UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 21, 2010

Superintendent Nerissa Underwood
Guam Department of Education
P.O. Box DE
Agana, Guam 96910

Dear Superintendent Underwood:

Enclosed are Federal Fiscal Year (FFY) 2010 special conditions for U.S. Department of Education (Department) grants awarded to the Guam Department of Education (GDOE). The special conditions will apply to all grants awarded by the Department to GDOE on or after the date of these special conditions, including formula grant funds awarded to GDOE under the American Recovery and Reinvestment Act of 2009 (ARRA) (ARRA formula funds) and funds received by GDOE from the Guam governor under the ARRA State Fiscal Stabilization Fund (SFSF). Additionally, the special conditions apply to all grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these special conditions, including ARRA formula and SFSF funds.

The FFY 2010 special conditions are in continued response to GDOE's failure to successfully address significant problems in fiscal accountability for Department grant funds. These problems led to the FY 2003 designation of GDOE as a "high-risk" grantee under 34 CFR § 80.12. In the FFY 2007 special conditions, the Department required GDOE to address its inadequate financial management of Department grant funds by developing and implementing a Comprehensive Corrective Action Plan (CCAP); however, the Department has concluded that GDOE has since failed to make significant progress in implementing the CCAP tasks and measures, including, in particular, a new Financial Management Improvement System (FMIS). Thus, the Department determined that GDOE must have the assistance of a third-party fiduciary agent to oversee the financial management of Department funds, to assist GDOE in implementing its CCAP, and to assist GDOE in implementing the new FMIS.

Attachments A and B to the FFY 2010 special conditions outline the responsibilities and requirements of GDOE and the third-party fiduciary agent, respectively, for Department grant funds. Section II.E.2 of the special conditions provides the conditions under which GDOE may draw down funds. For grants awarded on or after the date of these special conditions, as well as grants awarded on or after the date of the November 25, 2009 amended special conditions, except ARRA formula grants and SFSF funds, GDOE must meet several requirements concerning the third-party fiduciary agent before it may draw down funds under those grants, including that the agent must be in place and prepared to manage the grant funds. For grants

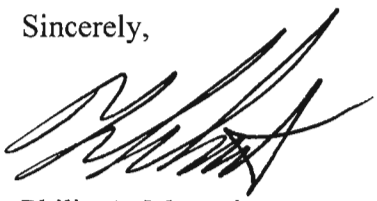
awarded prior to the date of the November 25, 2009 amended special conditions and for ARRA formula grants and SFSF funds, GDOE may continue to draw down funds before the agent is in place and prepared to manage grant funds, as long as the GDOE internal auditor continues to provide the Department with additional oversight through the submission of monthly reports on the obligation and liquidation of those funds, consistent with the assurance dated November 27, 2009 that GDOE provided to the Department. The oversight function of the internal auditor is intended to conclude once a third-party fiduciary agent begins providing services, as the agent will perform administrative and management responsibilities for all Department funds awarded to GDOE.

In addition, Attachment B, section 11 of the special conditions permits the third-party fiduciary agent to seek the Department's approval to charge allowable pre-award costs against grant awards covered by the special conditions; this approval is required for any costs incurred by GDOE under a grant prior to the time that the Department has approved the grant application and made the grant award.

Finally, the special conditions require GDOE to revise its CCAP and the process for reporting progress under the CCAP and to report to the Department on a quarterly basis on its progress in implementing measures under the CCAP.

The Department is committed to assisting GDOE in completing the process of procuring a third-party fiduciary agent, in the revision of the CCAP, and in making significant improvements in its management and administration of Department grant funds. If you have any questions or require further assistance, please contact Christine Jackson, the primary contact for the Management Improvement Team of the Risk Management Service within the Office of the Secretary, at (202) 260-2516 or via e-mail at christine.jackson@ed.gov.

