

## EXPRESS SHIPPING SERVICES AGREEMENT

This Agreement is made and entered into effective as of September 1, 2010, by and between Stephen F. Austin State University, an institution of higher education of the State of Texas ("University" or "SFA"), and eShipGlobal, Inc. with its principal place of business at 5800 Campus Drive, Suite 220A, Irving, TX 75063 ("Contractor").

### WITNESSETH

**THAT WHEREAS** Stephen F. Austin State University is engaged in the use of express shipping services; and

**WHEREAS** Contractor represents that it has the experience and expertise to provide such express shipping services and logistics management services;

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants expressed herein, the parties agree as follows:

### **TERM**

The term of this Agreement shall commence on September 1, 2010 and terminate on August 31, 2012.

### **CONTRACTOR SERVICES**

- a. Contractor will provide the following services:  
Contractor's web-based software hosted by Contractor for all University departments to include 1) management of logistic services; 2) storing individual repeat shipment information; 3) rate shopping among carriers selected by University; 4) load any special contracted carrier rates specific to University; 5) provide alternative rates available through Contractor; 6) provide ability to print shipping labels and documents from local printers for any selected carrier; 7) store and make available historical records of all transactions processed by University, by account, department, time period, carrier or as requested by University, and 8) provide monthly or cyclic electronic invoices to University in a format prescribed by University.
- b. Contractor agrees to furnish University with access to its Shipping and Information Management Solution which will enable the flow of letter and package shipment information between SFA and the Carriers.
- b. Contractor agrees that it will act as the central point of contact with the Carriers with respect to invoices and payment thereof and with respect to processing claims by SFA related to shipment of letters and packages initiated by SFA with the Carriers via Contractor's Shipping and Information Management Solution. As between Contractor and the Carriers, Contractor will act as the customer of the Carriers. In such capacity, Contractor will receive invoices from the Carriers with respect to University shipments, and Contractor agrees to pay such invoices. Following receipt of a Carrier invoice, Contractor will invoice the University for the shipping services performed by such Carrier with respect to the SFA shipments reflected on such Carrier invoice; provided, all Contractor invoices submitted to the University will be prepared based upon the University's discount.

- d. Contractor agrees to promptly enter express shipping pricing from state and cooperative contracts to which the University has access, and provided to Contractor by Carrier, into its Shipping and Information Management Solution. Such information will be made available to the University through the University's access to Contractor's web-based system. In addition to the University's shipping information, additional features and functionality are also available to the University.
- e. Contractor agrees to provide one time training for power users and procurement staff at the University. Subsequently, procurement staff may conduct training sessions to train users campus wide. Contractor will assist University procurement staff by providing online materials, powerpoint presentation and steps required for first time users to go online to place shipping orders.
- f. Contractor reserves the right to add or delete Carriers upon not less than sixty (60) days written notice to the University.
- g. Contractor agrees to make Express and Ground Shipping for Domestic and International Destinations available for order by the University via Contractor's Shipping Information Management Solution (such services to be performed by the Carriers):

#### **INSURANCE, LICENSES, PERMITS, TAXES, FEES, LAWS AND REGULATIONS**

- a. Contractor will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor's performance of this Agreement.
- b. Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor's performance of this Agreement.
- c. Contractor will comply with, and will be responsible for requiring its officers and employees to comply with, all applicable federal, state, and local laws and regulations.
- d. Contractor will obtain and maintain in force, at Contractor's sole expense, all insurance required by state or federal law, including but not limited to workers' compensation and unemployment insurance.
- e. Stephen F. Austin State University is a tax exempt entity under the laws of the State of Texas.

#### **CONFIDENTIAL INFORMATION**

- a. As a contractor for the University, Contractor shall comply with the provisions regarding client confidentiality. Additionally, Contractor shall not use, publish, or disclose to any third party any data, notes, information or records related to Contractor's performance of this Agreement or any data or information disclosed to Contractor that is identified by University as confidential or proprietary data. In the event that Contractor is required to disclose any data, notes, records, or information that is subject to this Paragraph, Contractor shall notify University prior to such disclosure in order that University may take such action as may be available to prohibit the disclosure of the information.
- b. University acknowledges that the software used by Contractor is confidential in nature and constitutes a trade secret belonging to Contractor. University agrees to hold in confidence and not to license or disclose its contents, including methods or ideas used in the software, to anyone except to University Departments that the disclosure is confidential and that the employee must keep the web based software confidential by using the same care and discretion that they use with other data designated by University as confidential.

Provided, however, that University is an agency of the State of Texas and subject to the provisions of the *Texas Public Information Act*, Chapter 552, *Texas Government Code*, and nothing in this Agreement shall be construed to prevent or restrict the University from full compliance with the provisions of this State law.

**COMPENSATION**

- a. SFA will compensate Contractor for services based on the Pricing Table below. The transaction fee is included in the pricing of the shipment on the invoice to the University. The rate of compensation to Contractor shall be reviewed and negotiated annually on the Anniversary Date of the Agreement, such Anniversary Date shall be designated as September 1.

