



**Zayo Group, LLC
Business Partner Agreement**

THIS BUSINESS PARTNER AGREEMENT (“Agreement”), entered into on _____, 20____ (“Effective Date”), by and between Zayo Group, LLC, a Delaware limited liability company, together with its affiliates (“Zayo”), whose address is 1805 29th Street, Suite 2050, Boulder, Colorado 80301 and _____ (“Partner”), a _____ whose address is _____.

Partner’s Tax Identification Number is: _____.

RECITALS

WHEREAS, Zayo is engaged in providing certain Services (defined below) to Customers.

WHEREAS, Partner has agreed to market and sell Zayo Services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Zayo and Partner agree as follows:

AGREEMENT

1. Definitions.

- A. **“Customer”** means a person or entity to which Zayo provides Services.
- B. **“Customer Term”** means the amount of time for which a Customer commits to buy a Service from Zayo, as stated in an Order.
- C. **“In Term Service”** means a Service in its initial Term or a renewal Term of at least twelve (12) months.
- D. **“MRR”** means the monthly recurring revenue for Services set forth in an Order for Services accepted by Zayo.
- E. **“Order”** means a request from a Customer for a Service together with an agreement by the Customer to the terms and conditions under which Zayo has offered that Service to the Customer.
- F. **“Out of Term Service”** or “OOT” means any Service not an In Term Service.
- G. **“Quote”** means a written quotation for a specific Service or Services which Zayo makes available to Partner upon Partner’s request, usually in the form of a proposed Service Order or through Zayo’s online portal.
- H. **“Residual”** means the commission payment made or due to Partner based on Services provided to Customer that were sold to Customer by Partner, as further defined in this Agreement. Residuals are paid on MRR collected by Zayo subject to the terms and conditions herein.
- I. **“Service(s)”** means any service generally made available by Zayo to Customers.
- J. **“Sub-Agent”** means a party other than Partner that has sold Service under this Agreement as Partner’s representative or agent.

2. Term of Agreement. This Agreement is effective as of the Effective Date and remains effective for as long as Zayo receives MRR from Customers for Services marketed and sold to the Customer by Partner and approved by Zayo, unless earlier terminated pursuant to the terms and conditions herein (“Term”).

3. Services. Subject to this Agreement, Partner shall be entitled to market Services made available by Zayo to Customers, so long as Zayo continues to provide such Services to its Customers through its partner channel.

4. Appointment of Partner.

- A. Zayo grants to Partner the non-exclusive right to market Services. Zayo reserves the right, without obligation or liability to Partner (except as set forth herein), to also market the Services, including through its own representatives or through other agents.
- B. Partner may sell services competitive with the Services being offered pursuant to this Agreement; provided that Partner will not (i) intentionally disparage Zayo; or (ii) move any Customer from Services provided by Zayo to those provided by another supplier of similar services, unless Customer: (a) expresses dissatisfaction with Zayo’s services; (b) expresses a desire to move to another provider; and/or (c) requests quotes for the services from a provider other than Zayo.
- C. Partner and Zayo are independent contractors. Partner shall make no representations or warranties relating to the Services except as set forth in Zayo’s approved written contracts with Customers. Partner shall have no authority to bind Zayo by contract or otherwise. Neither Partner nor Partner’s employees or agents are Zayo employees or joint employees. Partner assumes full responsibility for the acts of its employees and agents, and for their supervision, direction and control. This Agreement is not intended to and does not create any third party beneficiaries respecting the matters stated herein.
- D. Partner may refer to itself as a Zayo “Authorized Service Broker” in conjunction with the marketing and sale of Services hereunder. Except directly in connection with Partner’s marketing and sale of Zayo Services pursuant to this Agreement, neither party shall use the trade names, trademarks or other intellectual property of the other party in advertising or other promotional material or activity without the prior written permission of the other party.