Sincerely,



Philip A. Maestri
Director
Risk Management Service
Office of the Secretary

Enclosure

cc: Guam Governor
Speaker, Twenty-Ninth Guam Legislature
Guam Attorney General
Congressional Representative
Chairman, Guam Education Policy Board

# Guam Department of Education
# Federal Fiscal Year 2010 Special Conditions

PREAMBLE: These special conditions are imposed on all program grants issued by the U.S. Department of Education (Department) to the Guam Department of Education (GDOE) on or after the date of these special conditions, including formula grant funds awarded to GDOE under the American Recovery and Reinvestment Act of 2009 (ARRA) (ARRA formula funds) and funds received by GDOE from the Guam governor under the ARRA State Fiscal Stabilization Fund (SFSF). Additionally, as described herein, these special conditions apply to grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these special conditions. These special conditions are applied to these program grant funds in accordance with the Department's regulations governing "high-risk" grantees in the Education Department General Administrative Regulations (EDGAR), 34 CFR § 80.12. GDOE has not made substantial progress in improving its financial management and administration of Department funds. Therefore, these special conditions are imposed on GDOE's Department grants to ensure that GDOE implements Department grant awards in accordance with applicable legal requirements and with appropriate fiscal accountability measures and management practices and controls.

## I. BACKGROUND

In September 2003, the Department designated GDOE a "high-risk" grantee under the authority of 34 CFR § 80.12. This was based on the Department's determination that GDOE lacked fiscal and programmatic accountability in the administration of Federal education programs as evidenced by its failure to provide the Department with timely and complete single audits, as required by the Single Audit Act, and by the auditors' declaration that GDOE's records for FFYs 1998-2000 were unauditable.

In the special conditions imposed on GDOE's FFY 2007 grant awards, the Department required GDOE to develop a Comprehensive Corrective Action Plan (CCAP) to address the underlying problems associated with its high-risk designation. The CCAP was meant to address persistent problems related to GDOE's internal controls, including accounting and reconciling its financial records for Department grant funds in accordance with Federal requirements; implementing monitoring to ensure that grant and subgrant-supported activities are carried out in accordance with Federal program statutes, regulations, and other requirements; instituting procurement and property management processes that comply with Federal requirements; and implementing appropriate cash management procedures. GDOE developed a CCAP, but has since failed to make significant progress in implementing the CCAP measures. In particular, GDOE had not made substantial progress in implementing its Financial Management Improvement Plan (FMIP), a core feature of the CCAP that involves instituting a Financial Management Improvement System (FMIS) to enable GDOE to significantly improve its financial management of Department grant awards.

In a letter dated September 28, 2009, the Department notified GDOE of its concerns regarding the limited progress that GDOE had made in addressing the fiscal management deficiencies that affect its administration of Department funds. The Department's conclusion

that GDOE had made limited progress was based on several findings that the Department made during a July 2009 onsite visit to validate GDOE's biannual CCAP reports. The September 28th letter contained these findings and noted that many of the critical actions required under the CCAP had not been implemented to the extent reported in the biannual reports. The Department required GDOE to demonstrate why the Department should not begin to take immediate administrative action under the terms of the FFY 2008 and 2009 special conditions and other applicable Federal requirements.

Based on GDOE's written response, submitted on October 13, 2009, the Department concluded that GDOE had failed to make substantial progress on the objectives of the CCAP, including implementation of the FMIP, and that GDOE's response did not show that GDOE will be able to make substantial progress under the CCAP, independent of additional administrative action from the Department. In its determination letter, dated November 2, 2009, the Department emphasized a number of areas in which GDOE was to have made substantial progress over the last two years of CCAP implementation, including implementing the FMIS; developing and implementing its Management Internal Controls program to institute necessary internal controls to enable GDOE to engage in effective financial management and procurement operations; and implementing policies and procedures to validate and reconcile fixed-asset property. The lack of progress in these key areas indicates that Department funds awarded to GDOE remain at risk of inadequate fiscal management and administration.

Therefore, in accordance with section II.H of the FFY 2008 and 2009 special conditions applicable to GDOE's Department grant awards, the Department issued amended special conditions to GDOE dated November 25, 2009, which notified GDOE that it would require GDOE 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 GDOE. The requirement for a third-party fiduciary agent is maintained in these special conditions, as set forth in further detail below. Because GDOE has not met the requirements in Part 80 of EDGAR regarding the management of Department funds by States, these special conditions require GDOE to comply with regulations that normally would apply to non-State governments.

