

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES (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 (OEO), 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, [DESCRIPTION OF PROJECT TO BE CARRIED OUT FOR WHICH PROFESSIONAL SERVICES ARE NEEDED]; and

WHEREAS, viNGN is in need of the services of a professional services contractor to [GENERALLY DESCRIBE TASK(S)]; and

WHEREAS, viNGN issued a Request for Proposals (RFP) [NUMBER] for [TASK(S)] setting forth the particular services requested, including specific contractor requirements and [OTHER REQUISITES set forth in the RFP]; and

WHEREAS, the Contractor was selected through viNGN's standard competitive procurement process to perform the services referred to above and represents that it is willing and capable of providing such services in an expeditious manner and in accordance with the

terms and conditions of the grant award and any special award conditions and in conformity with applicable law, regulations, and guidelines including the requirements imposed by ARRA, the BTOP and the CCI Program and federal grants generally as applicable hereto;

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 provide the services described in **Addendum I** (Scope of Work) attached hereto and made a part of this Contract.

2. TERM

This Contract shall commence upon execution by the parties. The term of this Contract shall be for a period of [NUMBER OF MONTHS OR YEARS, OR UNTIL A DATE CERTAIN] upon final execution.

3. COMPENSATION

In consideration of the satisfactory performance of the services described in **Addendum I** (Scope of Work), the Authority agrees to pay Contractor [if hourly with a cap, specify] a sum not to exceed [Amount in Words] Dollars (\$[Amount in Numbers]) in accordance with the provisions set forth in **Addendum II** (Terms of Compensation) attached hereto and made a part of this Contract.

As a condition of payment, the Contractor shall keep documented and precise records of all work performed and time expended hereunder, and shall prepare and submit to viNGN, no more frequently than once per month, an invoice and progress report identifying specific tasks completed and describing in detail all services performed during the billing period and amount due hereunder. Cost overruns will not be paid by viNGN, and viNGN is not committed to seeking funds to pay for such cost overruns.

The Contractor shall be reimbursed only for those travel expenses which are authorized under the applicable grant requirements and reasonably necessary to the timely performance of its obligations hereunder, on an actual cost basis as incurred, not to exceed [Amount in Words] Dollars (\$[Amount in Numbers]). Reimbursement for travel expenses shall be further subject to the following restrictions: (i) air travel shall be booked at the lowest available fare and in advance to minimize cost; (ii) hotel accommodations shall be for standard rooms at non-luxury hotels; (iii) ground transportation costs shall be at published taxi fare rates of the Virgin Islands Taxi Commission or for the rental of standard non-premium class vehicles and associated fuel charges; (iv) meals shall be at non-luxury establishments; and (v) the amount of any reimbursement for hotel lodging, meals and incidentals shall not exceed the per diem rates in

effect at the time the charge was incurred as set by the U.S. Department of Defense through the General Services Administration for St. Thomas, St. John, or St. Croix, as applicable. All expenses over [Amount in Words] Dollars (\$[Amount in Numbers]) shall require the advance written approval of viNGN. To obtain reimbursement for authorized travel expenses, Contractor shall submit documentation of all such expenses, including receipts, along with an invoice itemizing the date and place (city, town, or other similar designation) of the expenses, the business purpose of the trip, and the name(s) of the person(s) on the trip.

4. RECORDS

The Contractor shall present documented, precise records of time and/or money expended under this Contract as a condition of payment or reimbursement for any time or expenses hereunder.

5. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands and to require the maintenance of such standards by any subcontractor employed hereunder.

6. DOCUMENTS, PRINTOUTS, CONFIDENTIAL INFORMATION, ETC.

All documents and information, including all books, manuals, records, reports, notes, contracts, computer files and data of any nature, lists, blueprints, instructional materials, programs, printouts, memoranda and other documents or materials of every description derived therefrom and pertaining to this Contract, or copies thereof, and equipment furnished to or prepared by the Contractor in the course of or incident to the services provided hereunder, including, without limitation, records, source codes, programs and any other materials pertaining to viNGN's business, belong to viNGN subject to the terms and conditions of any federal grant or local bond funding and shall be turned over to viNGN upon termination of this Contract. Contractor may keep an archive copy of its work documents for the purpose of later proving what work was done. The above-described materials shall not be used by Contractor for any other purpose or by any other person or entity except as required by law or upon the written permission of viNGN.

The Contractor acknowledges that by reason of its relationship with and service to viNGN, the Contractor may have access to confidential information relating to operations and technology and know-how which have been developed by viNGN and may be developed in the future, including, without limitation, information and knowledge pertaining to products, systems and services, computer programs, methods of operation and pricing, sales and profit data, customer and supplier lists and relationships between viNGN and its customers, suppliers and others who have business dealings with it, customer lists, pricing data, supply sources, techniques, computerized data, maps, methods, product design information, market information, technical information, benchmarks, performance standards and other confidential or proprietary

information of, or licensed to viNGN or an affiliated entity, including without limitation trade secrets, inventions, patents and copyrighted materials other information not relating thereto (the "Confidential and Proprietary Information"). In recognition of the foregoing, the Contractor agrees to maintain the confidentiality of all such information and other matters of viNGN known to the Contractor which are not otherwise in the public domain or constituting public information required to be disclosed by law and will not disclose any such information to any person outside viNGN, except as required by law or with viNGN's prior written authorization and consent.

