

July 1, 2008

The Honorable John de Jongh, Governor  
Office of the Governor  
No. 21 Kongens Gade  
Charlotte Amalie  
St. Thomas, Virgin Islands 00802

Dear Governor de Jongh,

The purpose of this letter is to convey to you the enclosed fiscal special conditions, which will apply to grants awarded by the U.S. Department of Education (Department) to the Virgin Islands and/or its agencies (Virgin Islands) on or after the date of this letter. These special conditions will also be applicable to grant funds previously awarded by the Department to the Virgin Islands that are still available for obligation or liquidation as of the date of these special conditions.

As you know, since August 25, 2006, the Virgin Islands has been working with a third party fiduciary agent, Alvarez & Marsal (A&M), because the Virgin Islands has yet to implement a credible central financial management system (CFMS) as was originally required under the Compliance Agreement with the Department that ended on September 23, 2005. Because the use of a third party fiduciary agent (Agent) continues to be necessary in order to ensure that Federal funding is used effectively, the Department, through these special conditions, will continue to require the Virgin Islands to use the Agent to perform the financial management duties required under 34 C.F.R. Parts 75, 76, and 80 for all Department grant awards.

These special conditions describe the responsibilities of the Virgin Islands and its agencies to work with the Agent; Attachment A to these special conditions prescribes the responsibilities of the Agent in administering Department funds. In particular, these special conditions explain that the failure of the Virgin Islands and/or its agencies to comply with any of the special conditions – including working cooperatively and in a timely manner with the Agent to implement the activities described in these special conditions, and notifying the Department if a dispute arises between the agent and the Virgin Islands and/or its agencies concerning implementation of the contract or the administration of grant funds – will negatively impact the ability of the Virgin Islands and/or its agencies to continue to receive Department grants.

The Department has become increasingly concerned about the working relationship between the Virgin Islands, in particular the Virgin Islands Department of Education (VIDE) and your current Agent, A&M. The challenges within this relationship are impeding the ability of the Virgin Islands and A&M to work in a collaborative way, as

required by the Departmental special conditions, to bring about improvements in fiscal management of Department grants. While the Department recognizes that the requirement to use an Agent introduced significant changes to which the Virgin Islands had to adapt, we are nevertheless concerned about the level of support and cooperation provided to A&M by some staff of Virgin Islands agencies, which is critical to the success of any Agent's ability to effectively manage Department funds. It is essential that all agencies in the Virgin Islands, including VIDE, the Virgin Islands Department of Finance (VIDF), the Virgin Islands Department of Health, the Virgin Islands Department of Human Services, and the Virgin Islands Department of Property and Procurement work cooperatively with the Agent and fully comply with these special conditions as a prelude to any possible consideration of transitioning fiscal management responsibilities for Department grants back to agencies in the Virgin Islands once a CFMS is in place. After meeting and speaking with Dr. Terry, and in speaking with Ms. Karen Marsal of A&M, we are hopeful that the working relationship between VIDE and A&M (or any successor Agent) will improve. Both Dr. Terry and Ms. Marsal have expressed their interest in building a positive, collaborative relationship.

These special conditions also prescribe requirements for the Virgin Islands to continue to make significant improvements in all aspects of its fiscal management. Specifically, under the enclosed special conditions, by September 1, 2008, the Virgin Islands, through VIDF or another agency you designate, must submit to the Department its detailed overall project plan with a work breakdown structure for, and a report on any progress to date in, developing and implementing a fully functioning CFMS. The overall project plan and/or status report must include a detailed timeline and milestones for fully implementing the CFMS. Further details and reporting deadlines related to the CFMS requirements are explained in Section II.B of the enclosed special conditions.

As noted under Section II.G, before the Virgin Islands may expend Department grant funds under the grant awards to which these special conditions are attached, the Virgin Islands must incorporate these special conditions as an addendum to the contract signed on August 25, 2006 between the Virgin Islands and A&M, as well as to any new contract awarded as a result of the recompile for third party fiduciary services expected to occur on or before April 25, 2009.

Please be aware that, in addition to these enclosed special conditions, the Department may impose additional programmatic special conditions under individual grant programs. Moreover, the Department is prepared to take further steps, beyond these enclosed special conditions and any additional programmatic special conditions, to address any problems of noncompliance, as necessary.

As we have previously indicated, this approach is a valuable solution, as it enables us to provide funds to the Virgin Islands, while the Virgin Islands continues its efforts to develop and implement a CFMS and to make other system improvements previously required by, but not adequately implemented under, the Compliance Agreement. The result we continue to seek is that, with the assistance of the Agent, the Virgin Islands will be able to regain fiscal management responsibilities for, and effectively manage,

Department grant programs in the future. If you have any questions, please contact me at (202) 205-3511.