## II. SPECIAL CONDITIONS

### A. Requirement for Third-Party Fiduciary Agent

GDOE must enter into a contract with a third-party fiduciary agent (Agent) that meets the qualifications below. The Agent will perform financial management duties currently performed by GDOE, and required under EDGAR at 34 CFR Parts 75, 76, and 80, for all Department grants awarded by the Department to GDOE on or after the date of these special conditions, including ARRA formula grants awarded by the Department to GDOE and SFSF funds received by GDOE from the Guam governor, and for all grants previously awarded by the Department to GDOE, including ARRA formula grants awarded by the Department to GDOE and SFSF funds received by GDOE from the Guam governor, that are still available for obligation or liquidation on the date of these

special conditions. GDOE agrees that by accepting grant awards subject to the terms of these special conditions, it may not draw down funds under any grants awarded on or after the date of these special conditions, with the exception of ARRA formula grants and SFSF funds, and that it still may not draw down funds under any grants that were awarded on or after the date of the November 25, 2009 amended special conditions, with the exception of ARRA formula grants and SFSF funds, until such time as GDOE has entered into a binding contract with the approved Agent and the Agent is prepared to provide services under the contract. Moreover, GDOE agrees that it may continue to draw down funds under grants awarded prior to the date of the November 25, 2009 special conditions and under ARRA formula grants and SFSF only if it complies with the conditions in section II.E.2 of these special conditions.

B. Qualifications of Third-Party Fiduciary Agent

The entity that GDOE selects to serve as the Agent must:

1. have a demonstrated, track record in successfully performing the types of financial management services required for Department grants awarded to GDOE;

2. have a sufficient number of personnel available with the skills and expertise in financial management functions necessary to perform the required financial management services for Department grants awarded to GDOE;

3. be able to, and agree to, increase operational capacity to accommodate increases in workload as a result of the contract with GDOE; and

4. be approved by the Department before GDOE enters into a contract with the entity.

C. Responsibilities of GDOE and the Third-Party Fiduciary Agent Concerning Administration of Grant Funds

The responsibilities and requirements of GDOE in working with the Agent are set forth in Attachment A to these special conditions. The responsibilities and requirements of the Agent in carrying out the financial management duties for GDOE's Department grants are set forth in Attachment B to these special conditions. Any request for proposals, statement of work, or other related documents used in GDOE's procurement process, and any contract between GDOE and the Agent, must comply with the procurement provisions in 34 CFR §§ 80.36(b)-(j) and must include the provisions set forth in Attachments A and B.

D. Approval of Contract with Third-Party Fiduciary Agent

As stated in section II.B.4 of these special conditions, the Agent selected by GDOE must be approved by the Department. Prior to entering into the contract for financial management services, GDOE must submit to the Department for approval: 1) evidence that it followed applicable procurement procedures; 2) the name of the proposed Agent;

3) the fee or rate that the proposed Agent will charge for the third-party fiduciary services; and 4) the proposed contract provisions, which must be consistent with the responsibilities of GDOE and the Agent in Attachments A and B.

E. Drawdown of Funds

1. GDOE will be authorized to draw down funds under Department grants awarded on or after the date of these special conditions and on or after the date of the November 25, 2009 amended special conditions only upon (i) execution of a written, binding contract between GDOE and the Agent, consistent with the terms of these special conditions; (ii) certification by the Agent that it is prepared to manage grant funds on behalf of GDOE in accordance with section II.A. above and Attachment B, and consistent with applicable Federal requirements, the contract, and these special conditions; and (iii) compliance with all other eligibility requirements applicable under the grants. ARRA formula grant funds and SFSF funds are excluded from the requirements of this subparagraph, but are subject to the requirements of subparagraph 2 below.