5. Responsibilities of Parties.

A. **Zayo’s Responsibilities to Partner.** During the Term, Zayo shall:

- (1) Provide Services to those Customers offered by Partner and accepted by Zayo, subject to this Agreement and Zayo’s agreement with the Customer;
- (2) Maintain records on the accounts sold by Partner and the Services (including the rates and charges) purchased by Customers for the time periods set forth in this Agreement;
- (3) Provide customer service, billing, and collection services to Customers in accordance with Zayo’s customary business practices.
- (4) Pay the Residuals due to Partner in accordance with this Agreement.

B. **Partner’s Responsibilities to Zayo.** During the Term, Partner shall:

- (1) Prior to providing a Quote to any potential Customer, Partner shall submit the following information for approval by Zayo:

(a) the Service(s) Partner proposed offering to the potential Customer, including any and all service location(s);

(b) the identity of the potential Customer; and

(c) the proposed term for which the specific Service(s) are to be offered to the potential Customer.

(2) After receiving the above information from Partner, Zayo may provide a Quote to Partner, and Partner may then offer the Service(s) to the Customer on the terms and conditions specified in such Quote.

(3) If the Customer agrees to purchase Services, Partner shall submit an Order to Zayo. If Zayo accepts the Order, Partner will receive Residuals pursuant to Section 6 for such Service(s).

6. Residuals.

A. For Services sold by Partner, Partner's Residual will be ___%. Subject to the terms of this Agreement, Residuals will be paid for the Customer Term of each such Service and during any month-to-month extension thereof.

B. Exceptions to Residual Payments.

(1) No Residuals will be paid on Accounts that have any amounts outstanding or past due. No Residuals will be paid on Services that have been disconnected, terminated, suspended, or for which Zayo does not receive payment from a Customer. However, in the event Zayo reconnects the Services within one hundred twenty (120) days of disconnecting, terminating or suspending the Service on the same terms and conditions that existed previously, Partner shall be entitled to Residuals on the Services under the terms of this Agreement as though the Services had not been disconnected, terminated or suspended. No Residuals will be paid on Customer amounts Zayo receives from enforcement actions such as settlements, collection efforts, litigation, arbitration, bankruptcy or any other process out of the normal course.

(2) Zayo shall not pay the Residual to Partner if the Partner is affiliated by or under common ownership or control with the Customer ("Affiliate").

(3) In the event that Customer receives a refund or if Zayo overpays the Partner, Zayo may recover from Partner the pro-rata share of any Residual payments for which Zayo refunded any Customer payment or any amount paid in error ("Chargebacks"). Zayo may offset against future Residuals any amounts owed to Zayo by Partner, including, but not limited to Chargebacks or the amount of any Residuals paid to Partner in error. If a Partner Affiliate is subject to Chargebacks, Zayo may offset those Chargebacks against Partner's Residuals. Zayo may not Chargeback any Residuals more than one hundred twenty (120) days after such Residuals were paid to Partner.

(4) Unless otherwise agreed upon by the Parties in writing, no Residual will be paid on anything other than MRR. MRR does not include, without limitation, non-recurring charges, taxes, surcharges, installation charges, time and materials or construction, expedite fees or order change charges.

C. Payment of Residuals. Pursuant to the terms of this Agreement, Zayo shall make Residual payments to Partner on all MRR collected by Zayo in a given month, with the payment being made to Partner on or before the 30th day of the following month. Payment will be made by check or electronic funds transfer to a bank account designated by Partner in writing. Zayo shall provide with each payment a report detailing the calculation of the Residual, the name of each Customer, the Services provided to each, and the amounts billed to and the MRR received from each Customer for each Service.

7. Termination.

- A. This Agreement is terminable without cause by either party upon thirty (30) days' prior written notice (termination "For Convenience").
- B. Termination for Cause. Either party may terminate this Agreement for material breach (termination "For Cause") by the other party of any provision of this Agreement provided that written notice of breach has been given to the other party and such breach has not been cured within thirty (30) days after such notice.
- C. If this Agreement is terminated, Partner shall not market, sell, Quote, or otherwise advertise Zayo services.
- D. If Zayo terminates this Agreement For Convenience or if Partner terminates this Agreement For Cause, Partner shall continue to receive Residuals on Services in accordance with and subject to this Agreement.
- E. If Partner terminates this Agreement For Convenience, Partner shall continue to receive Residuals on Services in accordance with this Agreement for Services that are In Term. Residuals will not be paid for any Services that are OOT.
- F. If Zayo terminates this Agreement For Cause, Partner shall not receive Residuals on any Services, provided that Partner will be paid for any Residuals that were due and owing prior to such termination For Cause.