All right, title, and interest of every kind and nature whatsoever in and to the Confidential and Proprietary Information and all personal property, including, without limitation, all books, manuals, records, reports, notes, contracts, computer files and data of any nature, lists, blueprints, and other documents, or materials, or copies thereof made, written, discussed, developed, secured, obtained or learned by the Contractor during the term of the relationship with viNGN shall be the sole and exclusive property of viNGN subject to the terms and conditions of any federal grant or local bond funding. The Contractor acknowledges that all works of authorship performed for viNGN, and all works developed, created, invented, devised, conceived or discovered by the Contractor during its employment by viNGN constitute works for hire and shall remain the sole property of the viNGN subject to the terms and conditions of any federal grant or local bond funding.

7. LIABILITY; INSURANCE

Nothing in this Contract shall be construed to impose any liability upon viNGN or the Government of the Virgin Islands generally to persons, firms, associations, or corporations engaged by Contractor as employees, servants, agents, or independent contractors, or in any other capacity whatsoever, or make viNGN or the Government 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 and social security taxes for Contractor, its servants, agents 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 used in connection with the performance of the Contractor's obligations hereunder 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.

8. ASSIGNMENT

Contractor shall not subcontract or assign any part of the services under this Contract

without the prior written consent of viNGN. viNGN shall have the right to assign this Contract to another public corporation or entity of the Government of the Virgin Islands at its option.

9. INDEMNIFICATION

The Contractor agrees to indemnify, defend and hold harmless viNGN from and against any and all losses, damages, liabilities, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which viNGN may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of viNGN.

10. 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.

11. GOVERNING LAW

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

12. 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.

13. ENTIRE AGREEMENT

This Contract and the Addenda incorporated herein by reference constitute the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the project which is the subject matter of this Contract are merged herein.

14. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, viNGN shall 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.

15. CONDITION 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.

16. 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.

17. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by viNGN, in part, whenever viNGN shall deem such termination advisable. 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 services provided to the date of termination, including payment for the period of the thirty (30) days notice.

18. 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.

19. 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:

(1) 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

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

(i) 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;

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

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

20. EFFECTIVE DATE

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

21. 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.

22. 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 U.S. Virgin Islands and shall, as a condition of payment hereunder, provide viNGN with proof of same in the form of a valid Virgin Islands business license in the corporate name of Contractor along with the appropriate corporate document(s) issued by the Corporations Division of the Office of the Lieutenant Governor which demonstrate its authority to conduct business in the Territory in conformity with the provisions of Title 13 of the Virgin Islands Code.

23. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against viNGN, the Government of the Virgin Islands, 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.

24. 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.

25. 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.

26. 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) Job Creation and Retention Reports

Contractor shall cooperate with viNGN and OEO in fulfilling the reporting requirements for those receiving funding as a result of an ARRA grant by providing payroll and other data requested in connection with ARRA 1512 Reports relating to the number of jobs created and retained, based on jobs hours paid with ARRA funding, and delineated by total job hours created and retained. Job creation and retention reporting data shall be provided on at least a quarterly basis and no later than five (5) days following the end of each quarter.

(C) Buy American Provisions

The Contractor acknowledges that purchases of any iron, steel or manufactured goods made with funding under the CCI grant 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.

(D) 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>.

(E) 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.

(F) 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.

(G) 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.

27. TIME IS OF THE ESSENCE [as applicable – for specific tasks with ARRA deadlines]

The parties acknowledge and agree that time is of the essence, and that **an express condition of the grant funding for this Contract is that [DESCRIPTION OF TASK(S) AND DEADLINE]**. Each of the following constitutes a failure to undertake and complete the Project: (a) failure to undertake the Project in a timely manner in accordance with the schedule set forth [WHERE]; (b) failure to make progress on the project set forth in **Addendum I** hereof to the satisfaction of viNGN pursuant to the schedule set forth [WHERE]; or (c) failure to complete the project set forth in **Addendum I** hereof by [DEADLINE] in conformity with the grant requirements, the conditions set forth in the RFP, and applicable law, regulations and relevant agency guidance. A failure to undertake, to make progress on or to complete the project in accordance with the schedule set forth [WHERE] shall constitute cause for suspension or termination of further obligation of viNGN hereunder, and if such failure is attributable to any reason or cause other than a national emergency or an Act of God, the Contractor shall repay to viNGN all monies paid to the Contractor within thirty (30) days after demand for repayment is made.

28. 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.

SAMPLE ONLY – NOT FOR EXECUTION

By: _____
Lawrence J. Kupfer
President & CEO Date

Contractor:
[ENTITY NAME]

SAMPLE ONLY – NOT FOR EXECUTION

By: _____
[NAME]
President Date

[NB: LLC, LLP, OR OTHER NON-CORPORATE ENTITIES REQUIRE APPROPRIATE MODIFICATIONS TO SIGNATURE BLOCK]

Attest:

SAMPLE ONLY – NOT FOR EXECUTION

By: _____
[NAME]
Secretary Date