

CONSTRUCTION CONTRACT

THIS AGREEMENT (the "Contract") is made this ____ day of _____, 2012 by and between **viNGN, Inc.**, a Virgin Islands corporation and wholly owned subsidiary of the Virgin Islands Public Finance Authority (the "Authority"), an autonomous instrumentality of the Government of the Virgin Islands ("viNGN") whose address is Warehouse K, 9015 Havensight Mall, 6B-F Estate Thomas, St. Thomas, VI 00820 and [NAME OF ENTITY], a [jurisdiction of formation][type of entity] (the "Contractor") with offices at [office address] and a mailing address of [mailing address] (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Broadband Technology Opportunities Program (BTOP) is a \$4.7 billion national competitive grant program funded through the American Recovery and Reinvestment Act of 2009 (ARRA) and administered by the National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce and intended to accelerate broadband deployment in unserved and underserved areas, supporting strategic institutions that are likely to create jobs or provide significant public benefit; and

WHEREAS, the Authority, through its Office of Economic Opportunity, applied for and was awarded four (4) broadband grants through the NTIA (collectively known as the "Broadband Grants") which are being carried out by and through its subsidiary, viNGN, as subrecipient (the "Broadband Project"); and

WHEREAS, one (1) of the four (4) Broadband Grants awarded to the Virgin Islands is Award Number NT10BIX5570096 (the "CCI Grant") under the Comprehensive Community Infrastructure ("CCI") Program for the construction of a Territory-wide two hundred forty four (244) mile high-speed fiber optic middle-mile network delivering wholesale broadband service to local internet service providers, connecting community anchor institutions with reliable high-speed internet services, and strengthening external broadband connections through acquisition of undersea cable use, fostering and encouraging economic development by improving access to online educational, healthcare and government services to residents; and

WHEREAS, the build out of the broadband network under the CCI Grant requires [description of construction project]; and

WHEREAS, the construction work for [description of project] includes site work and construction as more fully shown and described in the architect's plans and specifications for the project; and

WHEREAS, viNGN is in need of a contractor to furnish all labor, materials and equipment necessary for construction of [description of location and other identifying information] (the "Subject Project") and in furtherance of that need, viNGN issued a [type of solicitation] ARRA-BTOP-2012-[number] (the "Defined Term for the solicitation") incorporated herein by reference; and

WHEREAS, as a result of the competitive bidding process conducted in conformity with applicable law and grant requirements including the viNGN procurement policy, the Contractor's [name of submission] was selected for the construction of the Subject Project; and

WHEREAS, viNGN wishes to enter into a contract for the construction of the Subject Project as set forth herein, all in strict accordance with the plans and specifications set forth in the relevant portions of the (a) Project Manual, Specifications for [title of specifications document] prepared by [name of architect] and issued for bidding [date], as well as the (b) [title of plans] prepared by name of architect] and dated [date], both of which are incorporated herein by reference; and as further set forth in the provisions of **Addendum I** (General Provisions), **Addendum II** (Termination of Contracts), and **Addendum III** (Compensation) attached hereto and incorporated as part of this Contract by reference; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor shall supply all necessary labor and materials and construct the Subject Project in a timely and workmanlike manner as provided herein and in conformity with the architect's plans and specifications as set forth in the relevant portions of the (a) Project Manual, Specifications for [title of specifications document] prepared by [name of architect] and issued for bidding [date], as well as the (b) [title of plans] prepared by name of architect] and dated [date], both of which are incorporated herein by reference and made a part of this Contract.

2. TERM

This Contract shall commence upon execution by all the parties. The term of this Contract shall expire [date] unless extended or terminated pursuant to the terms hereof. No work is authorized or subject to compensation hereunder unless and until this Contract shall have been fully executed by all the parties and a Notice to Proceed has been issued by viNGN. All work hereunder shall be completed within one hundred twenty (120) days of the issuance of a Notice to Proceed by viNGN, with delay damages as set forth herein commencing on the one hundred twenty first (121st) day.

3. COMPENSATION

In consideration of the satisfactory performance of the services described herein, viNGN agrees to pay the Contractor the sum of [**Amount written in words**] Dollars (**[\$amount written in numbers]**) in accordance with the provisions set forth in **Addendum III** (Compensation),

attached hereto and incorporated herein.