Sincerely yours,

/s/ Philip A. Maestri

Philip A. Maestri  
Director, Risk Management Service

*Enclosures*

*cc:*

Dr. Laverne Terry, Commissioner, Department of Education  
Ms. Debra Gottlieb, Director, Office of Management and Budget  
Ms. Claudette Watson-Anderson, Commissioner, Department of Finance  
Ms. Lynn Millin, Commissioner, Department of Property and Procurement

U.S. Virgin Islands  
Virgin Islands Department of Education  
Virgin Islands Department of Health  
Virgin Islands Department of Human Services  
Federal Fiscal Year (FFY) 2008 Special Conditions

PREAMBLE: These special conditions are imposed on grants made available by the U.S. Department of Education (Department or ED) to the U.S. Virgin Islands (Virgin Islands), the Virgin Islands Department of Education (VIDE), the Virgin Islands Department of Health (VIDH), and the Virgin Islands Department of Human Services (VIDHS) on or after the date of these special conditions. Additionally, these special conditions apply to all grant funds previously awarded by the Department to the Virgin Islands, VIDE, VIDH and VIDHS that are still available for obligation or liquidation on the date of these special conditions. These grant awards are made in accordance with the Department's regulations governing "high risk" grantees in 34 CFR § 80.12, and these special conditions are imposed, as explained further below, because the Virgin Islands has yet to implement a credible central financial management system (CFMS) as was originally required under the comprehensive, three-year Compliance Agreement (Agreement) between the Virgin Islands and the Department that was signed on September 23, 2002 and expired on September 23, 2005. Further, the Virgin Islands still needs to make significant improvements in its fiscal management of Department grant funds in order to ensure compliance with Federal grant requirements and fiscal accountability. Therefore, these special conditions are imposed to help ensure that grant funds awarded by the Department to the Virgin Islands, VIDE, VIDH, and VIDHS are expended in accordance with applicable legal requirements and the appropriate fiscal accountability measures and management practices and controls.

## I. BACKGROUND

As a result of serious and recurring deficiencies in the administration of ED programs by the Virgin Islands, the Department entered into the Agreement with the Virgin Islands. Under the terms of the Agreement, the Virgin Islands agreed to develop integrated and systemic solutions to problems in managing ED funds and programs, so that the Virgin Islands would be fiscally accountable in managing these programs, and would administer and implement the programs in a manner that would benefit people in the Virgin Islands, in accordance with Federal requirements.

In a letter dated March 31, 2005 from former Department Under Secretary Edward R. McPherson to former Virgin Islands Governor Charles W. Turnbull, the Department notified the Virgin Islands of its concerns regarding the limited progress that the Virgin Islands had made in meeting the goals of the Agreement, and required the Virgin Islands to demonstrate why the Department should not begin to take immediate remedial action under the terms of the Agreement. Based on the response from former Governor Turnbull submitted by the Virgin Islands in

a letter dated April 15, 2005, the Department concluded, in a June 17, 2005 letter from former Under Secretary McPherson, that the Virgin Islands had failed to meet on a timely basis key terms and conditions of the Agreement that are critical to successful compliance and would not be able to meet all of the terms and conditions by the time the Agreement ended on September 23, 2005. In particular, there was a significant lack of progress on the part of the Virgin Islands in developing and implementing a CFMS – the cornerstone of the Virgin Islands’ financial management improvements that are critical to its ability to manage ED funds consistent with applicable Federal regulations concerning fiscal accountability and funds management. Under section II.A. of the Agreement concerning the application of additional special conditions, in September 2005, the Department imposed special conditions upon the Virgin Islands’ grant awards, requiring the Virgin Islands to procure the services of a third party fiduciary agent, acceptable to the Department, to perform the financial management duties required under Federal regulations for all Department grant awards made to the Virgin Islands.

In 2006 and 2007, with the required third party fiduciary agent in place, the Department again imposed special conditions upon Department grant awards, requiring the third party fiduciary to perform the financial management responsibilities for all Department grant funds awarded to the Virgin Islands and available for obligation and liquidation. Because the Virgin Islands has not demonstrated that it has implemented effectively its own procedures for resolving the fiscal deficiencies that led the Department to require a third party fiduciary agent, the Department will continue its special conditions on all Department grant awards made to the Virgin Islands, except as expressly otherwise noted in this document. These conditions are set forth in further detail below. In addition, because the Virgin Islands has not met the requirements in Part 80 of the Education Department General Administrative Regulations (EDGAR) regarding the management of ED funds by ED grant recipients, these special conditions require the Virgin Islands to comply with those provisions of Part 80 applicable to grantees other than States (such as, but not limited to, § 80.20(b) of EDGAR), which set forth more specific requirements for the financial management of ED funds.

