

**AGREEMENT FOR THE DIRECTED TRANSFER  
OF FEDERALLY FUNDED GRANT PROPERTY**

This Agreement for the directed transfer of federally funded grant property (Agreement) is by and between Zayo Group, LLC (Zayo) and the National Oceanic and Atmospheric Administration, Grants Management Division (NOAA/GMD), on behalf of the U.S. Department of Commerce (Commerce Department).

**WHEREAS**, the Centennial Board of Cooperative Educational Services (CBOCES) obtained a financial assistance award (Award Number NT11BIX5570156) from the Commerce Department through the National Telecommunications and Information Administration (NTIA) under the Broadband Technology Opportunities Program (BTOP), a grant program established by the American Recovery and Reinvestment Act of 2009. As a condition of the award (BTOP Award), CBOCES agreed to, amongst other conditions, the Department of Commerce Financial Assistance Standard Terms and Conditions, the BTOP Round Two Notice of Funds Availability (75 Fed. Reg. 3792 (Jan. 22, 2010)), the provisions of 15 C.F.R. Part 24 and the special award conditions imposed by the NOAA Grants Officer (collectively, BTOP Terms and Conditions). This award was subsequently transferred from CBOCES to EAGLE-Net Alliance (ENA) in January 2011 (renumbered as Award No. NT11BIX5570001);

**WHEREAS**, the BTOP Terms and Conditions required ENA to construct, operate and maintain a functional broadband network and to provide broadband services to the identified Colorado communities (Program Purpose) until September 2032 (approximate useful life);

**WHEREAS**, ENA used the federal funds provided under the BTOP Award to extend broadband services to school districts, libraries, and other community institutions across Colorado, with a focus on rural and underserved school districts and educational institutions. In doing so, ENA used a significant portion of the BTOP Award funds to purchase certain property for use in the BTOP network, with such property being identified in detail in Attachment A to this Agreement (BTOP Property);

**WHEREAS**, pursuant to the BTOP Terms and Conditions, including 15 C.F.R. §§ 24.31 through 24.34, ENA held only nominal title in and to the BTOP Property during its scheduled useful life, and further held such title in trust and subject to the public purposes and the terms and conditions of the BTOP Award. During the useful life of the BTOP Property, the United States of America, through the Commerce Department, holds beneficial title and ownership in and to all of the BTOP Property (Federal Interest);

**WHEREAS**, pursuant to the BTOP Terms and Conditions, specifically 15 C.F.R. § 24.32(g), the NOAA Grants Officer reserves the right to direct ENA to transfer title to the BTOP Property to an eligible third-party determined by the NOAA Grants Officer;

**WHEREAS**, on or around November 30, 2015, ENA and Zayo entered into a Management Services Agreement to manage and operate the network funded under the BTOP Award, which Zayo continues to manage and to operate. During the pendency of negotiating the Management Services Agreement, Zayo took physical possession of the BTOP Property, which remains in the custody of Zayo;

**WHEREAS**, on October 27, 2016, ENA sent a letter informing NTIA that ENA could no longer continue in operation. As part of this communication, ENA requested that NTIA provide direction on the disposition of the BTOP Property given ENA's financial condition, and recommended that NTIA consider directing the transfer of the BTOP Property to Zayo.

**WHEREAS**, on November 7, 2016, the NOAA Grants Officer requested that ENA provide written assurance from Zayo confirming that Zayo would be willing to accept the BTOP Property and that Zayo would own and manage the BTOP Property in accordance with all the applicable BTOP terms and conditions;

**WHEREAS**, on December 7, 2016, Zayo provided written assurance to the NOAA Grants Officer that it was willing to accept the BTOP Property and that it would own and manage the BTOP Property in accordance with all the applicable BTOP terms and conditions;

**WHEREAS**, on December 9, 2016, the NOAA Grants Officer sent a letter to ENA directing that ENA transfer all of the BTOP Property to Zayo concurrent with the closeout of the BTOP Award. This communication also included a Closeout Agreement for ENA's review and approval.

**WHEREAS**, on December 28, 2016, ENA and the NOAA Grants Officer executed the Closeout Agreement, which provides, amongst other items, that "ENA forgoes its right to any share, contribution, and/or reimbursement arising from its participation in and contribution to the BTOP Grant, including but not limited to the property disposition provisions of 15 C.F.R. part 24."