2. GDOE is authorized to draw down funds under grants awarded prior to the date of the November 25, 2009 amended special conditions and under ARRA formula grants and SFSF subject to its continued compliance with the written assurance, dated November 27, 2009 and signed by the GDOE superintendent and the GDOE internal auditor, that the GDOE internal auditor will provide independent additional oversight with respect to funds obligated and liquidated under these grant awards and will submit monthly reports directly to the Department regarding the expenditure of funds under these grants, until such time as GDOE has entered into a binding contract with the approved Agent and the Agent is prepared to provide services under the contract. The oversight shall be conducted in sufficient detail and precision to allow the auditor to determine if funds were spent for unallowable or unauthorized expenditures or if other Federal requirements were not met. The internal auditor's reports will continue to be due no later than the 15th of each month and must cover obligations and expenditures of Department grant funds during the preceding month. Upon request by the Department, the auditor must provide additional information relevant to determining whether all Federal requirements were met. The Department will continue to work with the internal auditor, as necessary, to agree on the oversight process and the information to be included in the monthly reports.

F. Comprehensive Corrective Action Plan (CCAP)

1. GDOE and the Department worked together to develop a CCAP designed to address the fiscal deficiencies in administering Department grant awards that led to GDOE's designation as a "high-risk" grantee. The CCAP contains tasks with measurable objectives and completion dates, developed to correct a number of recurring findings and identified weaknesses. These tasks include the development and implementation of the FMIS, strengthening internal controls over financial management and procurement, and strengthening and improving GDOE's Business Office operations.

The CCAP became final in October 2007, and the Department approved revisions to the CCAP in December 2008. Since the inception of the CCAP, however, GDOE has made only limited progress in carrying out its objectives.

2. GDOE must work with the Department and the Agent to revise the CCAP to ensure that GDOE will be able to achieve measurable progress in its financial management and administration of Department funds. Additionally, GDOE must cooperate in revising the process for reporting progress made under the CCAP so that the Department may receive a meaningful and accurate assessment of GDOE's progress on a regular basis. A revised CCAP must be submitted to the Department within 90 days of the date of the Department's approval of the contract with the Agent.

3. Upon the Department's approval of a revised CCAP, GDOE will be required to provide quarterly reports to the Department on its progress in implementing measures required under the CCAP, using the revised process for reporting progress that it develops as required above. GDOE agrees that the Agent will play a critical role in assessing GDOE's progress in meeting the objectives of the CCAP and also agrees that it will obtain the assistance of the GDOE internal auditor in reviewing and validating the quarterly reports for accuracy prior to their submission.

G. Assurances

GDOE's written assurance dated November 27, 2009, that necessary improvements in internal controls will be reinforced by governance and management stability within its organization, including within the GDOE Superintendent's Management Team, and in accordance with the Attorney General's legal opinion dated September 24, 2008, remains in effect for the duration of these FY 2010 special conditions. Governance and management stability are essential as the underlying infrastructure needed for GDOE to implement improved internal controls necessary to meet Federal program requirements. Such stability affects the extent to which CCAP momentum and continued progress in implementing the Federal education programs are maintained.

H. Single Audits

GDOE must continue to ensure that its single audits are conducted, and audit reports submitted, annually and in a timely and complete manner. All single audits must be completed and reports published within nine months after the end of each fiscal year, as required by the Single Audit Act, as amended. If GDOE expects an audit or report to be submitted late, it must promptly notify the Department's contact person of the reason and extent of the delay.

I. Prompt Access

GDOE shall promptly provide the Department or its representative's access to any requested staff, locations, records, and information associated with the affected grant funds.

J. Program-Specific Conditions

Special conditions have been, and may be, imposed on FFY 2010 grant awards made under one or more Department programs to address areas in which GDOE is out of compliance with program requirements. Each such program-specific special condition will be contained in an attachment to the grant award notification document in question that is provided by the Department to GDOE.

K. ARRA-Specific Conditions

ARRA-specific special conditions were and will be contained in attachments to the final ARRA grant notification documents provided by the Department to GDOE and will be in addition to the special conditions contained in this document.

L. Compliance with Program Requirements

In addition to complying with any program-specific special conditions imposed on its Department grant awards, GDOE must timely and fully comply with all applicable programmatic requirements under Federal laws and regulations. GDOE must fully meet all specific program reporting requirements on a timely basis, including, but not limited to, submission of the Individuals with Disabilities Education Act (IDEA) Parts B and C Annual Performance Reports and revised State Performance Plans, and port required for the Consolidated Grant under section 76.132(a)(5) of EDGAR. GDOE must also work cooperatively with, and respond to requests for information from, Department program offices responsible for administering the various grant programs under which GDOE receives funds. These requests for information are part of the technical assistance that the program offices provide to GDOE and are designed to assist GDOE in properly implementing programs, projects, and activities under the grant awards that it receives from the Department.