4. COMPLIANCE WITH BONDING REQUIREMENTS

In compliance with federal regulations governing the Broadband Grants, because the compensation payable hereunder exceeds the federal simplified acquisition threshold of \$100,000.00, the Contractor shall provide the following as a condition of this Contract:

(A) Performance Bond

Contractor shall provide a performance bond for one hundred percent (100%) of the contract price to secure fulfillment of all the Contractor's obligations hereunder; and

(B) Payment Bond

A payment bond for one hundred percent (100%) of the contract price to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for hereunder.

5. LIQUIDATED DAMAGES

It is hereby expressly agreed by the parties hereto that time is of the essence, and in the event the Contractor has not completed the work hereunder within the time set forth in Paragraph 2 hereof, liquidated delay damages of Five Hundred Dollars (\$500.00) for each calendar day or portion thereof in which the work remains incomplete shall be due to viNGN. The liquidated damages shall first be deducted from any contract monies due but not yet paid to the extent available.

6. RECORDS

The Contractor shall present documented, precise records of time and money expended under this Contract.

7. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to construction contractors doing business in the United States Virgin Islands and to require the maintenance of such standards by any employee or contractor employed by it to perform services hereunder.

8. DOCUMENTS, PRINTOUTS, ETC.

Certified copies of all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract

shall become the property of viNGN and shall be turned over to it at the termination of this Contract, or at viNGN's request, during the life of the Contract. The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of viNGN.

9. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon viNGN, the Authority, or the Government generally, to persons, firms, associations, or corporations engaged by Contractor as servants, agents, employees or independent contractors, or in any other capacity whatsoever, or make viNGN, the Authority, or the Government generally, liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations or taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipts taxes, and social security taxes for Contractor, its servants, agents, employees or independent contractors.

Throughout the term of this Contract, Contractor shall maintain the following minimum amounts of insurance: (i) workers' compensation of an amount and type specified by the laws of the Territory; (ii) commercial general liability with One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) general aggregate; (iii) automobile liability for all owned, hired, and non-owned automobiles with One Hundred Thousand Dollars (\$100,000.00) combined single limit. Prior to starting any work under this Contract but in no case later than ten (10) days after the Effective Date, Contractor shall provide viNGN with a certificate which confirms that Contractor has the above coverages and states that the Contractor and viNGN shall be notified thirty (30) days prior to any cancellation or non-renewal of any such coverage.

10. ASSIGNMENT; SUBCONTRACTORS

viNGN shall have the right to assign this Contract to an affiliated entity upon notice to but without need of consent from the Contractor. The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of viNGN.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

The laws of the United States Virgin Islands shall govern this Contract and jurisdiction over this Contract as well as venue are exclusive in the United States Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the Parties hereto or their duly authorized representatives and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This Contract, including such provisions of **Addendum I** (General Provisions), **Addendum II** (Termination of Contracts), and **Addendum III** (Compensation), all of which are attached hereto and incorporated herein by reference, as well as the architect's plans and specifications as set forth in the relevant portions of the (a) Project Manual, Specifications for [title of specifications document] prepared by [name of architect] and issued for bidding [date], as well as the (b) [title of plans] prepared by name of architect] and dated [date], and relevant provisions of the RFP and Contractor's proposal which are also incorporated herein by reference, constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to subject matter of this Contract are merged herein. In the event of a direct conflict between the terms of this Contract and any of the foregoing Addenda or other documents incorporated herein by reference, the terms of this Contract shall be controlling.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, viNGN will have the right to withhold, out of any payment due to the Contractor, such sums as viNGN may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, viNGN may apply such sums in such manner as viNGN may deem proper to secure itself or to satisfy such claims. viNGN shall immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold. No such withholding or application shall be made by viNGN if and while Contractor gives satisfactory assurance to viNGN, in writing, that such claims will be paid by Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

16. CONDITIONS PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and the approval or ratification of the Board of Directors of viNGN.

17. TERMINATION

viNGN shall have the right to terminate this Contract with or without cause on thirty (30) days written notice to the Contractor specifying the date of termination. The Contractor shall be entitled to receive payment for services provided to the date of termination.

18. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by viNGN, in part, whenever viNGN shall deem such termination advisable or convenient. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term(s) and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for authorized services provided to the date of termination, including payment for authorized services rendered during the period of the thirty (30) day notice.

19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin. Contractor further warrants that it shall comply with all applicable local and federal anti-discrimination laws, regulations and executive orders in the performance of this Contract, including without limitation Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in U.S. Department of Labor regulations found at Chapter 60 of Title 41 of the Code of Federal Regulations, to the extent the same may be applicable.

