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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 25th day of March, 2023, in the Territory of the Virgin Islands, by and between the Government of the **Virgin Islands, Department of Property and Procurement**, on behalf of the **Department of Education** (hereinafter referred to as "Government") of 1834 Kongens Gade St. Thomas, U.S. Virgin Islands 00802 and **Virgin Islands Telephone Corporation dba VIYA** (hereinafter referred to as "Contractor" or "VIYA") of 4611 Tutu Park Mall, St. Thomas, U. S. Virgin Islands 00802

WITNESSETH:

WHEREAS, the Government is in need of the services of a contractor to provide Leased Lit Fiber Internet Services and Wide Area Network (WAN) broadband bandwidth to the Department of Education's ("VIDE" or "Department") schools and facilities in the St. Thomas-St. John ("STTJ") and St. Croix ("STX") School Districts, including the administrative offices; and

WHEREAS, the Schools and Libraries Program of the Universal Service Fund commonly known as Education Rate or "E-Rate" is administered by the Universal Service Administrative Company ("USAC") under the direction of the Federal Communications Commission ("FCC") and provides discounts to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access; and

WHEREAS, the Government has participated in the E-Rate Program since its inception in 1998, and has received more than Sixty-Two Million Dollars (\$62,000,000.00) in federal funding for technology during the E-Rate Program Years 1-23; and

WHEREAS, the Government solicited the services under **Request for Proposal No. BD-23-400-4001-145**; and

WHEREAS, for E-Rate Funding Year 2024 and 2025, the Contractor was selected pursuant to the federally mandated E-rate competitive bidding process outlined in Title 47, §54.503 (Competitive bidding requirements) of the Code of Federal Regulations, which involves the posting of the service solicitation application form, Form-470 on USAC's website and the establishment of a technology committee to review responsive proposals submitted by interested vendors; and

WHEREAS, the delivery of the services is subject to and contingent upon approval of the application for Year 23 (2023-2024) and Year 24 (2024-2025) of the federal E-Rate program; and

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



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5. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

6. 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.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract produced or created by the Government shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

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

9. ASSIGNMENT

The Contractor may subcontract or assign any part of the services under this Contract to Alliance Data Service LLC and/or Island Wiring LLC.

10. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to bandwidth management and the installation and of the facilities required to support the services to be provided by Contractor under this Contract and arising from any cause, except the sole negligence of Government.



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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

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain 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 agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this agreement, whether written or oral.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will 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 Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.



16. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

17. TERMINATION

Either party will have the right to terminate this Contract with or without cause on sixty (60) days written notice to the other party specifying the date of termination.

18. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing thirty (30) days written notice to the Contractor. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term 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) 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.

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:
 - (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; and



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

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 parties as follows:

GOVERNMENT

Lisa Alejandro
Acting Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas Virgin Islands 00802

Dionne Wells Hedrington, Ed. D
Commissioner
Department of Education
1834 Kongens Gade
St. Thomas, U.S. Virgin Islands 00802

CONTRACTOR

Julio Rhymer
Chief Financial Officer
Virgin Islands Telephone Corporation dba VIYA
4611 Tutu Park #200
PO Box 6100
St. Thomas, U.S Virgin Islands 00802

22. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required 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.

23. OTHER PROVISIONS



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Addenda I, II, and III attached hereto are a part of this Contract and are incorporated herein by reference.

24. 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 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 Government of the Virgin Islands for any progress payments heretofore made.

25. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

26. 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 offence.

27. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.



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- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.
- (c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

28. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

29. BILLING PROCEDURES and PAYMENT

The Government will pay Contractor upon receipt of properly completed invoices that shall describe and document to the Department's satisfaction, and shall contain information, including but not limited to, the period of services covered by the invoice, description of the services performed, and the amount of fees in accordance with the compensation schedule in ADDENDUM II attached hereto and made a part of this Contract. Each invoice must be accompanied by applicable supporting documents, including monthly reporting of services delivered outages, trouble tickets, signed orders (if applicable), calculations to support numbers on invoice, cost variations if any and the reason(s) for any variation from the contract for the invoice period.

The Contractors agree to first submit E-Rate invoices to the Department of Education, Office of Instructional Technology's E-Rate Program Manager, Coleen Smith at coleen.smith@videandoitinvoice@vide.vi, for verification that the services were provided in accordance with the contract and all applicable federal laws and regulations, including all applicable policies, rules, and procedures pertaining to this Contract or the services provided hereunder. After verifications and signatures from VIDE invoice review team—within five (5) business days – the Department of Education will return signed invoices to the Contractor. It is only after receipt of signed invoices from the VIDE the Contractor may submit them to the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) for Payment. The Department will provide reasonable and timely support upon Contractor's written request for any of Contractor's efforts to obtain (i) timely payment from the Department, (ii) corroborating documentation from the Department, including proof of payment(s) such as the issuance of check(s), and timely payment performance from USAC, including related documentation required by USAC from the Department.

The obligation of the Government to compensate Contractor for services rendered under the Contract shall be contingent upon Contractor's compliance with the terms and conditions herein. Non-compliance with this condition will subject Contractor to applicable federal and local penalties including those provided in Paragraphs 15:RIGHT TO WITHHOLD, 17: TERMINATION, 18:PARTIAL TERMINATION, 25:FALSE CLAIMS and 26:NOTICE OF FEDERAL FUNDING



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The Contractor agrees that USAC/E-Rate shall be responsible to compensate the Contractor for the ninety percent (90%) balance (this is, other than the Government's ten percent (10%) match) as specified in Addendum II (Compensation). The Contractor agrees that the Government shall only be obligated to compensate the Contractor for the Government's ten percent (10%) match as specified in Addendum II (Compensation) after verification that services were provided and invoices are approved for payment.

After receipt of properly completed invoices, payment shall be considered timely if made by the Department within sixty (60) days during which period the Department will verify that the services invoiced were provided in accordance with the Contract and all applicable federal and local laws and regulations, including all applicable policies, rules, and procedures pertaining to this Contract or the services provided hereunder. Payment shall be sent to the address designated by the Contractor. The Department may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract—subject to immediate written notification by the Department to Contractor of the specific nature of such failure. No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Department.

30. FORCE MAJEURE

Neither Party shall be liable to the other for any delays or failure to perform under this Contract, as a result of conditions reasonably beyond the Party's control including but not limited to war, terrorist acts, riot, strikes, fire, earthquakes, hurricanes, floods, or any act of God.

31. DEFAULT AND FAILURE TO PERFORM

In the event of any failure or refusal of the Contractor to perform its obligations under this Contract, except as defined in Paragraph 30, all relevant costs, charges, and expenses that the Department suffers, and provides proof of, shall be a part of the damages claim to the Contractor to the Department, as a result of such failure or refusal to perform.

32. SEVERABILITY

If any of the provisions of this Contract are determined to be invalid, such invalidity shall not affect or impair the validity of the other provisions, which shall be considered severable and shall remain in full force and effect.



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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Dionne Weles Hedrington, Ed.D
Department of Education

03/22/2023
Date

Lisa Alejandro, Acting Commissioner
Department of Property and Procurement

3/23/2023
Date

CONTRACTOR

Julio Rhymer, Chief Financial Officer
Virgin Islands Telephone Corporation dba VIYA
(Corporate seal, if Contractor is a corporation)

3/21/23
Date

APPROVED:

Bosede Bruce
Acting Governor

Date: 3/25/2023

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:
Assistant Attorney General

Date 3/23/2023

PURCHASE ORDER NO. _____