## II. SPECIAL CONDITIONS

### A. Requirement for the Virgin Islands, VIDE, VIDH, and VIDHS to Use a Third Party Fiduciary Agent and Responsibilities for Administration of Grant Funds

In order to continue to receive Department funds, the Virgin Islands must have a third party fiduciary agent in place to administer all Department grant funds that are available to the Virgin Islands for obligation or liquidation. As required by the special conditions imposed on ED grants awarded to the Virgin Islands in September 2005, on August 25, 2006, the Virgin Islands entered into a contract with Alvarez & Marsal (A&M), a third party fiduciary agent approved by the

Department (Agent). The Virgin Islands must maintain its contract with A&M for the remainder of its full contract period. Because the contract with A&M is scheduled to end during the period of these special conditions on April 25, 2009, the Virgin Islands must complete the steps necessary to procure the continued services of an Agent, approved by the Department, that will carry out all of the responsibilities and requirements set forth in Attachment A, after the contract with A&M expires. The Virgin Islands, and all of its agencies, including VIDE, VIDHS, VIDH, the Virgin Islands Department of Finance (VIDF) and the Virgin Islands Department of Property and Procurement (VIDPP), will be required to adhere to the special conditions described in this Section II.A under any new contract with an Agent. The Department will not authorize any expenditure of Department funds unless an Agent is in place for the full period of these special conditions.

In working with the Agent, the Virgin Islands must do the following:

1. The Virgin Islands and all of its agencies including VIDF, VIDPP, VIDE, VIDH, and VIDHS must work cooperatively and in a timely manner with the Agent to implement the activities and responsibilities described in these special conditions.
2. The Virgin Islands, including VIDF and VIDPP, VIDE, VIDH, and VIDHS must permit the Agent's personnel to have access to certain books, records, and reports of the Virgin Islands, VIDF, VIDPP, VIDE, VIDH, and VIDHS, and to have discussions with personnel of the Virgin Islands, VIDF, VIDPP, VIDE, VIDH, and VIDHS concerning the services the Agent is to perform under these special conditions, as provided for in the contract between the Virgin Islands and the Agent.
3. The Virgin Islands, VIDE, VIDH, and VIDHS must notify the Department when any dispute arises between the Agent and the Virgin Islands, VIDE, VIDH, and VIDHS concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by this grant, including the financial management of grant funds. The Virgin Islands, VIDE, VIDH, and VIDHS understand that the Department will assist in the resolution of any such dispute and that this may involve requests for additional information from the Virgin Islands, VIDE, VIDH, or VIDHS, and from the Agent, conference calls among the parties, and decisions or advice from the Department in resolution of the dispute.
4. The Virgin Islands, VIDE, VIDH, and VIDHS must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants.
5. The Virgin Islands, VIDE, VIDH, and VIDHS remain responsible for the provision of program services under the grants, including the review and approval

of local educational agency (LEA) applications for subgrants under formula grant programs, determination of LEA allocations, and notification to the LEAs regarding their allocations under the grants.

6. VIDH's IDEA Part C FFY 2004 through 2008 grant awards shall continue to include special conditions (that are attached to, and specified in, the IDEA Part C grant award letter) requiring the use of its third party fiduciary agent, Lutheran Social Services (LSS), for continued fiscal accountability and provision of services. In addition, VIDH's IDEA Part C grant funds must not be used to pay any costs charged by A&M or its successor Agent to the Virgin Islands under these special conditions.
7. At the beginning of the new contract period, and during the term of either the current or the new contract with the Agent, the Virgin Islands, VIDE, or VIDHS, prior to any draw downs or disbursements, must provide the Agent with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities. For purposes of the Consolidated Grant to Insular Areas (Consolidated Grant), the Virgin Islands and VIDE must provide the Agent with line item budgets for each of the programs under which the Virgin Islands and VIDE will use Consolidated Grant funds. The line item budget for each of these programs must be based on the total amount of Consolidated Grant funds to be used for each program and include amounts for State administration, State-level program activities, and LEA program activities.
8. The Virgin Islands, VIDE, and VIDHS are responsible for: (i) executing their respective draw downs of funds under the grants from the Department's Grant Administration and Payment System (GAPS) so that funds are deposited into the separate bank account established and maintained by the Agent; and (ii) providing to the Agent, for deposit into the separate bank account established by the Agent, any matching funds required for the grants. The Virgin Islands, VIDE, and VIDHS understand and agree that they must draw down funds and provide all matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Failure by the Virgin Islands, VIDE, or VIDHS to comply with this condition concerning the time within which they must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent for that entity. In the event of the Virgin Islands', VIDE's, or VIDHS' failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, the Virgin Islands, VIDE or VIDHS, as appropriate, must take all steps necessary to provide the Agent with full authority to perform draw downs, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.