20. CONFLICT OF INTEREST

(A) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(B) Contractor further covenants that it is:

(i) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(ii) a territorial officer or employee and, as such, has:

(a) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;

(b) not made, negotiated or influenced this Contract, in its official capacity;

(c) no financial interest in the Contract as that term is defined in section 1101 (1) of said Code chapter.

21. EFFECTIVE DATE

The effective date of this Contract shall be the date all parties have fully executed the Contract (the "Effective Date").

22. NOTICE

Any notice required to be given by the Terms of this Contract, shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the following officer, or authorized successor thereof, of the parties or as follows:

viNGN: Lawrence J. Kupfer, President & CEO
viNGN, Inc.
Warehouse K, 9015 Havensight Mall
Charlotte Amalie, St. Thomas, VI 00802

Contractor: [name]
[company]
[address]
[address]

Notice which is hand delivered shall be deemed given upon delivery. Notice which is mailed shall be deemed given three (3) days following deposit in the U.S. Mail, postage prepaid. A party may change the person or address for notice hereunder by providing notice pursuant hereto.

23. LICENSURE

The Contractor covenants that it has:

(A) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by federal law or by Title 27 of the Virgin Islands Code; and

(B) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

Contractor further represents that it is authorized to do business in the United States Virgin Islands and has provided viNGN with proof of same in the form of a valid Virgin Islands business license in the company name of Contractor. Contractor further covenants that as a condition of continued payment hereunder, it shall maintain a valid business license at all times while performing work hereunder. Any subcontractors approved by viNGN pursuant to the terms of this Contract shall be duly licensed as a condition of approval of any subcontract and payment for any work performed thereunder.

24. CONTRACTOR'S REPRESENTATIONS

The Contractor agrees that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract, and that it has been engaged in and now does such work and represents that it is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work. The Contractor agrees further to begin work on the date indicated on the formal notice to proceed or as soon as possible thereafter and to complete the work within the number of days specified herein or as extended in accordance with the General Provisions of this Contract. The work shall be done under the direct supervision of viNGN or its contractor retained for the purpose of managing the construction hereunder, in accordance with applicable local and federal laws and regulations governing the same. No work shall be performed without the required construction permit or permits.

25. WARRANTY OF NON-SOLICITATION

The Contractor expressly warrants that it has employed no person to solicit or obtain this Contract on its behalf, or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by it hereunder; and that it has not, in estimating the contract price demanded by it included any sum by reason of such brokerage, commission or percentage; and that all monies payable to him hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this Contract. Contractor further warrants that it has not violated any applicable local or federal law with respect to kickbacks, lobbying, conflicts of interest, or false or fraudulent claims in connection with the procurement of this Contract. Breach of the foregoing warranty shall give viNGN the right to terminate this Contract immediately without penalty or further obligation to Contractor.

26. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any

claim upon or against viNGN, the Authority, or the Government of the Virgin Islands generally, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

27. DEBARMENT CERTIFICATION

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the link to <https://www.epls.gov/> and the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT." In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this Contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Authority for any progress payments heretofore made.

28. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make, or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

29. COMPLIANCE WITH GRANT REQUIREMENTS

This Contract is governed by applicable provisions of the American Recovery and Reinvestment Act of 2009, federal regulations and ARRA implementing guidance as may be revised and updated from time to time, and by program-specific requirements of the BTOP as administered by the NTIA. The Contractor agrees that it will perform its services hereunder in compliance with applicable laws, rules, regulations and guidance applicable to this Contract, including without limitation all applicable requirements imposed by ARRA, such as recordkeeping, reporting, retention and disclosure obligations, and whistleblower protections, as well as all program-specific requirements of the BTOP as administered by the NTIA and any other relevant agencies, and all specifications and requirements set forth in any request for proposals or request for qualifications in connection with this Contract, and all amendments or modifications to any of the foregoing, to the extent the same may be applicable. In the event the Contractor fails to comply with applicable ARRA or BTOP requirements governing the use of federal grant funds, viNGN may withhold or suspend, in whole or in part, funds awarded, or recover misspent funds following an audit, in addition to all other remedies available to viNGN under federal or Territorial law. Without limiting the foregoing, the Contractor shall specifically comply with the following requirements:

(A) ARRA Reporting and Recordkeeping Requirements; Access to Records

The Contractor shall take such steps as may be necessary to ensure compliance with any applicable recordkeeping requirements imposed under ARRA, the BTOP or by any other applicable provision of federal or Virgin Islands law or regulation governing the work performed hereunder. To help ensure full compliance with the transparency and accountability requirements of ARRA, the parties shall keep segregated and accurate records of all activities relating to this Contract, and shall retain such records for a period of at least three (3) years following conclusion of the work hereunder. Contractor shall permit access by viNGN, the Authority, the NTIA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

(B) Buy American Provisions

Purchases of any iron, steel or manufactured goods made with funding hereunder shall be made in compliance with the Buy American provisions of section 1605 of ARRA to the extent the same may be applicable and no waiver applies to the same.

(C) Whistleblower Protection Compliance

In compliance with the Whistleblower Protection provisions of ARRA, all job sites shall display a Whistleblower Protection poster which can be downloaded from the federal Government's Recovery.com website by accessing the following web page: <http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower%20Poster.pdf>.

(D) Compliance with Anti-Kickback Act

To the extent the same may be applicable to its performance of this Contract, the Contractor shall comply with the Copeland "Anti-Kickback" Act as codified at sections 276a to 276a-7 of Title 40 of the United States Code and as supplemented by U.S. Department of Labor regulations found at Part 3 of Title 29 of the Code of Federal Regulations, as amended.

(E) Compliance with Federal Labor Law

To the extent the same may be applicable to its performance of this Contract, the Contractor shall comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act codified at sections 327-330 of Title 40 of the United States Code and as supplemented by U.S. Department of Labor regulations found at Part 5 of Title 29 of the Code of Federal Regulations, as amended.

(F) Compliance with Environmental and Energy Conservation Law

To the extent the same may be applicable to its performance of this Contract, the Contractor shall comply with all standards, orders or requirements issued under section 306 of the federal Clean Air Act codified at section 1857(h) of Title 42 of the United States Code, section 508 of the federal Clean Water Act codified at section 1368 of Title 33 of the United States Code, federal Executive Order 11738, and U.S. Environmental Protection Agency regulations found at Part 15 of Title 40 of the Code of Federal Regulations, along with any mandatory standards and policies relating to energy efficiency which are contained in any local energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871.

30. COOPERATION AND DISPUTE RESOLUTION

The Parties agree to cooperate in good faith with each other in the performance of this Contract and negotiation of any modifications hereto in order to achieve and maintain timely compliance with BTOP, ARRA and other applicable federal and local laws and requirements, and to ensure the success of the Broadband Project and fulfillment of its goals, including the deadlines for obligating and expending funds under the Broadband Grants.

To ensure timely completion of work and expenditure of grant funding, the Parties agree that they shall endeavor to resolve promptly any disputes or disagreements regarding interpretation and performance of this Contract. As a matter of course, the Parties shall bring problems or potential problems to the attention of each other as soon as possible and discuss them.

(A) Negotiation

The parties agree to attempt to settle through negotiation in good faith any dispute arising under or relating to this Contract. The disputing party shall initiate negotiations by giving the other party written notice briefly outlining the dispute. Within five (5) days after receipt of the notice, the receiving party shall submit to the other party a brief written response. The Parties shall then confer within fifteen (15) days of receipt of the disputing party's notice, in person at a mutually acceptable time and place, or by telephone at a mutually acceptable time, at least once and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt in good faith to resolve the dispute amicably to their satisfaction.

(B) Mediation

If the dispute is not settled despite a good faith effort to resolve it through negotiation, then the Parties shall endeavor in good faith to settle the dispute without delay through mediation by a mutually acceptable mediator administered by the American Mediation Institute (AMI) or a mediator certified by the U.S. District Court or the Superior Court of the Virgin Islands before resorting to arbitration.

(C) Binding Arbitration

Any controversy or dispute concerning this Contract which cannot be settled through negotiation or mediation shall be settled by arbitration according to the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award may be entered and enforced in any court of competent jurisdiction.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the day and year written below.

"viNGN":
viNGN, INC.

By: SAMPLE ONLY – NOT FOR EXECUTION
Lawrence J. Kupfer, President & CEO _____ Date

Witness:

"Contractor":
[name of company]

By: SAMPLE ONLY – NOT FOR EXECUTION
[name] _____ Date

Its: _____