

This Agreement, COG-2106A, entered into as of the 1st of January in the year of 2021.

**MASTER AGREEMENT**

*between*

**Cooperative Council of Governments**

6001 Cochran Road, Suite 333  
Cleveland, Ohio 44139

*and*

**PRO\*ACT**

40 Lower Ragsdale Drive  
Suite #200  
Monterey, California 93940

*and*

**Equalis Group LLC**

5550 Granite Parkway, Suite 298  
Plano, Texas 75024

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THIS MASTER COOPERATIVE PURCHASING AGREEMENT (this "**Master Agreement**"), effective as of January 1, 2021 (the "**Effective Date**"), is entered into by and between The Cooperative Council of Governments, Inc., an Ohio non-profit corporation organized as a regional council of governments under Chapter 167 of the Ohio Revised Code, with its principal place of business at 6001 Cochran Road, Suite 333, Cleveland, Ohio 44139 ("**CCOG**"), PRO\*ACT, a California limited liability corporation with its principal place of business at 40 Lower Ragsdale Drive, Suite #200, Monterey, California 93940 ("**PRO\*ACT**"), and Equalis Group LLC, a Delaware limited liability company with its principal place of business at 5550 Granite Parkway, Suite 298, Plano, Texas 75024 ("**Equalis**"). Throughout this Master Agreement, CCOG, PRO\*ACT, and Equalis are referred to interchangeably as in the singular "**Party**" or in the plural "**Parties**."

## **SECTION 1. RECITALS**

**A.** CCOG is a Council of Governments formed under Chapter 167 of the Ohio Revised Code and established for the purpose of (a) developing and implementing certain sound business practices and processes as shared services to be made available to its members, and (b) serving as a lead public agency (a "**Lead Public Agency**") for Equalis Group ("**Equalis Group**"), a national cooperative purchasing organization, by publicly procuring Master Agreements for products and services to be made available to current and prospective Equalis Group members ("**Equalis Group Member**" or "**Member**").

**B.** Equalis is the third-party procurement administrator for and duly authorized agent of CCOG, and in that role manages the procurement, marketing, sales, reporting, and financial activities of, for, and on behalf of CCOG at the direction and with the authorization of the CCOG Board of Directors.

**C.** To the extent that the laws of a state, region, territory, and/or country permit, any public sector entity may join Equalis Group as a Member. The term "**Public Sector Entities**" includes, but is not limited to, political subdivisions, municipal corporations, counties, townships, villages, school districts, special districts, public institutions of higher education or training, units of government, state/regional/territorial agencies, state/regional/territorial governments, federal/national agencies, federal/national governments, and other entities receiving financial support from tax monies and/or public funds.

**D.** Any organization that is exempt from federal income tax under **Section 501(c)(3)** of the IRS Code, and any other entity if permitted under the IRS Code and other applicable law, including for-profit companies, may also join Equalis Group as a Member.

**E.** Equalis Group makes its Master Agreements available through groups and associations ("**Association Partners**") that contract with Equalis for the purpose of providing additional benefits to the members of such Association Partners.

**F.** Members, Association Partners, and Association Partners' members are referred to throughout this Master Agreement as Equalis Group participants ("**Equalis Group Participants**").

**G.** CCOG issued request for proposal ("**RFP**") #COG-2106 dated October 2, 2020 for contracting on behalf of Equalis Group Participants for produce procurement and distribution ("**Products & Services**") and awarded a contract to PRO\*ACT as the lowest responsive and responsible bidder.

**H.** PRO\*ACT desires to promote and expand its operations and increase the sales of its Products & Services to public sector, private sector, and non-profit organizations through Equalis Group. PRO\*ACT will utilize its network of Distributors to facilitate the sale of Products & Services to Equalis Group Participants.

**I.** CCOG and Equalis agree to make the Products & Services from PRO\*ACT available to Equalis Group Participants and PRO\*ACT agrees to provide the same to Equalis Group Participants who purchase Products & Services ("**Program Participants**") subject to the terms of this Master Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to the following terms and conditions:

## **SECTION 2. BUSINESS TERMS**

**2.1. Appendices.** PRO\*ACT agrees to provide Products & Services to Program Participants as may be agreed to by the Parties in accordance with the specific terms and conditions set forth in this Master Agreement and the appendices attached hereto and made a part of this Master Agreement (if one, an “**Appendix**” or more, “**Appendices**”).

