

SERVICES AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND  
EPG HOLDINGS, LLC

This Services Agreement (“Agreement”) is entered into and effective April 1, 2020 (the “Effective Date”), by and between The Texas A&M University System (“TAMUS”), an agency of the State of Texas, and EPG Holdings, LLC (hereafter referred to as “PROVIDER”). TAMUS and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

TAMUS and PROVIDER hereby agree as follows:

**1. SCOPE OF WORK**

PROVIDER will provide consulting services to TAMUS and advise TAMUS on strategies for aligning its relationships with key industry representatives, trade associations and other stakeholders to enhance TAMUS’ ability to execute on its strategic plan and provide support for the System member universities and agencies (“Scope of Work”). PROVIDER shall provide such services pursuant to direction from TAMUS, and shall provide deliverables and meet deadlines as reasonably requested and established by TAMUS. It is expressly understood and agreed that PROVIDER’S Scope of Work specifically excludes any matters relating to the federal government, and PROVIDER will not participate in any discussions or meetings involving TAMUS’ relationship, contractual and otherwise, with the federal government and similarly will not participate in the review or preparation of any memoranda, studies, contracts or other documents relating to TAMUS’ interactions with the federal government.

**2. TERM OF THE AGREEMENT**

The initial term of this Agreement shall begin on the Effective Date and will extend until May 31, 2021 (the “Initial Term”). This Agreement can be extended for one year beyond such termination date upon written agreement of both Parties. Any extensions shall be at the same terms and conditions unless otherwise agreed to in writing by TAMUS and PROVIDER.

**3. PAYMENT TERMS**

- A. For the services rendered under this Agreement, TAMUS shall pay PROVIDER \$25,000.00 per month.
- B. PROVIDER’s travel expenses may be reimbursed only if PROVIDER obtains approval for such travel in advance and in writing.
- C. PROVIDER will invoice TAMUS monthly for the Scope of Work identified in Section 1. Payment will be made to PROVIDER upon approval of such invoice by TAMUS. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30<sup>th</sup> day unless a discount has been arranged for more immediate payment.

- D. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:  
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>
- E. All invoices must reference the TAMUS purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and description of services provided to include but not limited to time, deliverables, and activities.

#### **4. DEFAULT AND TERMINATION**

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS may terminate this Agreement upon seven (7) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the seven-day period), provided that said failure is through no fault of TAMUS.
- B. TAMUS may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.

#### **5. PUBLIC INFORMATION**

- A. PROVIDER acknowledges that TAMUS is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon TAMUS's written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUS has a right of access.
- C. PROVIDER acknowledges that TAMUS may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **6. DISPUTE RESOLUTION**

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUS and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of



a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

## 7. INSURANCE

- A. For the duration of this Agreement, PROVIDER shall obtain and maintain automobile liability insurance coverage that meets or exceeds the minimum automobile insurance liability coverage limits required by the laws of the State of Texas. PROVIDER shall provide documentation to TAMUS certifying such coverage within five (5) business days of the effective date of this Agreement.
- B. In lieu of obtaining workers compensation insurance coverage, PROVIDER is required to execute and deliver to TAMUS a Hold Harmless agreement in the form attached hereto as Exhibit A.

## 8. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless TAMUS from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TAMUS. TAMUS will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of TAMUS relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services

contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the Parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both Parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMUS.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.
- M. **Force Majeure.** Neither party will be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages



are caused by, a Force Majeure, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. Force Majeure is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given to the unaffected party promptly thereafter, but no later than five business days after its occurrence which notice must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a party's financial inability to perform its obligations shall in no event constitute a Force Majeure.

- N. **Loss of Funding.** Performance by TAMUS under this 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, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.
- O. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- P. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- Q. **Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each Party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in

the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

- S. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is or becomes inaccurate.
- T. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS and PROVIDER can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:


TAMUS:                   The Texas A&M University System  
301 Tarrow St., Suite 361  
College Station, Texas 77840  
Attention: Jeff Zimmermann  
Phone: (979) 458-6410  
Fax: (979) 458-6250  
E-mail: [jzimmermann@tamus.edu](mailto:jzimmermann@tamus.edu)

PROVIDER:               EPG Holdings, LLC  
200 Oak Run Lane  
Round Top, Texas 78954  
Phone: 979-446-6500  
Fax:  
Email: [epgholdings72@gmail.com](mailto:epgholdings72@gmail.com)

- U. **Prohibition On Contracts Related To Persons Involved In Human Trafficking.** Under Section 2155.0061, Government Code, PROVIDER certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

**The Texas A&M University System**

By   
Billy Hamilton  
Deputy Chancellor and Chief Financial Officer

4/1/2020  
Date

**EPG Holdings, LLC**

By   
Name:  
Title:

4/1/20  
Date

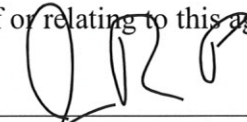


**EXHIBIT A**

**Hold Harmless Agreement**

In consideration of the A&M System permitting PROVIDER to enter the A&M System's property to provide certain services, PROVIDER agrees to hold The Texas A&M University System, its Board of Regents, officers, employees, and agents harmless and relieve them from any responsibility or liability for any legal action or damage, cost, or expense (including attorneys' fees) resulting from that work on the A&M System's property and which may result in any injury to a worker employed by PROVIDER.

The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of or relating to this agreement and all of the transactions it contemplates.

Signature: 

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

Printed Name of Person Signing: James P. Perry

Title: Manager

Date: 4/1/20