

**COOPERATIVE PURCHASE AGREEMENT (UETN-2017-CAT2-Pro)**

This Cooperative Purchase Agreement (“Agreement”) is entered into and effective as of the 1st day of April, 2017 (the “Effective Date”), by and between the University of Utah, a body politic and corporate of the State of Utah and a public institution of higher education, for and on behalf of the Utah Education and Telehealth Network (“University”), and Proactive Network Management Corporation (“Vendor”), located at 124 South 400 East, Suite 200, Salt Lake City, Utah, 84111, Attention Wendy Molteni. University and Vendor are sometimes collectively referred to herein as “Parties”, or individually, as a “Party”.

**RECITALS**

A. Pursuant to that certain Request for Proposals for Utah’s Digital Teaching and Learning Classroom Connectivity Infrastructure Program (Including Category 2 E-rate Components and Services) # 80106215 issued by University on October 14, 2016 with Addendum #1 issued on November 8, 2016 (the “RFP”), the University solicited proposals for the provision of certain services to Stakeholders throughout the State of Utah.

B. Vendor responded to the RFP through a proposal dated December 8, 2016 (the “Proposal”) and University has selected Vendor as a qualified vendor to provide services on terms and conditions, including pricing, pertaining to future orders of services by Stakeholders, all as more specifically described in the RFP and the Proposal (collectively, the “Purchasing Documents”).

C. In order to facilitate the execution of contracts with Stakeholders, Vendor enters into this Agreement with University to establish its commitment to provide such services to any Stakeholder identified in the RFP as an eligible participant in the cooperative procurement process.

**AGREEMENT**

In consideration of the mutual promises, conditions and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purchase of Services by Stakeholders. Vendor hereby agrees that, without limiting the rights of the University, each Stakeholder identified in Exhibit A of this Agreement shall have the right to procure and purchase the Services and, if applicable, Equipment under terms and conditions of this Agreement and the Purchasing Documents. Vendor acknowledges that any Stakeholder purchasing off this agreement must execute a Participating Addendum with the Vendor accepting a purchase order from Stakeholder pursuant to this Agreement. Vendor further acknowledges and agrees that UETN shall have no liability, financial or otherwise, arising out of each Stakeholder’s purchase of Services from Vendor pursuant to such Participating Addendum.

2. Incorporation of RFP and Proposal. The RFP and the Proposal are hereby incorporated into this Agreement by this reference. In the event of a conflict between the provisions this Agreement, the Response, and/or the RFP, the conflict shall be resolved by reference to the documents in the following order of priority: (i) this Agreement; (ii) the Proposal; and (iii) the RFP.

3. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be given by (i) express mail (or other established express delivery service which maintains delivery records), (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or such other addresses as the Parties may designate from time to time by written notice in the above manner:

To University:           University of Utah  
Utah Education and Telehealth Network  
101 Wasatch Drive  
Salt Lake City, Utah 84112  
Attention: Dennis Sampson  
dsampson@uen.org  
Phone: 801-585-9037  
Fax: 801-585-6105

To Vendor:               Proactive Network Management Corporation  
124 South 400 East, Ste 200  
Salt Lake City, UT 84111  
Attention: Wendy Molteni  
[Wendy@pnmc.com](mailto:Wendy@pnmc.com)  
Phone: 801-355-1099  
Fax: 801-355-1566

Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the intended recipient refuses the delivery or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

The University will transmit written contact information for the Contractor(s) selected for installation of the Equipment following execution of the installation agreements.

4. Binding Effect; Governing Law. Except as modified herein, the Purchase Agreement shall remain in full effect. If any inconsistency exists or arises between the terms of this Agreement and the terms of the Purchase Agreement, the terms of this Agreement shall

prevail. This Agreement shall be construed and interpreted in accordance with, and governed by, the substantive laws of the State of Utah, without giving effect to any conflict-of-laws rule or principle that might result in the application of the laws of another jurisdiction.

5. Indemnification. Vendor shall hold harmless, defend and indemnify the University of Utah and its trustees, officers, employees, and agents from and against any and all claims, losses, causes of action, judgments, damages and expenses, including, but not limited to, reasonable attorneys' fees, because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of: (a) performance or breach of this Agreement by Vendor, or (b) Vendor's use of University of Utah premises, or (c) any act, error, or omission on the part of Vendor, or its agents, employees, invitees, participants, or subcontractors, except where such claims, losses, causes of action, judgments, damages or expenses result solely from the negligent acts or omissions or willful misconduct of University of Utah, or its trustees, officers, employees, or agents.

6. Amendment; Entire Agreement. This Agreement shall not be amended or modified except by an instrument in writing signed by all the Parties and this Agreement, including those documents incorporated herein by reference, contains all of the agreements, understandings, representations and warranties of the Parties with respect to the subject matter hereof. The recitals above are incorporated into this Agreement by this reference.

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. Each Party agrees to provide the other Party with an original of this Agreement with its original signature thereon promptly following any request for same.

8. Red Light Rule of the Federal Communication Commission (FCC). If the vendor has outstanding debt with the FCC and is violation of the Red Light Rule under the Debt Collection Improvement Act (DCIA), the University reserves the right to terminate the contract with the vendor (see red light rule 47 C.F.R. §1.1910).

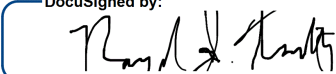
9. Term. The Term of this Agreement shall be thirty-nine (39) months, beginning April 1, 2017 and ending on and including June 30, 2020, unless earlier terminated as permitted herein.

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

VENDOR

THE UNIVERSITY OF UTAH

By:    
 DocuSigned by: Wendy Molteni   
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By:    
 DocuSigned by: Ray J. Timothy   
 88A319DAAC9940F...

(Signature)

(Signature)

Name: Wendy Molteni

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

Ray J. Timothy

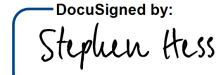
Title: Director of operations

Title: UETN Executive Director

Signature Date: 3/28/2017

Signature Date: 3/28/2017

By: \_\_\_\_\_

By:    
 DocuSigned by: Stephen H. Hess   
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(Signature)

(Signature)

Name: Wendy Molteni

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

Stephen H. Hess

Title: Director of operations

Title: University of Utah CIO

Signature Date: 3/28/2017

Signature Date: 3/28/2017

**EXHIBIT A – AUTHORIZED END USERS (STAKEHOLDERS)**

Awards by Vendor / Category / District / Region

<b>Proactive – Fortinet</b>	District / Region
Category 1 – Wireless Networking (Fortinet)	ALL DISTRICTS / STAKEHOLDERS
Category 2 – Wired Networking (Fortinet)	ALL DISTRICTS / STAKEHOLDERS
<b>Proactive – Hewlett Packard Enterprises / Aruba</b>	
Category 1 – Wireless Networking (Hewlett Packard Enterprises / Aruba)	ALL DISTRICTS / STAKEHOLDERS
Category 2 – Wired Networking (Hewlett Packard Enterprises / Aruba)	ALL DISTRICTS / STAKEHOLDERS