- (i) **Appendix A** defines the Term of this Master Agreement and Addresses for Notices.
- (ii) **Appendix B** sets forth the Products & Services and pricing available to Program Participants under this Master Agreement.

**2.2. Terms in Appendices.** In all cases where the terms of this Master Agreement and any Appendices disagree, the terms in the Appendix shall control.

**2.3. Utilization of Products & Services.** Purchases of the Products & Services from PRO\*ACT may only be made by any Equalis Group Participant upon execution of such credit applications, forms, agreements, appendices, or other documentation (“**Customer Agreements**”) as mutually agreed upon by PRO\*ACT and Equalis.

**2.4. Personnel & Equipment.** The Parties agree that the number and types of any subcontractors, personnel, or specialized equipment which may be required to furnish Products & Services to Program Participants will be determined by PRO\*ACT. PRO\*ACT agrees to engage the number and types of subcontractors, personnel, and/or specialized equipment necessary to furnish the types of Products & Services as specified in **Appendix B** to all Program Participants throughout the Term, as defined in **Appendix A**, of this Master Agreement and any Customer Agreement.

**2.5. Rates & Charges.** The rates, fees, and charges to be charged to and paid by Program Participants for Products & Services are set forth in **Appendix B**. PRO\*ACT agrees that there are no other applicable rates, fees, charges, or other monetary incentives for Products & Services except those set forth in **Appendix B**.

## **SECTION 3. TERMS & CONDITIONS**

**3.1. Independent Contractors.** In the performance of this Master Agreement, PRO\*ACT shall be an independent contractor to CCOG and Equalis, and shall not be or act as, or be deemed to otherwise be an agent, employee, or representative of CCOG, Equalis, or any Equalis Group Participant. CCOG and Equalis shall be independent contractors to PRO\*ACT, and shall not be or act as, or be deemed to be agents, employees, or representatives of PRO\*ACT. PRO\*ACT’s employees will not be deemed to be CCOG’s and/or Equalis’s employees or employees of any Equalis Group Participant, and CCOG’s and Equalis’s employees will not be deemed to be PRO\*ACT’s employees. Nothing contained in an Appendix or this Master Agreement may be construed to be inconsistent with that relationship or status. No Party exercises direct control or supervision over the employees of the other Parties and, in fact, each Party disavows any right to do so, and no Party in any way directs the operations of the other Parties or the manner of the other Parties’ performance. No partnership, joint venture, or other relationship between the Parties or any Equalis Group Participant is created hereby.

**3.2. Operational Control.**

- (a) **PRO\*ACT Control.** As between the Parties, PRO\*ACT shall have sole and exclusive control over the manner in which PRO\*ACT and its employees, agents, subcontractors, and suppliers perform its responsibilities under this Agreement. PRO\*ACT shall engage, employ, or subcontract with such

individuals or other entities as it may deem necessary in connection therewith, provided, however, that PRO\*ACT furnishes the types and quantities of Products & Services specified in **Appendix B** to all Program Participants purchasing Products & Services throughout the Term of this Master Agreement and PRO\*ACT executes its roles and responsibilities in accordance with any Customer Agreements. Such individuals shall not be considered employees or subcontractors of CCOG, Equalis, or any Equalis Group Participant, and shall be subject to employment or engagement, and discharge, discipline, and control solely and exclusively by PRO\*ACT.

(b) **Equalis Control.** As between the Parties, Equalis shall have sole and exclusive control over the manner in which Equalis and its parent company, employees, agents, subcontractors, and suppliers perform its responsibilities under this Master Agreement. Equalis shall engage, employ, or subcontract with such individuals or other entities as it may deem necessary in connection therewith. Such individuals shall not be considered employees or subcontractors of CCOG, PRO\*ACT, or any Equalis Group Participant, and shall be subject to employment or engagement, and discharge, discipline, and control solely and exclusively by Equalis.

(c) **Taxes.** Except as otherwise specified herein, each Party shall be solely responsible for the payment of any and all wages and fringe benefits, local, state, and federal payroll taxes or contribution of taxes for unemployment insurance, pensions, workers' compensation, and other Social Security and related protection with respect to those employees engaged by that Party pursuant to the performance of this Master Agreement. Each Party will make and submit, in its name, all reports and payments required by federal, state, or local laws related to its employees, agents, subcontractors, and suppliers.

