiction of the STB, or that the STB refuses to accept a complaint or declaratory order, refuses to make a ruling on the subject matter of the dispute, or finds that it lacks primary or exclusive jurisdiction over the subject matter, a dispute may be submitted to the American Arbitration Association for arbitration under that Association's Rules and Procedures. If so submitted to arbitration, no court action can be taken by either party prior to conclusion of the arbitration proceeding (other than the filing of suit to protect against the running of any period of limitations set forth in the Agreement or applicable statute), and the Arbitrator's decision shall be final and binding, subject to judicial review.

(c) The parties agree that any disputes arising under this Agreement shall be mediated, arbitrated or litigated in a forum located in the city, county and state in which Broker maintains its principal place of business. For that purpose, both parties agree to submit to the venue and jurisdictional requirements of the federal courts, or the American Arbitration Association sitting in or with jurisdiction over Broker's principal place of business. In the enforcement of any obligation arising out of or in connection with this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred.

(d) Notwithstanding the preceding, claims involving loss of or injury or damage to freight, persons, business or other property may be filed in a state or federal court, which has the origin, destination or place of loss or damage within its jurisdiction.

(e) Proceedings for the recovery of charges relating to any shipment tendered to Carrier pursuant to this Agreement must be filed within one year of date of delivery of the shipment, except that proceedings for the recovery of charges relating to a shipment inadvertently transported without a pre-existing rate in effect must be filed within six months of delivery of the shipment.

(f) Proceedings based on loss, damage, injury or delay to freight transported pursuant to this Agreement shall be initiated within two years and a day from the later of the dates on which the claimant and Broker receive a written disallowance from Carrier.

19. **Assignment.** Neither party to this Agreement may assign their rights or obligations under this Agreement without the express written consent of the other party (except right of recovery for recovery of overcharges, over collections, duplicate payments or for loss, damage or injury to persons, business or property).

20. **Severability/Survivability.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of

competent jurisdiction to be invalid or unenforceable, the parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the parties shall survive the termination of this Agreement for any reason.

21. **Status of Parties.** In the performance of services hereunder, the relationship of each party to the other shall be that of independent contractor. Nothing in this Agreement shall be construed as establishing an employment, agency, partnership or joint venture relationship between the parties. Neither party shall be responsible for any debts or obligations incurred by the other in performance of its business activities, except as expressly provided herein.

22. **Binding Nature.** This Agreement shall be binding upon the parties hereto, their legal representatives, successors and authorized assigns.

23. **Nonwaiver.** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

24. **Counterparts.** This Agreement may be executed in any number of identical counterparts and each such counterpart shall be deemed a duplicate original hereof.

25. **Governing Law.** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Ohio, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

26. **Notices.** All notices under this Agreement required or authorized to be given by either party shall be given in writing to be sent by certified mail, return receipt requested, or overnight delivery service, and shall be addressed to the company, person, and address set forth in the signature section of this Agreement with copies sent via similar means to any person(s) additionally listed therein. Either party may via similar means notify the other party of any change in or addition to the persons required to receive subsequent notices on its behalf.

27. **Entire Agreement.** The provisions contained in this Agreement together with Appendix A and other appendices properly express and memorialize the complete agreement and understanding between the parties, including those as contained in all prior agreements, both verbal or written, and there are no other contracts or understandings whatsoever, express or implied. This Agreement may not be changed, waived or modified except by written agreement signed by Carrier and Broker stating that such writing is an amendment to this Agreement.

28. **Judicial Proceedings; Waiver of Jury.** Carrier and Broker irrevocably consent to the non-exclusive jurisdiction of the courts of the State of Ohio and the United States District Court for the Southern District of Ohio and waives any objection based on venue or forum non-

convenience with respect to any action instituted therein arising under this Agreement or the transactions related hereto, in each case, whether now existing or hereinafter arising, and whether in contract, tort, equity, or otherwise, and agrees that any dispute arising out of the relationship of Carrier and Broker or the conduct of such persons in connection with this agreement or otherwise shall be heard only in the courts described above. CARRIER AND BROKER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATED TO OR ARISING OUT OF THIS AGREEMENT. Carrier and Broker each confirm that the foregoing waivers are informed and freely made.

IN WITNESS WHEREOF, the Broker and Carrier hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives effective as of the dates first above written.

BROKER:

CARRIER:

X1 Logistics, LLC

Company Name

_____ Company Name

431 Ohio Pike, Suite 214,

Address

_____ Address

Cincinnati, Ohio 45255-3629

City, State, Zip Code

_____ City, State, Zip Code

Telephone No: 513-528-9961

_____ Telephone No:

Facsimile No. **513-528-7400**

_____ Facsimile No:

By: _____

By: _____

Signature _____

Signature _____

Printed Name _____

Printed Name _____

Title _____

Title _____