9. The Virgin Islands, VIDE and VIDHS must use fiscal control and accounting procedures that meet the requirements imposed on non-State governmental grantees in accordance with 34 CFR §§ 80.20(b) and 80.21.
10. The Virgin Islands, VIDE and VIDHS must permit funds to be spent only for allowable costs of programs under the grants, in accordance with 34 CFR § 80.22 and Office of Management and Budget (OMB) Circular A-87. Additionally, for purposes of the Consolidated Grant, the Virgin Islands, VIDE and VIDHS must permit funds to be spent only for allowable costs under, and included in, each Department-approved Consolidated Grant plan from FFY 2004 through 2008. The Virgin Islands, VIDE, and VIDHS acknowledge that the Agent also has the duty to ensure that funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the grants as required by OMB Circular A-87 and that are procured in accordance with applicable procurement requirements in 34 CFR § 80.36(b)-(j). Where there is a question as to whether a cost is allowable, the Agent should raise this question with the Virgin Islands, VIDE, or VIDHS and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
11. The Virgin Islands, VIDE, and VIDHS must coordinate with the Agent the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, the Virgin Islands, VIDE, and VIDHS must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants. The Virgin Islands, VIDE, or VIDHS, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.
12. The Virgin Islands, VIDE, and VIDHS must allow funds under a grant to be charged only for costs resulting from obligations that were properly made during the funds' period of availability, including any carryover period. To ensure against the lapsing of funds, the Virgin Islands, VIDE, and VIDHS must provide the Agent with all obligations in a timely manner to ensure that the obligations are liquidated no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 34 CFR § 80.23.
13. The Virgin Islands, VIDE, and VIDHS must establish and maintain an effective process for tracking and reporting time and effort spent by all employees whose salaries are paid with ED grant funds, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, and properly allocating salary costs among ED grants, based on accurate time



distribution and time and attendance records. The Virgin Islands, VIDE, and VIDHS must carry out these responsibilities consistent with Federal requirements in OMB Circular A-87.

14. The Virgin Islands, VIDE, and VIDHS must ensure that the charging of direct and indirect costs against the grants is consistent with the indirect cost rate negotiated and established by the U.S. Department of Interior (the Virgin Islands' cognizant Federal agency) and the Virgin Islands, and provided to the Agent, and with the requirements of OMB Circular A-87 and 34 CFR §§ 75.560-564 (discretionary grants), 34 CFR §§ 76.560-569 (formula grants), and 34 CFR § 80.22.
15. The Virgin Islands, including VIDF and VIDPP, VIDE, and VIDHS must grant the Agent authority to enter into contracts with vendors on behalf of the Virgin Islands, VIDE, VIDHS, and, as appropriate, VIDH, and in doing so, must comply with the provisions for procurement set forth in 34 CFR §§ 80.36(b)-(j).
16. The Virgin Islands, VIDE, and VIDHS must provide effective oversight for proposed procurements, including, but not limited to, training all staff on, and reviewing all requisitions against, local and ED requirements for procuring goods and services, to facilitate the review and approval by the Agent in a timely manner of purchase orders and to reduce the number of requisitions that are disallowed by the Agent for not meeting these requirements.
17. The Virgin Islands, VIDE, and VIDHS must work with the Agent to ensure that all property procured under ED grants are managed in accordance with the requirements of 34 CFR §§ 80.32(a) and (c)-(g) to ensure that property with a purchase price of \$ 500 or greater are properly inventoried, maintained, and stored to prevent loss, damage, or theft of the property. In particular, by October 1, 2008, the Virgin Islands (through VIDPP or another agency designated by the Governor) must conduct a physical inventory of property with a purchase price of \$500 or greater that was acquired with ED grant funds, and must provide a copy of the inventory to the Agent.
18. All transactions under the contract between the Virgin Islands and the Agent must be consistent with all applicable Federal requirements, including OMB Circular A-87 and EDGAR at 34 CFR Parts 80 and 75 or 76, as appropriate.
19. The Virgin Islands, including VIDF and VIDPP, VIDE, and VIDHS must work with the Agent to assist in training employees and providing transition assistance (including, but not limited to, transferring all necessary data from the Agent to the new CFMS, and communicating information from the Agent to the contractor implementing the new CFMS), as the Virgin Islands implements the new CFMS.
20. The Virgin Islands, VIDE, and VIDHS must recognize that, notwithstanding the citation of specific EDGAR requirements in these special conditions, there are other provisions of EDGAR not specifically cited above that are applicable to