**3.3. Technical Systems; Intellectual Property.** PRO\*ACT shall retain title to its proprietary systems and methodologies used in connection with the delivery of Products & Services during the course of this Master Agreement, including, but not limited to, descriptions of the systems or methodologies, document templates, and/or project tools and software, whether owned by PRO\*ACT or licensed to PRO\*ACT by a third Party and incorporated into any sale of Products & Services ("**PRO\*ACT Systems and Methods**"). As needed, PRO\*ACT shall grant a limited license to all Program Participants subject to this Master Agreement to use PRO\*ACT's Systems & Methods during the Term of this Master Agreement and for the duration of any Customer Agreements established between PRO\*ACT and a Participant to purchase Products & Services subject to the terms of this Master Agreement until such Customer Agreements expire or are terminated.

**3.4. Confidentiality.**

(a) **Obligation.** The nature and details of the business relationship established by this Master Agreement, and the business information regarding the other Party(ies) (the "**Disclosing Party**") to which a Party(ies) (the "**Receiving Party**") may become privy during the Term of this Master Agreement (collectively, the "**Information**") constitute confidential and proprietary information, the disclosure, copying, or distribution of which could result in competitive harm to the Disclosing Party. Each Party agrees to maintain the other Parties' Information in the strictest confidence and agrees not to disclose, copy, or distribute the other Parties' Information, whether orally or in writing, directly or indirectly, in whole or in part, except to those of the Receiving Party's employees, agents, subcontractors, and suppliers with a need to know the Information. The foregoing will not limit a Receiving Party, for purposes of marketing, from informing actual or potential Equalis Group Participants of the existence of a contractual relationship between the Parties. The Parties further agree that they will require that all of their employees, agents, subcontractors, and suppliers abide by the terms of these confidentiality obligations. The confidentiality obligations set forth in this section will continue in effect for the Term of this Master Agreement and for a period of two (2) years after the date this Master Agreement is terminated or expires.

(b) **Exceptions.** Nothing herein will apply to any information (a) which is or becomes generally available to the public other than as a result of a disclosure by a Receiving Party or its representatives, (b) which was available on a non-confidential basis prior to its disclosure by the Disclosing Party or its

representatives, (c) which becomes available to a Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its representatives, provided that such source is not known to be subject to any prohibition against transmitting the information, (d) which is disclosed pursuant to an order of court; provided that in the event that proprietary information is disclosed or threatened to be disclosed pursuant to this clause (d), the Receiving Party will give the original Disclosing Party prompt, written Notice, as hereinafter defined, of such threatened disclosure and the right to defend against such disclosure, at Disclosing Party's expense, and provided further that the original Receiving Party will cooperate reasonably in such defense, or (e) which is subject to a Freedom of Information Act Request or other public records request to which a Party is, or may be, required to respond by applicable law.

### **3.5. Indemnification.**

(a) **PRO\*ACT Indemnification.** Except as otherwise provided herein and to the extent permitted by law, PRO\*ACT shall indemnify, defend, and hold harmless ("**Indemnifying Party**") CCOG and Equalis, and their respective officers, directors, employees, agents, subcontractors, suppliers, and all Equalis Group Participants subject to this Master Agreement (the "**Indemnified Party**") from and against any and all liabilities, damages, fines, penalties, costs, claims, interest, and expenses (including costs of defense, settlement, and reasonable attorneys' fees), including any claim arising from environmental health and safety laws or regulations, which are generated by claims, allegations, actions, causes of action, demands, assertions, adjudications, or suits which arise out of damage to or destruction of any property, or bodily injury (including death) suffered by any person including the Indemnified Party ("**Losses**") to the extent they are caused by gross negligence, willful misconduct, noncompliance with applicable laws, or strict products liability of the Indemnifying Party or its employees, agents, subcontractors, and suppliers. With respect to a claim under this Master Agreement, the liability of the Indemnifying Party is limited to the extent of such Indemnifying Party's gross negligence, willful misconduct, noncompliance with applicable laws, or strict products liability.