III. ADDITIONAL PROVISIONS

A. Failure to Comply with Conditions

Failure to comply with any of these special conditions will negatively impact GDOE's ability to continue to receive grant funds from the Department. These terms and conditions do not preclude the Department from taking any authorized enforcement or other actions at any time, including, but not limited to, withholding of Department funds.

B. Submission of Reports

All reports or other submissions that GDOE, its Internal Auditor, or the Agent are required to submit to the Department under these special conditions must be sent to:

Christine Jackson
400 Maryland Avenue, S.W.
LBJ, Room 7E230
Washington, DC 20202

C. Reconsideration and Modifications

At any time, GDOE may request reconsideration of the above special conditions by contacting the Department contact named above, and stating in writing the reasons why GDOE believes any particular condition should be amended or removed. Additionally, 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 GDOE fully demonstrates, to the Department's satisfaction, the ability to manage Department funds, and property acquired with Department funds, in a manner that complies with applicable Federal requirements concerning accountability and grants management.

D. Incorporation of Special Conditions as Addendum to Contract

Before GDOE may expend funds under its grant awards, GDOE and the Agent must incorporate these special conditions as an addendum to the contract between GDOE and the Agent, and must provide written notice to the Department that the conditions have been so incorporated.

Dated: June 21, 2010

Attachment A to the GDOE FFY 2010 Special Conditions

Responsibilities and Requirements of GDOE
(to be incorporated into any contract for services with the Agent)

The responsibilities and requirements of GDOE in working with the Agent under these GDOE FFY 2010 special conditions are as follows:

1. GDOE must work cooperatively and in a timely manner with the Agent to implement the activities and responsibilities described in these special conditions.

2. GDOE must permit the Agent's personnel to have access to certain financial books, records, and reports of GDOE and to have discussions with GDOE personnel concerning the services the Agent is to perform under these special conditions, as provided for in the contract between GDOE and the Agent.

3. GDOE must notify the Department when any dispute arises and remains unresolved between the Agent and GDOE concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. GDOE agrees that the Department may assist in the resolution of any such unresolved dispute and agrees to cooperate with any requests from the Department for additional information related to the dispute and to participate in conference calls with Agent and Department. This does not preclude GDOE and the Agent from including formal dispute resolution mechanisms in their contract.

4. GDOE must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants, including those under EDGAR, ARRA, and applicable Federal program statutes and regulations.

5. GDOE remains responsible for the provision of program services under Department grants.

6. At the beginning of the contract period, and prior to any drawdowns or disbursements, GDOE 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 local-level program activities. For purposes of the Consolidated Grant to Insular Areas (Consolidated Grant), GDOE must provide the Agent with line-item budgets for each program under which GDOE 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 local-level program activities.

7. GDOE is responsible for: (i) executing drawdowns of funds under the grants from

the Department's Grant Administration and Payment System (GAPS/G5) so that funds are deposited into a 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. GDOE understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of a written request from the Agent. Consideration may be given for reasonable delays due to any time differences that may exist between GDOE and its vendors. However, failure by GDOE to comply with this condition may result in the transfer of drawdown authority to the Agent, at the Department's discretion. Upon receiving notice of GDOE's failure to draw down funds in accordance with this condition, the Department will decide whether to transfer drawdown authority to the Agent. Upon receiving written notice of a decision by the Department to transfer drawdown authority to the Agent, GDOE 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.

8. GDOE must use fiscal control and accounting procedures that meet the requirements imposed on non-State governmental grantees under 34 CFR §§ 80.20(b) and 80.21.

9. GDOE must permit funds to be expended only for costs that are allowable under the respective grant programs, in accordance with 34 CFR § 80.22 and Office of Management and Budget (OMB) Circular A-87. Additionally, for purposes of the Consolidated Grant, GDOE must permit funds to be spent only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. GDOE acknowledges that the Agent has the responsibility to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective 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 must raise this question with GDOE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.