**WHEREAS**, on May 24, 2017, the Board of Directors of ENA adopted a resolution to dissolve ENA and to cease operations on June 5, 2017. The NOAA Grants Officer and NTIA were not formally notified of the resolution or of the dissolution until late June 2017, and after ENA had formally dissolved;

**WHEREAS**, ENA dissolved without effectuating the transfer of the BTOP Property to Zayo, as directed by the NOAA Grants Officer;

**WHEREAS**, following ENA's dissolution, Zayo has continued to manage and to operate the BTOP network, and has had continued possession of the BTOP Property;

**WHEREAS**, Zayo informed NTIA that it is willing and able to assume title to and ownership of the BTOP Property under the BTOP Award, and to use and manage the BTOP Property in accordance with applicable terms and conditions agreed to by NTIA and Zayo, including Zayo's recognition of the continuing Federal Interest in the BTOP Property during its useful life;

**WHEREAS**, Zayo is not assuming responsibility for any obligation, duty, liability, action or inaction owed or performed by ENA, except as such obligation or duty under the BTOP Award is on-going, which Zayo assumes from the date hereof; and

**WHEREAS**, NTIA and Zayo are desirous of Zayo acquiring title in and to the BTOP Property and for Zayo to continue to operate and manage the BTOP network funded under the BTOP Award, subject to the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which is not and may not be disputed, the parties to this Agreement hereby agree as follows:

1. The NOAA Grants Officer hereby authorizes and directs Zayo to assume title to and ownership of the BTOP Property, subject to the BTOP Terms and Conditions as set forth at Attachment B and incorporated herein by reference from the date hereof, as well as the disposition restrictions and such other terms and conditions as are set forth in this Agreement.
2. As required by the NOAA Grants Officer, Zayo shall complete all necessary agreements, supporting documentation and UCC filings as authorized or as required under applicable federal or state law. Zayo is hereby authorized and directed by the NOAA Grants Officer to timely file a form UCC-3 amending the prior filing, or a new UCC-1 as necessary or appropriate showing Zayo as the “debtor” of record relative to any BTOP Property. In addition, during the useful life of the BTOP Property, Zayo is authorized and directed by the NOAA Grants Officer to timely file any necessary UCC continuation statements for the BTOP Property. All amended or new UCC-1 filings, and all UCC continuation statements, together with a certification from legal counsel, must be submitted to the NOAA Grants Officer and to NTIA with 15 business days following such filings. NTIA will provide Zayo with copies of those UCC-3 Continuation Statements filed by NTIA in or around October 2017, reflecting the continuing Federal Interest in the BTOP Property.
3. During the remaining useful life of the BTOP Property, Zayo shall use and maintain the BTOP Property to fulfill and to otherwise carry out the Program Purpose of the original BTOP Award and shall abide by all terms and conditions of those documents and notices set forth in this Agreement. In addition, Zayo agrees to the following use and disposition requirements relative to the BTOP Property:

(a) Zayo shall use the BTOP Property in accordance with the nondiscrimination and network interconnection obligations set forth in Section V.D.3.b. of the Second NOFA (75 Fed. Reg. 3792, 3800-01 (Jan. 22, 2010)) and in Section 6001(j) of the Recovery Act. Zayo may be asked to provide periodic certifications and/or supporting documentation to NTIA or to the NOAA Grants Officer pertaining to its ongoing compliance with the nondiscrimination and network interconnection obligations;

(b) The BTOP Property shall not be encumbered, nor shall any or all of the rights, title or interests in or to any or all of the BTOP Property be pledged, assigned, transferred or otherwise hypothecated to another party, nor sold or disposed of, without the prior written approval of the NOAA Grants Officer including not but not limited to using BTOP Property or the proceeds from the sale thereof, towards the satisfaction of any debts of or judgements against ENA, Zayo or any other person, without the prior written consent of the NOAA Grants Officer or upon an order of a court of competent jurisdiction, provided that the United States was a party to such a proceeding.

(c) In the event that any or all of the BTOP Property is no longer needed by Zayo to accomplish the Program Purpose or when any or all of the BTOP Property is not being used in accordance with the Property Standards set forth in 2 C.F.R. §§ 200.310 through 200.316, Zayo shall request disposition instructions for such BTOP Property in accordance with the requirements set forth in 2 C.F.R. §§ 200.310 through 200.316. In issuing such disposition

instructions, the NOAA Grants Officer will adhere to and enforce the procedures and requirements contained in 2 C.F.R. §§ 200.310 through 200.316, which may require that the Commerce Department be compensated for its Federal Interest in any disposed of BTOP Property.

4. It is understood and agreed that, in accordance with 2 C.F.R. §§ 200.310 through 200.316, the closeout agreement with ENA signed December 28, 2016, and the terms and conditions of this Agreement, the Commerce Department maintains a 100 percent reversionary interest in all of the BTOP Property during the remaining useful life of such BTOP Property, which may be adjusted based on capital improvements made hereafter to the BTOP Property by Zayo and determined to be acceptable in form and substance to the NOAA Grants Officer. The Commerce Department reserves the right to assert and to take all necessary steps to protect and to effectuate its Federal Interest in the BTOP Equipment should Zayo fail to comply with the terms and conditions of this Agreement.