(b) **CCOG Indemnification.** Except as otherwise provided herein and to the extent permitted by law, CCOG shall indemnify, defend, and hold harmless ("**Indemnifying Party**") PRO\*ACT, its officers, directors, employees, agents, subcontractors, and suppliers subject to this Master Agreement (the "**Indemnified Party**") from and against any and all liabilities, damages, fines, penalties, costs, claims, interest, and expenses (including costs of defense, settlement, and reasonable attorneys' fees), including any claim arising from environmental health and safety laws or regulations, which are generated by claims, allegations, actions, causes of action, demands, assertions, adjudications, or suits which arise out of damage to or destruction of any property, or bodily injury (including death) suffered by any person including the Indemnified Party ("**Losses**") to the extent they are caused by gross negligence, willful misconduct, or noncompliance with applicable laws of the Indemnifying Party or its employees, agents, subcontractors, and suppliers. With respect to a claim under this Master Agreement, the liability of the Indemnifying Party is limited to the extent of such Indemnifying Party's gross negligence, willful misconduct, or noncompliance with applicable laws.

(c) **Equalis Indemnification.** Except as otherwise provided herein and to the extent permitted by law, Equalis shall indemnify, defend, and hold harmless ("**Indemnifying Party**") PRO\*ACT, its officers, directors, employees, agents, subcontractors, and suppliers subject to this Master Agreement (the "**Indemnified Party**") from and against any and all liabilities, damages, fines, penalties, costs, claims, interest, and expenses (including costs of defense, settlement and reasonable attorneys' fees), including any claim arising from environmental health and safety laws or regulations, which are generated by claims, allegations, actions, causes of action, demands, assertions, adjudications, or suits which arise out of damage to or destruction of any property, or bodily injury (including death) suffered by any person including the Indemnified Party ("**Losses**") to the extent they are caused by gross negligence, willful misconduct, or noncompliance with applicable laws of the Indemnifying Party or its employees, agents, subcontractors, and suppliers. With respect to a claim under this Master Agreement, the liability of the Indemnifying Party is limited to the extent of such Indemnifying Party's gross negligence, willful misconduct, or noncompliance with applicable laws.

### **3.6. Notice & Opportunity to Defend; Limitations & Thresholds.**

(a) **Notice; Opportunity.** If any Losses are asserted against an Indemnified Party, such Indemnified Party shall notify the Indemnifying Party as promptly as practicable and give it an opportunity to defend the same. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in connection with such defense. In the event that the Indemnifying Party in connection with such claim fails to defend against the claim within thirty (30) days after Notice of such claim, the Indemnified Party shall be entitled to assume the defense thereof, and the Indemnifying Party shall be liable to repay the Indemnified Party entitled to indemnification for all its expenses reasonably incurred in connection with said defense (including reasonable attorneys' fees and settlement payments) until the Indemnifying Party assumes such defense. The attorneys prosecuting such defense on behalf of a Party must be acceptable to the Indemnified Party, which acceptance shall not be unreasonably withheld.

(b) **Liability.** Notwithstanding any other provision of this Master Agreement, indemnity obligations entered into hereunder shall be due only to the extent of the Losses actually suffered by an Indemnified Party (i.e., reduced by any offsetting or related asset or service received and any recovery from any third Party). The Indemnifying Party shall be subrogated to all rights of the Indemnified Party against any third party with respect to any claim for which indemnity was paid.

**3.7. PRO\*ACT Insurance.** During the Term of this Master Agreement, and for two (2) years following expiration or termination of this Master Agreement, PRO\*ACT, at its own expense, shall maintain and shall require that its agents, subcontractors, and suppliers engaged in PRO\*ACT's performance of its duties under this Master Agreement maintain general liability insurance, property insurance, and automobile insurance (at a minimum, in the amount of \$1,000,000 per occurrence/\$5,000,000 annual aggregate) applicable to any claims, liabilities, damages, costs, or expenses arising out of its performance under this Master Agreement, or any Appendix, and with respect to, or arising out of, PRO\*ACT's provision of Products & Services to Program Participants. CCOG, Equalis, and their respective officers, directors, employees, and agents will be named as additional insureds on PRO\*ACT's related insurance policies. All such insurance policies shall incorporate a provision requiring the giving of written Notice to CCOG and Equalis at least thirty (30) days prior to the cancellation, nonrenewal, and/or material modification of any such policies. PRO\*ACT shall submit to Equalis within ten (10) calendar days after the Effective Date of this Master Agreement, and prior to furnishing Products & Services to any Program Participants, valid certificates evidencing the effectiveness of the foregoing insurance policies. PRO\*ACT shall provide such valid certificates on an annual basis until the terms of this section are no longer applicable.

