

THIRD PARTY PROVIDER / SHIPPER TRANSPORTATION AGREEMENT

This THIRD PARTY PROVIDER / SHIPPER TRANSPORTATION AGREEMENT (this "Agreement") is made effective _____, 20__ by and between X1 Logistics, LLC, an Ohio limited liability company having its principal offices at 431 Ohio Pike, Suite 214, Cincinnati, Ohio 45255-3629 ("X1") and _____ having its principal offices at _____ ("Shipper").

RECITALS

A. X1 is a transportation broker, duly authorized by the DOT under License No. [MC 514643] to arrange for the transportation of property by motor carriers on behalf of shippers (consignors) or receivers (consignees) and for the purposes of contract sufficiently controls the arrangements for transportation of the commodities to be tendered to Carrier under this Agreement; and

B. Shipper, to satisfy some of its distinct, varying and continuing transportation needs, desires to utilize the services of X1 to arrange for transportation of Shipper's freight through the use of various carriers (each referred to herein as a Carrier and collectively as the Carriers).

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises herein and intending to be legally bound, X1 and Shipper 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. Upon termination Shipper shall be responsible to pay X1 for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to Shipper.

2. **Service.** X1 agrees to arrange 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 and regulations relating to the brokerage of the freight covered by this Agreement. X1's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of Shipper's freight. Shipper and X1 agree that this Agreement shall govern any and all shipments for which transportation was arranged for Shipper by X1 during the term of this Agreement whether regulated or unregulated commodities in inter- or intra-state transportation. Shipper shall be responsible to X1 for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.

3. **Receipts and Bills of Lading.** Shipper and X1 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. If requested by Shipper within 18 months of delivery, X1 agrees to provide Shipper with proof of acceptance and delivery of such loads in the form of a signed bill of lading or proof of delivery, as specified by Shipper. The terms and conditions of any freight documentation used by X1 or a Carrier does not supplement, alter, or modify the terms of this Agreement. 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. Shipper 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 Shipper and any Carrier.

4. **Rates and Charges.** 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 X1 and Shipper, 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. X1 shall invoice directly to Carrier all charges relating to a particular shipment. Shipper shall pay (or cause to be paid) directly to X1, within 30 calendar days after receipt of invoices for transportation performed pursuant to this Agreement.

5. **Claims.**

(a) Shipper must file claims for cargo loss or damage with X1 within 9 months from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. Shipper must file any civil action against X1 in a court of law or submit a claim for arbitration, as applicable, within two years and a day from the date a Carrier or X1 provides written notice to Shipper that the Carrier has disallowed any part of the claim in the notice.

(b) If payment of claim is made by X1 to Shipper, Shipper automatically assigns its rights and interest in the claim to X1 so as to allow X1 to subrogate its loss. In no event shall X1 or X1's Carrier be liable to Shipper or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless Shipper has informed X1 in written or electronic form, prior to or when tendering a shipment or series of shipments to X1, of the potential nature, type and approximate value of such damages, and X1 specifically agrees in written or electronic form to accept responsibility for such damages.

6. **Hazardous Materials.** Shipper and X1 shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform X1 immediately if any such shipments do constitute hazardous materials. Shipper shall defend, indemnify and hold X1 harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of Shipper's failure to comply with applicable hazardous materials laws and regulations.

7. **No Solicitation of Carriers.**

(a) Shipper and X1 agree that X1, at great expense has developed a broad shipper/receiver customer, and Carrier base. Shipper and X1 agree that disclosure of any Carrier's identity to Shipper 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, Shipper shall not, directly or indirectly solicit or do business of a transportation or warehousing nature with any of X1's Carriers who serviced Shipper 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 a Carrier who does, or did in the past, provide transportation services for Shipper traffic under arrangements first made or procured by X1. Solicitation includes conduct initiated or induced by Carrier or Shipper, or accepted from or through others in any way related to or affiliated with the Carrier or Shipper.

(c) If Shipper should use Carrier to perform services of a transportation nature for compensation without prior documented authorization from X1 during said time period, in violation of this Agreement, Carrier shall pay to X1 within ten days of each such violation, an amount equal to 15% of all revenue invoiced Shipper by Carrier (or their related parties, as applicable).

8. **Indemnification.** X1 and Shipper shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and accessorial charges to Carriers, arising out of their failure to perform in accordance with this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party. The measurement of the loss, damage or injury shall be the lesser of the actual replacement cost or the cost of repair to the commodities so lost, damaged or destroyed, subject to a maximum amount not exceeding \$100,000 per truckload shipment.

9. **LIMITATION OF LIABILITY.** IT IS UNDERSTOOD AND AGREED THAT X1 IS NOT A CARRIER AND THAT X1 SHALL NOT BE HELD LIABLE FOR LOSS, DAMAGE OR DELAY IN THE TRANSPORTATION OF SHIPPER'S PROPERTY

UNLESS CAUSED BY X1'S NEGLIGENT ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS AGREEMENT. CARRIER'S AND X1'S LIABILITY FOR ANY ONE SHIPMENT SHALL NOT EXCEED \$100,000 IN THE AGGREGATE. NEITHER BROKER NOR ANY CARRIER SHALL BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF ITS KNOWLEDGE.

10. 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.

(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 X1 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 X1'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.

11. 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); provided, however, X1 shall be permitted to assign rights and obligations in and to this Agreement to any successor to substantially all of its related business without the prior consent of Shipper.

12. **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.

13. **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.

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

15. **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.

16. **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 Shipper or X1, provided that the party so prevented uses its best efforts to perform under this Agreement.

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

18. **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.

19. **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.

20. **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 Shipper and X1 stating that such writing is an amendment to this Agreement.

21. **Judicial Proceedings; Waiver of Jury.** Shipper and X1 irrevocably consent to the 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 to the extent any dispute arising out of the relationship of Shipper and X1 or the conduct of such persons in connection with this Agreement or otherwise is permitted to be brought in a court of law, such dispute, claim or cause of action 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.** Shipper and X1 each confirm that the foregoing waivers are informed and freely made.

IN WITNESS WHEREOF, X1 and Shipper hereto have caused this Third Party Provider / Shipper Agreement to be executed in their respective names by their duly-authorized representatives effective as of the dates first above written.

X1:

SHIPPER:

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 _____

Title _____

Printed Name _____

Title _____

APPENDIX A
RATES AND CHARGES

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