grants awarded by the Department to the Virgin Islands, VIDE, and VIDHS. This includes, for example, the drug-free workplace requirements in Part 84 of EDGAR, which are applicable to Virgin Islands, VIDE, VIDHS, and the Agent, and the definitions of terms in Part 77 of EDGAR.

21. The Virgin Islands, VIDE, and VIDHS may include any other such terms, consistent with those above, as they believe are necessary to ensure timely drawdowns and payments to staff, providers and vendors, and financial management consistent with applicable Federal regulations, under the grants.

#### B. Requirements for Developing and Implementing a Credible Financial Management System

The Virgin Islands must continue to make significant improvements in all aspects of its fiscal management of Department funds, including, but not limited to payroll, property management, procurement, tracking expenditures, and audits, in order to ensure compliance with Federal grant requirements and fiscal accountability. Under these special conditions, the Virgin Islands is required to develop and implement a CFMS before the Department will consider transferring the financial management of Department grants from an Agent to the Virgin Islands.

Credible financial management includes systems, policies, and procedures that: (1) provide access to accurate information when needed; (2) account appropriately for funds; (3) ensure timely deposits or drawdown of funds; (4) ensure timely and accurate payments; and (5) otherwise enable and support generally accepted government financial management and accounting standards and requirements. In addition, VIDE, VIDF, VIDPP, VIDHS, and other Virgin Islands agencies must demonstrate improved communication, coordination, and cooperation among themselves to develop a CFMS that meets needs across the Virgin Islands.

It is especially important that the CFMS is effectively coordinated with or integrated into all management systems and procedures of VIDE, as well as integrated across departments and with other management systems (including systems for budgeting, human resource management, property and procurement, and planning and evaluation). One example of the integration required includes connecting financial management policies and systems with time and attendance systems to ensure appropriate payment and accounting for staff time. It is a critical factor for success that the Virgin Islands also improve its cash management function. The cash management function must be able to provide timely and accurate information about each drawdown of funds from the Department.

Specifically –

1. By September 1, 2008, the Virgin Islands (through VIDF or another agency designated by the Governor) must submit to the Department its detailed overall

project plan with a work breakdown structure (WBS) for, and a report on any progress to date in developing and implementing, a fully functioning CFMS that:

- a) Includes functioning payroll and human resources modules that can accurately account for existing staff and their work hours;
- b) Can readily verify the payment of payroll costs under Department grants;
- c) Includes effective procurement and property management procedures and controls that result in the elimination of significant audit findings in these areas for at least three consecutive years;
- d) Includes a chart of accounts structure in order to adopt a more detailed accounting format to better track expenditures; and
- e) Can facilitate up-to-date financial audits required by the Federal Single Audit Act and OMB Circular A-133. The Department's expectation is that these audit reports would be up to date and reflect an unqualified or "clean" opinion for at least three consecutive years, before the Department would consider a transition of the fiscal management responsibilities for Federal education grants from the Agent back to the Virgin Islands.

The overall project plan and/or the status report must include a detailed timeline and milestones for fully implementing the CFMS, including all modules required to eliminate the use of the legacy financial management system. The overall project plan and/or status report must also address whether the Virgin Islands has adopted (or will adopt) best practices and operating procedures that are based on those currently use by the Agent, and if not, why these procedures have not been (or will not be) adopted; and how the Virgin Islands will train all staff to use the CFMS.

2. By September 1, 2008, the Virgin Islands (through VIDF or another agency designated by the Governor) must submit a specific project plan to the Department, including a detailed WBS showing the timeline and key milestones necessary to synchronize the Virgin Islands' and A&M's charts of accounts so that the Department's grant expenditures can be recorded in the CFMS.

3. By September 1, 2008, the Virgin Islands (through VIDF or another agency designated by the Governor), working with VIDE, VIDF, VIDPP, and VIDHS, must, if it has not already done so, begin to enhance its existing chart of accounts structure in the Virgin Islands financial management system so that it is capable of synchronizing with the chart of accounts structure used by A&M.