**3.8. Termination Rights.** The Parties shall have the termination rights set forth below.

(a) **Insolvency.** If a petition in bankruptcy is filed by any Party, or if any Party is adjudicated as bankrupt, or if any Party makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the insolvency of any Party, then the other Parties, without prejudice to any other right or remedy, may terminate this Master Agreement upon giving at least five (5) business days prior written Notice of such termination.

(b) **Mutual Consent.** This Master Agreement, or any Appendix, may be terminated at any time by the mutual written consent of the Parties.

(c) **Breach.** In the event that any Party commits a material breach of its obligations under this Master Agreement, except for a payment obligation, the non-breaching Party(ies) may provide written Notice describing the material breach to the breaching Party. The breaching Party will have thirty (30) calendar days to cure such breach or provide acceptable reassurance to the non-breaching Party(ies), or, if the Parties agree that a cure or reassurance is not feasible within thirty calendar (30) days, such period of time for cure or satisfactory reassurance as the Parties may agree in writing. If the breach is not cured within such period or if satisfactory reassurance is not accepted by the non-breaching Party(ies) in such period, then the Party(ies)

not in breach may terminate this Master Agreement upon ten (10) business days written Notice at the Addresses for Notices set forth in **Appendix A**.

**3.9. Effects of Termination.** Upon termination of this Agreement for any reason, all Customer Agreements entered into with Program Participants shall immediately terminate. PRO\*ACT shall immediately cease any sales of Products & Services to any Program Participant under and through the terms of this Master Agreement. Following the date of termination, PRO\*ACT shall not be precluded from selling its products and services to individuals, businesses, and entities that were Program Participants when this Master Agreement was in effect either directly or through some other contract vehicle. Following the date of termination, CCOG and Equalis shall not be precluded from transitioning individuals, businesses, and entities that were Program Participants when this Master Agreement was in effect to another agreement or Equalis Group supplier partner.

**3.10. Audit of PRO\*ACT.** CCOG and Equalis, whether directly or through an independent auditor or accounting firm, shall have the right to perform audits, including inspection of books, records, and computer data relevant to PRO\*ACT's provision of Products & Services to Program Participants pursuant to this Master Agreement, to ensure that pricing, inventory, quality, process, and business controls are maintained; provided, however, that such inspections and audits will be conducted upon reasonable notice to PRO\*ACT and so as not to unreasonably interfere with PRO\*ACT's business or operations.

**3.11. Force Majeure.** This Master Agreement will be temporarily suspended during any period to the extent that any Party during that period is unable to carry out its obligations under this Master Agreement or the Appendices by reason of an Act of God or the public enemy, act of terrorism, fire, flood, labor disorder not caused by PRO\*ACT, civil commotion, closing of the public highways not caused by PRO\*ACT, government interference, government regulations, or any other event or occurrence beyond the reasonable control of the affected Party ("**Event of Force Majeure**"). No Party will have any liability to the other Party(ies) for a delay in performance nor failure to perform to the extent this Master Agreement or any Appendix is so temporarily suspended; provided that nothing contained herein shall apply to payment obligations with respect to obligations which have already been performed under this Master Agreement. If the provision of Products & Services are impeded due to an Event of Force Majeure, then PRO\*ACT may apportion the provision of Products & Services among its present and future customers on a fair and reasonable basis after consulting with Equalis and the Program Participants potentially affected and in a manner that would not reasonably be expected to disproportionately affect Program Participants.

**3.12. Notices.** All notices, claims, certificates, requests, demands, and other communications required or permitted hereunder ("**Notice**") must be in writing and will be deemed given to the Addresses for Notices (a) when delivered personally to the recipient, (b) upon delivery by reputable overnight courier service (charges prepaid), or (c) upon delivery or refusal of delivery by certified or registered mail, return receipt requested, and addressed to the intended recipient. The Parties agree that the day-to-day business communications, including notification of a change of address, pricing updates, or revisions to any Appendix, may be made via electronic communication.

**3.13. Waiver.** Other than the rights and obligations with respect to payment provided by this Master Agreement, waiver by any Party(ies) of or the failure of any Party(ies) hereto to enforce at any time its rights with regard to any breach or failure to comply with any provision of this Master Agreement by the other Party(ies) may not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other future breach of or failure to comply with the same provision or any other provision of this Master Agreement.