9. Dispute Resolution.

A. In the event of any dispute relating to this Agreement, the parties shall use their best efforts to settle such disputes. If the parties do not reach a resolution within thirty (30) days, then the matter will be escalated to the respective companies' executive leadership to seek resolution. If the parties do not reach a resolution within thirty (30) days of escalation, remedies available at law and/or in equity may be pursued.

B. Partner waives any right to dispute Residual payments unless such dispute is made in writing within one-hundred twenty (120) days after the Residual is paid or should have been paid, stating the reason for the dispute. Zayo will promptly respond in writing to any such dispute.

10. Assignability. Neither Party may assign this Agreement without the other's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either Party ("Assignor") may, without the consent of the other Party, assign all of its rights and obligations under this Agreement in connection with and in contemplation of any reorganization, merger, consolidation or sale of all or substantially all of the stock, ownership/membership interests or assets of such Party, or any other transaction substantially similar in effect. In any sale or disposition by Zayo of all or any portion of the customer base procured by Partner hereunder (the "Transferred Customer Base"), Zayo shall cause the acquiring party to assume this Agreement as to the Transferred Customer Base, including, but not limited to, Zayo's obligation to pay Residuals hereunder with respect to the Transferred Customer Base.

11. Confidential Information. Information or documentation exchanged between the parties in performing this Agreement, including the terms of this Agreement and the terms of Service on which Zayo sells or purposes to sell Services to Customers or prospective Customers, are subject to the terms of any non-disclosure agreement in effect between the parties, and if none, the parties agree to keep any such information which is of a confidential nature confidential and not disclose such information to third parties, other than to Affiliates or, in the case of Partner, any Sub-Agent (provided that such Sub-Agents agree to these confidentiality terms).

12. Indemnification and Limitation of Liability.

- A. Each Party shall indemnify, defend and hold harmless the other Party from any and all third party claims, actions, damages, expenses and other liabilities, including reasonable attorney's fees and costs of litigation, resulting from such party's negligence, willful misconduct, intentional misrepresentations, or the breach of this Agreement. Further, Partner shall indemnify, defend and hold harmless Zayo from any and all third party claims, actions, damages, expenses and other liabilities, including reasonable attorney's fees and costs of litigation, resulting from the acts or omissions of any of Partner's Sub-Agents.
- B. OTHER THAN FOR BREACHES OF SECTION 10, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF DATA, WHETHER IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Notices.

Any notice required or allowed hereunder shall be in writing and shall be deemed given when sent by the United States Mail, registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier, addressed as follows:

Partner:

Zayo: Zayo Group, LLC
Attn: General Counsel
1805 29th Street, Suite 2050
Boulder, CO 80301

or as such addressee or address is changed by written notice to the other party.

15. General.

- A. Unless otherwise provided herein, this Agreement may be modified only by a written amendment signed by both parties. In the event that any one or more of the provisions of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in effect. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or of the right of such party to thereafter enforce such provision.
- B. With the exception of payment obligations, a party shall be excused from performance under this Agreement for so long as its performance is delayed or prevented by any acts or events beyond the party's reasonable control.
- C. This Agreement is governed by the laws of the State of Delaware. Any suit to enforce or construe this Agreement shall be brought in a Court of competent jurisdiction in the City and County of Kent, Delaware. The prevailing party shall be entitled to recover its attorney's fees and expenses in any successful action to enforce this Agreement

D. This Agreement, together with any Exhibit(s), sets forth the entire understanding of the parties and supersedes and terminates any prior agreements, understandings, or representations between the parties, whether written or oral, with respect to the subject matter contained herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day set forth below.

ZAYO GROUP, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____