Volume	Transaction fee	
	Domestic \$/label	International \$/label % Documents
0 -10,000	0.75	1.00
10,001- 50,000	0.50	1.00
50,001- 200,000	0.30	1.00
Over 200,000	0.20	1.00

- b. If any package is not delivered at or before the commitment time, as guaranteed by Carrier (except as applicable under Exceptions clauses), Contractor will automatically file for a refund for that late delivery. Fifty percent (50%) of any successful claim against a carrier made on behalf of University will be credited to the associated shipment for the University within fourteen working days of receipt of credit from Carrier. Contractor shall retain the other fifty percent (50%) as payment for monitoring shipments and claim processing wherein the carrier fails to perform at the service level promised to and paid for by University. The University acknowledges and agrees that Contractor is not responsible for shipments that are delayed due to causes beyond carriers' control including but not limited to 1) the unavailability during normal business hours or refusal of a person to accept delivery of a shipment; 2) disruption in air or ground transportation networks caused by natural events such as weather and natural disasters.
- c. Invoices will be prepared based upon the University's Discounts (i.e., the discounts from the regularly published rates of the Carriers). The Discounts are subject to change based on contracts with carriers. Invoices from Contractor will be posted on the system bi-monthly. Payments will be made by the University to Contractor during the period within Net 15 days of the posting of each Invoice on the system.
- d. Contractor will be sending an invoice file (txt) to University in format suitable to University on a bi-monthly basis. University will upload file to its financial management system to create vouchers to pay Contractor.
- e. Upon mutual agreement of the parties, Contractor may be compensated by University for any professional services including customizing the software specific to University or managing University logistic services.

**INDEPENDENT CONTRACTOR**

Contractor recognizes that it is engaged as an independent contractor and acknowledges that University shall have no responsibility to provide vacation, insurance or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an

independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of University by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of University, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Contractor hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

#### **TERMINATION**

- a. If either party is in default of performance of any obligation under this Agreement, the party that is not in default may give written notice of the default to the other party and if the party notified fails to correct the default within sixty (60) days or within such period fails to satisfy the party giving notice that the default does not exist, the party giving notice may terminate this Agreement upon expiration of the sixty (60) day period.
- b. SFA may terminate this Agreement immediately in the event of the filing by or against Contractor of a petition for relief in bankruptcy or for receivership, or in the event that Contractor becomes insolvent.
- c. The termination of this Agreement shall not affect any right or remedy that has accrued to either party at the time of termination.
- d. Either party may terminate this Agreement, without cause, upon sixty (60) days written notice to the other party.

#### **INDEMNIFICATION**

**Contractor will save and hold harmless University and University's officers and employees from all claims, demands, causes of action, and judgments for taxes, license fees, excises, fines, and penalties; for supplies, services, or merchandise purchased by Contractor; for wages and fringe benefits of Contractor's employees; and for injury or death of any person or damage to property that result directly or indirectly from the negligent or intentional acts or omissions of Contractor or its officers, agents, or employees in the performance of this Agreement.**

#### **ASSIGNMENT**

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.

#### **ENTIRE AGREEMENT; MODIFICATIONS**

The Agreement supersedes all prior agreements, written or oral, between Contractor and University and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by the University and Contractor.

#### **VENUE; GOVERNING LAW**

Nacogdoches County, Texas, shall be the proper place of venue for suit on or in respect of the Agreement. The Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

## **REPRESENTATIONS AND WARRANTIES BY CONTRACTOR**

If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

## **REQUIRED CERTIFICATIONS**

Texas Family Code Child Support Certification. By signature hereon, Contractor certifies as follows: "Under Section 231.006, Texas Family Code, the Contractor certifies it is not ineligible to receive the payments specified in the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."

Sales Tax Certification. By signing the Agreement, Contractor certifies as follows: "Under Section 2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Franchise Tax Certification. By signing the Agreement, a corporate or limited liability company, certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Contractor acknowledges and agrees that if this certification is false or inaccurate, at University's option, the Agreement may be terminated and payment withheld.

Payment of Debts to the State of Texas. That pursuant to Section 403.0551, Texas Government Code, Contractor agrees that any payments owing to the Contractor under this contract may be applied towards any debt or delinquent taxes that the Contractor owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

## **LOSS OF FUNDING**

Performance by University under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then University shall issue written notice to Contractor and University may terminate the Agreement without further duty or obligation hereunder.

## **FRAUD AND ETHICS**

Contractor is hereby advised that the University maintains policies regarding fraudulent or unethical conduct. These policies establish examples of acceptable and unacceptable conduct as well as procedures and responsibilities for detecting, reporting and resolving instances of known or suspected fraudulent activity and prescribe a coordinated approach toward investigation and resolution of fraudulent activity; reference University Policies C-46, Fraud and C-33, Purchasing Ethics and Confidentiality.

## **DISPUTE RESOLUTION**

To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Chief Business Officer of University shall examine Contractor's claim and any counterclaim and

negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

IN WITNESS WHEREOF, the parties have executed this Agreement in the year and on the day first above written.

**Stephen F. Austin State University**

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By: Baker Pattillo, President

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Date

**eShipGlobal, Inc.**

  
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Srinivasan, President and CFO

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08/10/2010