**3.14. Governing Law; Invalidity.** This Master Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio without regard to rules of conflict of laws. If any provision of this Master Agreement is declared unlawful or unenforceable by judicial determination or performance, then the remainder of this Master Agreement shall continue in force as if the invalidated provision did not exist. Any suits filed by any Party pursuant to this Master Agreement shall be brought in a court of competent jurisdiction located in Cuyahoga County, Ohio. In the event any Party initiates a suit and that suit is adjudicated by a court of competent jurisdiction, the prevailing Party shall be entitled to reasonable attorney's fees and costs from the non-prevailing Party in addition to any other relief to which the court determines the prevailing Party is entitled or awarded.



**3.15. Modification.** No release, discharge, abandonment, waiver, alteration, or modification of any of the provisions of this Master Agreement, or any of the Appendices incorporated herein, shall be binding upon any Party unless set forth in a writing signed by authorized representatives of the Parties.

**3.16. Assignment.** This Master Agreement and the rights and obligations hereunder may not be assignable by any Party hereto without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned, or delayed, provided, however, that PRO\*ACT and Equalis may assign their respective rights and obligations under this Master Agreement without the consent of the other Parties in the event either PRO\*ACT or Equalis shall hereafter effect a corporate reorganization, consolidation, merger, merge into, sale to, or a transfer of all or substantially all of its properties or assets to another entity. Subject to the preceding sentence, this Master Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns. Any instrument purporting to make an assignment in violation of this section shall be null and void. This Master Agreement may be extended to additional entities affiliated with the Parties upon the mutual agreement of the Parties. No such extension will relieve the extending Party of its rights and obligations under this Master Agreement.

**3.17. No Third-Party Beneficiaries; Survival of Representations.** This Master Agreement is made solely for the benefit of the Parties to it, and no other persons will acquire or have any right under or by virtue of this Master Agreement. Except as otherwise provided herein, all representations, warranties, covenants, and agreements of the Parties shall remain in full force and effect regardless of any termination of this Master Agreement, in whole or in part.

**3.18. Entire Agreement.** This Master Agreement, together with all attachments, appendices, and exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written representations and agreements with regard to the same subject matter. The Parties acknowledge that this Master Agreement has been negotiated and incorporates their collective agreement as to the provisions to be contained herein. Therefore, no presumption will arise giving benefit of interpretation by virtue of authorship of any provision of this Master Agreement, and any ambiguity may not be construed for or against any Party. PRO\*ACT's complete and final RFP response is hereby incorporated into and made part of this Master Agreement.

**3.19. Execution in Counterparts.** This Master Agreement may be executed in one or more counterparts, each of which will be deemed an original. For purposes of this Master Agreement, a facsimile, scanned, or electronic signature will be deemed an original signature.

**3.20. Titles, Headings & Recitals.** The Preamble to this Master Agreement is hereby incorporated herein and made part of this Master Agreement. The Recitals stated within this Master Agreement are deemed to be a part of this Master Agreement. The titles and headings of the sections and paragraphs of this Master Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Master Agreement.

**3.21. Nondiscrimination & Intimidation.**

(a) PRO\*ACT expressly agrees that in the hiring of employees for the performance of work or services under this Master Agreement or any subcontract, PRO\*ACT, its subcontractors, or any person acting on a PRO\*ACT's or its subcontractor's behalf shall not discriminate in the hiring of employees by reason of race, creed, sex, disability as defined in **Section 4112.01** of the Ohio Revised Code nor shall it discriminate against any citizen of the State of Ohio in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

(b) PRO\*ACT expressly agrees that PRO\*ACT, any of its subcontractors, or any person on behalf of PRO\*ACT or its subcontractors in any manner shall not discriminate against or intimidate any employee hired for the performance of work or services under this Master Agreement on account of race, creed, sex, disability as defined in **Section 4112.01** of the Ohio Revised Code, or color.

(c) PRO\*ACT expressly agrees to include the provisions of this section in each of its written subcontractor agreements for the Products & Services subject to this Master Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Master Agreement to be executed by their duly authorized representatives as of the Effective Date.