4. By September 1, 2008, the Virgin Islands (through VIDF or another agency designated by the Governor), working with VIDE, VIDF, VIDHS, and the Agent, must perform a review and, depending on the outcome, a possible audit of the

VIDE staffing roster for payroll to verify those VIDE employee salaries (full or partial) that should be paid with Department grant funds. [NOTE: A&M completed a draft review and reconciliation of the VIDE payroll staffing roster on May 14, 2008. Numerous discrepancies were identified and are now being resolved by both A&M and VIDE. The projected completion date of this reconciliation is September 1, 2008.]

5. By December 1, 2008, and then by March 1, 2009, the Virgin Islands (through VIDF or another agency designated by the Governor), must submit to the Department a detailed report for each quarter, of its progress in implementing each aspect of the plan described above in paragraph B.1.

6. By June 1, 2009, the Virgin Islands (through VIDF or another agency designated by the Governor), working with VIDE, VIDF, VIDPP, and VIDHS, must complete the full implementation of its CFMS, including all modules required to eliminate the use of the legacy financial management system.

#### C. Notification and Approval of Amendments to Contract Between Virgin Islands and Agent

The Virgin Islands must notify the Department of any proposed amendment to the contract between the Virgin Islands and the Agent, and must submit the proposed amendment to the Department for approval prior to execution of the amendment by the parties.

#### D. Failure to Comply with Conditions

Failure of the Virgin Islands, including VIDF and VIDPP, VIDE, VIDH, or VIDHS to comply with any of these special conditions as to any grant award, in particular those provisions in Section B above, will negatively impact the ability of the Virgin Islands, VIDE, VIDH, or VIDHS to continue to receive grants from the Department.

#### E. Reconsideration and Modifications

At any time, the Virgin Islands, VIDE, VIDH, or VIDHS may request reconsideration of the above special conditions by contacting the Department and stating in writing the reasons why they believe the conditions should be modified or are no longer needed. Further, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as the Virgin Islands fully implements a CFMS that meets the conditions outlined above in Section II.B and demonstrates, to the Department's satisfaction, the ability to manage ED funds and property purchased for use under the grants in a manner that complies with applicable Federal requirements concerning accountability and funds management.

F. Program-Specific Special Conditions

In accordance with 34 CFR § 76.133(a)(5), the Virgin Islands and VIDE must submit an annual performance report to the Department, as required under 34 CFR § 80.40, for each of the programs for which they are using funds received under the Consolidated Grant. Each report must contain a comparison of actual accomplishments to the objectives established in the approved Consolidated Grant plans and the reasons for slippage if established objectives were not met.

Additional program-specific special conditions may be imposed on grant awards made under one or more programs, in addition to the special conditions that are contained herein, because in certain program areas, the Virgin Islands may still need to make significant improvements in the administration of program requirements. Each such program-specific special condition will be incorporated into the appropriate notification of grant award from the Department to the Virgin Islands, VIDE, VIDH or VIDHS.

G. Incorporation of Special Conditions as Addendum to Contract

Upon receipt of these special conditions, and before the Virgin Islands may expend funds under this grant, the Virgin Islands and the Agent must incorporate these special conditions as a further addendum to the contract between the Virgin Islands and the Agent, and must provide written notice to the Department that the conditions have been so incorporated. The terms of these special conditions supersede the terms of the special conditions issued on June 26, 2007, and attached as an Addendum to the current contract with A&M, to the extent that any provisions in these special conditions have been modified and are now inconsistent with those in the Addendum.

H. U.S. Department of Education Contact

All communications with the Department regarding these special conditions, including submission of notices, requests, or reports shall be directed to:

Mark Robinson  
Office of the Secretary  
Risk Management Service  
U.S. Department of Education  
550 12<sup>th</sup> Street, S.W.  
Room 7104  
Washington, D.C. 20024

Dated: \_\_\_\_\_ (same date as per program office conditions)

## Attachment A

### Responsibilities and Requirements for the Third Party Fiduciary Agent (to be incorporated into any contract for services with the Agent)

The responsibilities and requirements for the Agent under these special conditions are as follows:

1. The Agent must work cooperatively and in a timely manner with the Virgin Islands, VIDE, VIDH, and VIDHS to implement the activities and responsibilities described in these special conditions.
2. The Agent's role encompasses financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, instituting and applying procurement, inventory, and payroll procedures that comply with applicable Federal requirements, and other duties as more fully described below.
3. For purposes of the IDEA Part C FFY 2004 through 2008 grants, the Agent is responsible only for the property procurement and management functions that are required to be performed under EDGAR at 34 CFR Part 80 (including 34 CFR §§ 80.31, 80.32, 80.33 and 80.36(b) through (j)) by VIDPP, and any financial management functions needed to be performed by VIDF for the IDEA Part C grants, and which are not being performed already under the contract between VIDH and LSS. Because VIDH's IDEA Part C grants for FFYs 2004 through 2008 include special conditions requiring the use of a third party fiduciary agent (LSS) that carries out VIDH's financial management and recordkeeping responsibilities in accordance with the applicable provisions of IDEA Part C and EDGAR, the Agent performing services under these special conditions is not required to assume responsibilities other than the responsibilities described above in this subsection. VIDH's IDEA Part C FFY 2004 through 2008 grant awards shall continue to include special conditions requiring the use of LSS for continued fiscal accountability and provision of services. In addition, VIDH's IDEA Part C grant funds must not be used to pay any costs charged by the Agent to the Virgin Islands.
4. At the beginning of the new contract period, and during the term of either the current or the new contract with the Agent, the Virgin Islands, VIDE, or VIDHS, prior to any draw downs or disbursements, must provide the Agent with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities. For purposes of the Consolidated Grant, the Virgin Islands and VIDE must provide the Agent with line item budgets for each of the programs under which the Virgin Islands and VIDE will use Consolidated Grant funds. The line item budget for each of these

programs must be based on the total amount of Consolidated Grant funds to be used for each program and include amounts for State administration, State-level program activities, and LEA program activities. The Agent must use these line item budgets to track projected and actual expenditures for the programs under the grants. The Agent must ensure that the expenditures proposed are only for allowable purposes under each grant.

5. The Agent must establish, maintain, and manage a separate bank account for all of the funds under the grants from the Department. The Agent must provide the Virgin Islands, VIDE, and VIDHS, as appropriate, with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.
6. The Agent must acknowledge that the Virgin Islands, VIDE, and VIDHS has drawdown authority and that they understand and agree that they must draw down funds and provide all matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Failure by the Virgin Islands, VIDE, or VIDHS to comply with this condition concerning the time within which they must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent for that entity. In the event of the Virgin Islands', VIDE's, or VIDHS' failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, the Virgin Islands, VIDE or VIDHS, as appropriate, must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.
7. The Agent must use fiscal control and accounting procedures that meet the requirements imposed on non-State governmental grantees in accordance with 34 CFR §§ 80.20(b) and 80.21.
8. The Agent must permit funds to be spent only for allowable costs of programs under the grants, in accordance with 34 CFR § 80.22 and OMB Circular A-87. Additionally, for purposes of the Consolidated Grant, the Agent must permit funds to be spent only for allowable costs under, and included in each Department-approved Consolidated Grant plan from FFY 2004 through 2008. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with the Virgin Islands, VIDE, or VIDHS. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
9. The Agent must determine the value of any in-kind property or services donated to or provided by the Virgin Islands, VIDE, and VIDHS that are used to meet cost sharing or matching requirements as required by 34 CFR § 80.24 and must maintain records sufficient to document the bases for those valuations.
10. The Agent must take steps to prevent the lapsing of funds available under the grants,

including ensuring timely disbursement of funds through the use of methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement, in accordance with Treasury regulations at 31 CFR Part 205, as required by 34 CFR § 80.21(b). For grant funds not included in the Virgin Islands' Treasury-State agreement, the Agent must meet the requirements in 34 CFR § 80.20(b)(7). The Virgin Islands, VIDE, VIDHS, and the Agent must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, the Virgin Islands, VIDE, VIDHS, or the Agent, if it has undertaken drawdown responsibility, must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants.

11. The Agent must allow funds under a grant to be charged only for costs resulting from obligations that were properly made during the funds' period of availability, including any carryover period. To ensure against the lapsing of funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 34 CFR § 80.23.
12. The Agent may seek approval from the Department to charge allowable pre-award costs incurred by the Virgin Islands, VIDE, or VIDHS against any grant award from FFY 2004 through 2008 to which these special conditions apply. The Agent must submit any request for pre-award costs to the Department in writing and may not reimburse any pre-award costs unless it receives written approval from the Department.
13. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid with ED grant funds, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among ED grants, based on accurate time distribution and time and attendance records. The Agent must carry out these responsibilities consistent with Federal requirements in OMB Circular A-87.
14. In disbursing funds for allowable costs under the grants, the Agent must distinguish between direct and indirect costs and use accurate methods to allocate funds correctly between these two cost categories. The Agent must ensure that the charging of direct and indirect costs against the grants is consistent with the indirect cost rate negotiated and established by the U.S. Department of Interior (the Virgin Islands' cognizant Federal agency) and the Virgin Islands, and provided to the Agent, and with the requirements of OMB Circular A-87 and 34 CFR §§ 75.560-564 (discretionary grants), 34 CFR §§ 76.560-569 (formula grants), and 34 CFR § 80.22.
15. The Agent must establish contacts and working relationships with a group of prospective vendors that can provide goods and services that the Virgin Islands, VIDE, and VIDHS need under the grants. The Agent must work with the Virgin