5. Zayo acknowledges that it has an affirmative duty and agrees to promptly notify the NOAA Grants Officer and NTIA in the event that Zayo subsequently discovers or otherwise identifies any real, personal or intangible property in its possession or under its control that was acquired by ENA pursuant to the BTOP Award. In such a case, Zayo agrees that any subsequently discovered or identified property will be treated as BTOP Property for purposes of this Agreement and Zayo's obligations hereunder, unless otherwise directed in writing by the NOAA Grants Officer and regardless of whether Attachment A to this Agreement is updated by the parties.

6. The Commerce Department makes no warranty or representation of any kind to Zayo as to the condition or suitability for any use or purpose of the BTOP Property. Moreover, the Commerce Department is not authorized and does not intend to provide any federal funding or any form of indemnification or hold harmless of Zayo or to any other person in connection with Zayo's assumed ownership of the BTOP Property or otherwise arising in connection with this Agreement.

7. Except as otherwise provided in this Agreement, all rights, remedies, interest, claims and defenses of each of the parties to this Agreement are preserved.

8. Contact Information.

Questions, notices and other communications concerning this Agreement should be addressed to the following points of contact:

(a) For the Commerce Department:

(i) NOAA Grants Officer:

Alan Conway  
NOAA/GMD  
1325 East West Highway  
SSMC II  
Ninth Floor  
Silver Spring, MD 20910

Alan.p.conway@noaa.gov  
(301) 628-1310

(ii) NTIA:

Andy Spurgeon  
National Telecommunications and Information Administration  
Office of Telecommunications and Information Applications  
1401 Constitution Avenue, NW  
HCHB Room 4887  
Washington, DC 20230  
aspurgeon@ntia.doc.gov  
720-389-4900

(b) For Zayo:

Zayo Group, LLC  
1805 29<sup>th</sup> Street, Suite 2050  
Boulder, Colorado 80301  
Attn: General Counsel

9. Administrative Provisions.

(a) This Agreement contains and constitutes the entire agreement between the Commerce Department and Zayo concerning the matters set forth herein and shall be binding upon and inure to the benefit of each party.

(b) The provisions of ENA's BTOP Award (Award Number NT11BIX5570001), the BTOP Terms and Conditions, and any Attachment referenced in this Agreement are hereby incorporated into and made a part of this Agreement.

(c) The individuals executing this Agreement affirm that they are authorized and empowered to execute this Agreement on behalf of their respective organization and that the other parties to this Agreement are entitled to and fully justified in relying upon such affirmations and representations.

(d) This Agreement will become effective upon the signatures of the authorized representatives from all of the parties to this Agreement and may be amended only upon the written, signed agreement of the authorized representatives from the Commerce Department and from Zayo.

(e) This Agreement may be executed in counterparts and by different persons in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same Agreement. The counterparts to this Agreement may further be executed by email, facsimile or other electronically delivered


signature and such signature shall constitute an original signature for all purposes of this Agreement.

(f) This Agreement is intended to be for the benefit of the parties hereto, and nothing herein shall be interpreted or construed as creating any benefit, right or interest by any other person not a party to the Agreement.

[Signature page follows.]

**IN WITNESS WHEREOF**, Zayo Group, LLC and the Department of Commerce Grants Officer for the Award, have each hereunto set their hand as of the day and year first above written by their duly authorized officer or representative.

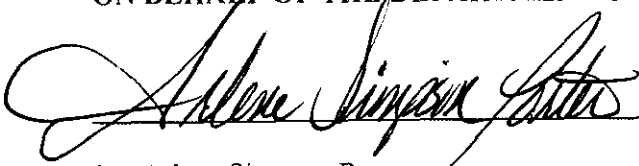
**ZAYO GROUP, LLC:**

  
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Date: 04-30-2018

By: Wendy Cassity  
General Counsel  
Zayo Group, LLC

**ON BEHALF OF THE DEPARTMENT OF COMMERCE:**

  
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Date: 5/2/18

By: Arlene Simpson Porter  
Director, Grants Management  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce

**Attachment A**  
**BTOP Property Inventory**



**Attachment B**

**BTOP Terms and Conditions**

Department of Commerce Financial Assistance Standard Terms and Conditions (2017)

BTOP Round Two Notice of Funds Availability (75 Fed. Reg. 3792 (Jan. 22, 2010))

Award Specific Award Conditions:

- Special Award Conditions Amendment #2 (effective 8/01/2011)
- Special Award Conditions Amendment #8 (effective 5/15/2014)

2 C.F.R. Part 200, Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (2017)

American Recovery and Reinvestment Act of 2009- DoC Standard Terms and Conditions