**THE COOPERATIVE COUNCIL OF GOVERNMENTS, INC.**

By: *Scott A. Morgan*  
Scott A. Morgan (Dec 21, 2020 12:18 EST)

Name: Scott A. Morgan

As: CCOG Board President

Date: Dec 21, 2020

**PRO\*ACT**

By: *B. Kane*  
Brian Kane (Dec 21, 2020 10:52 EST)

Name: Brian Kane

As: COO

Date: Dec 21, 2020

**EQUALIS GROUP, LTD.**

By: *Eric Merkle*

Name: Eric Merkle

As: SVP, Sourcing & Operations

Date: Dec 21, 2020

## **APPENDIX A: TERM OF AGREEMENT; NOTICES**

This Appendix may be modified at any time with the mutual written consent of the Parties.

### **1. The Term.**

This Master Agreement and the Appendices attached hereto will become effective as of the Effective Date. This Master Agreement will remain in effect for approximately five (5) years and expire on December 31, 2025 (the "**Termination Date**") unless extended or unless otherwise terminated or cancelled as set forth in the Master Agreement (the "**Initial Term**"). This Master Agreement may be renewed at any time by the mutual written consent of the Parties (each a "**Renewal Term**") unless this Master Agreement is terminated as set forth herein. The Initial Term together with all Renewal Terms exercised are hereinafter collectively referred to as the "**Term.**"

### **2. Addresses for Notices.**

#### **a. If to CCOG:**

The Cooperative Council of Governments, Inc.  
Attn: Board President  
6001 Cochran Road, Suite 333  
Cleveland, Ohio 44139  
Facsimile: 440.337.0002

#### **b. If to PRO\*ACT:**

PRO\*ACT  
Attn: Brian Kane, COO  
40 Lower Ragdsale Dr  
Ste 200  
Monterey CA 93940

#### **c. If to EQUALIS:**

Equalis Group, Ltd.  
Attn: Eric Merkle, SVP  
5550 Granite Parkway, Suite 298  
Plano, Texas 75024

## **APPENDIX B: PRODUCTS & SERVICES; PRICING**

The following terms and conditions will apply to any purchase or utilization of the Products & Services from PRO\*ACT. This Appendix may be modified at any time with the mutual written consent of PRO\*ACT and Equalis.

### **1. Products & Services**

PRO\*ACT will cause their approved distributors to make a variety of products available for purchase by Equalis Program Participants. These products primarily include fresh produce items but may also include other food and other non-food items.

The definition of Products & Services may be amended from time to time upon the mutual written agreement of PRO\*ACT and Equalis.

### **2. Pricing for Products & Services**

The Sell Price to Program Participants shall be calculated as Landed Cost + Mark-up.

#### **Landed Cost Calculations**

- Landed Cost may include one or more of the following components:
  - FOB cost, the cost of goods purchased by the distributor from the grower/processor.
  - Freight cost, the cost of transportation of goods from the grower/processor shipping point to the distributor facility.
  - Landed cost could also include, but is not limited to, packaging and repacking.

#### **Mark-up Calculations**

- Mark-up for full cases of product is established from the preceding calendar quarter's delivery history and applied for the following calendar quarter, per each individual Program Participant:
  - \$3.25, new Program Participants, and those averaging fewer than 50 cases per delivery.
  - \$2.75, those averaging 50 to 75 cases per delivery.
  - \$2.50, those averaging over 75 cases per delivery.
- Split Case Fee is \$1.75
  - Formula for application of Split Case Fee is:
  - $(\text{Full Case Landed Cost} + \text{Full Case Mark-up}) \times \text{Percentage of Split Case vs. Full Case} + \text{Split Case Fee} = \text{Split Case Sell Price}$

### **3. Price Adjustments**

Should it become necessary or proper during the term of this contract to make any change in design or any alterations that will increase expense, Equalis Group must be notified immediately. Price increases must be approved by CCOG and no payment for additional materials or services, beyond the amount stipulated in the contract, shall be paid without prior approval. All price increases must be supported by manufacturer documentation, or a formal cost justification letter.

PRO\*ACT must honor previous prices for thirty (30) days after approval and written notification from Equalis Group if requested.

It is Vendor's responsibility to keep all pricing up to date and on file with Equalis Group. All price changes must be provided to Equalis Group, using the same format as was accepted in the original contract.











# Agreement - CCOG and PRO ACT (Master) 2020.12.18

Final Audit Report

2020-12-21

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