Islands, VIDE, and VIDHS, to identify prospective vendors who will provide the best pricing and values for goods and services ordered and who will provide prompt delivery of goods and services. The Agent must have authority to enter into contracts with vendors on behalf of the Virgin Islands, VIDE, VIDHS, and, as appropriate, VIDH, and in doing so, must comply with the provisions for procurement set forth in 34 CFR §§ 80.36(b)-(j).

16. Within 24 hours of the Agent's receipt of a vendor invoice, the Agent must provide a copy of the invoice to the Virgin Islands, VIDE, VIDHS, or, as appropriate, VIDH, and ensure that the goods or services delivered are available for inspection and acceptance or rejection by the appropriate Virgin Islands, VIDE, VIDHS, or, as appropriate, VIDH, staff requesting the goods or services. Within 24 hours of receipt of the invoice, the staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account maintained by the Agent. The Agent must pay vendors for the delivered goods or services and must, to the extent reasonably possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account maintained by the Agent. The Agent must make payments by electronic funds transfer (EFT) or by paper draft only if EFT is not available or possible for a particular vendor.
17. The Agent must manage all property procured under the grants, with a purchase price of \$500 or greater, in accordance with the requirements of 34 CFR §§ 80.32(a) and (c)-(g). In particular, the Agent must establish and maintain a process for managing such property consistent with the requirements of 34 CFR § 80.32(d), including reconciling the inventory conducted by the Virgin Islands under Section II.A. 17 of these special conditions with existing property records; developing a system for maintaining property records and for identifying property acquired with ED grant funds; and establishing a control system to prevent loss, damage, or theft of the property.
18. The Agent must maintain records that fully show the amount of funds under each of the grants; how the Virgin Islands, VIDE, or VIDHS uses the funds; the total cost of each project; the share of that cost provided from other sources; and other records to facilitate an effective audit, in accordance with 34 CFR § 75.730 (discretionary grants) and § 76.730 (formula grants). The Agent, acting on behalf of the Virgin Islands, VIDE and VIDHS, must retain records in accordance with the provisions of 34 CFR § 80.42 of EDGAR, and recognizes that records maintained on behalf of the Virgin Islands, VIDE and VIDHS to meet the requirements of these conditions are not exempt under 34 CFR § 80.42(a)(2) from the record retention requirements.
19. In general, the Agent must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants), § 76.702 (formula grants), and § 80.20(b).
20. The Agent must maintain insurance as required under the terms of the contract.

21. All transactions under the contract between the Virgin Islands and the Agent must be consistent with all applicable Federal requirements, including OMB Circular A-87 and EDGAR at 34 CFR Parts 80 and 75 or 76, as appropriate.
22. The Agent must comply generally with the requirements of 34 CFR § 80.41. More specifically, the Agent must produce quarterly reports concerning financial transactions of the Virgin Islands, VIDE, and VIDHS for submission to those entities and the Department, detailing for each grant awarded to the Virgin Islands, VIDE, and VIDHS, including for each individual program for which the Virgin Islands and VIDE are using Consolidated Grant funds: a) the date of receipt, and the amount, of each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the Agent; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budgets described above in section II.B.3 [make sure section number is correct during final edit] and must be reconciled with the Department's GAPS. This reconciliation must include drawdown dates, drawdown amounts and available balances, by award. These reports shall be due within 10 working days after the end of each quarter.
23. The Agent must work with the Virgin Islands, VIDE, VIDHS, VIDF, and VIDPP to assist in the training of employees and to provide transition assistance (including, but not limited to, transferring all necessary data from the Agent to the new CFMS, communicating information from the Agent to the contractor implementing the new CFMS, and providing feedback to the Virgin Islands, VIDE, and the Department on the Virgin Islands' implementation of the new CFMS), as the Virgin Islands implements the new CFMS.
24. The Agent must recognize that, notwithstanding the citation of specific EDGAR requirements in these special conditions, there are other provisions of EDGAR not specifically cited above that are applicable to grants awarded by the Department to the Virgin Islands, VIDE, and VIDHS. This includes, for example, the drug-free workplace requirements in Part 84 of EDGAR, which are applicable to the Agent, and the definitions of terms in Part 77 of EDGAR.