10. GDOE must coordinate the timing of drawdowns and disbursements with the Agent to ensure that payments to staff, vendors and providers are prompt and timely. To the extent feasible, GDOE 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. GDOE, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.

11. GDOE 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 Department funds, GDOE must provide the Agent with the amount and nature of all obligations in a timely

manner to ensure that 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.

12. GDOE must establish and maintain an effective process for tracking and reporting time and effort spent by all employees whose salaries are paid with Department 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 Department grants, based on accurate and properly executed time distribution and time and attendance records and semiannual certifications, as appropriate for each employee. GDOE must carry out these responsibilities consistent with Federal requirements in OMB Circular A-87.

13. GDOE must ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (GDOE's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the Agent and comply with the applicable 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.

14. GDOE must grant the Agent authority to enter into contracts with vendors on behalf of GDOE, and in doing so, GDOE must cooperate with the Agent to ensure compliance with the provisions for procurement set forth in 34 CFR §§ 80.36(b)-(j).

15. GDOE must provide effective oversight of proposed procurements, including, but not limited to, training all staff on, and reviewing all requisitions against, local and Department requirements for procuring goods and services, to facilitate the timely review and approval of purchase orders by the Agent, and to reduce the number of requisitions that are disallowed by the Agent for not meeting these requirements.

16. GDOE must work with the Agent to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 34 CFR §§ 80.32(a) and (c)-(g) to ensure that such property is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property.

17. All transactions under the contract between GDOE 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.

18. In transferring to a new Financial Management Improvement System (FMIS), GDOE must work with the Agent as the Agent assists in (i) training the appropriate GDOE employees, (ii) providing transition assistance (including, but not limited to, transferring all necessary data from the Agent to the new FMIS), and (iii) communicating information from the Agent to any other contractor involved in

implementing the new FMIS.

19. Except as noted herein, GDOE shall comply with all applicable provisions of EDGAR.

20. GDOE may include any other such terms in the contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds, timely payment to staff, providers and vendors, and financial management consistent with applicable Federal regulations and Department grant awards.

Attachment B to the GDOE FFY 2010 Special Conditions

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

The responsibilities and requirements of the Agent under these GDOE FFY 2010 special conditions are as follows:

1. The Agent must work cooperatively and in a timely manner with GDOE to implement the activities and responsibilities described in these special conditions.

2. The Agent's role encompasses financial management responsibilities concerning Department 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. The Agent must use the line-item budgets submitted by GDOE, as described in Attachment A, to track projected and actual expenditures for the programs under Department grants. The Agent must ensure that the expenditures proposed are only for allowable purposes under each grant.

4. The Agent must establish, maintain, and manage a separate bank account for all Department grant funds. The Agent must provide GDOE, as appropriate, with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.

5. The Agent must acknowledge that GDOE has drawdown authority and that it understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent, consideration may be given for reasonable delays due to any time differences that may exist between GDOE and its vendors. Failure by GDOE to reasonably comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent. In the event of GDOE's 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, GDOE, 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.

6. 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.

7. The Agent must permit funds to be expended only for costs that are allowable under the respective grant programs, 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 applicable to the fiscal year in which the costs were obligated. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with GDOE. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.

8. The Agent must determine the value of any in-kind property or services donated to or provided by GDOE 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 basis for those valuations.

9. 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 GDOE's Treasury-State agreement, the Agent must meet the requirements in 34 CFR § 80.20(b)(7). GDOE and the Agent must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. Should the Agent assume drawdown responsibility, it 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, to the extent feasible.

10. 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 Department 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.

11. The Agent may seek approval from the Department to charge allowable pre-award costs incurred by GDOE against grant awards 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.

12. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid with Department grant funds, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among Department grants, based on accurate and properly executed time distribution and time and attendance records and semiannual certifications, as appropriate for each employee. To carry out the responsibilities under

this paragraph, the Agent must conduct an assessment of GDOE's internal controls over payroll and its operation to ensure that the payroll process is functioning as intended and calculations of gross earnings from all work performed during the pay period are correct; an assessment to determine that there are proper controls and procedures for identifying employees who are paid in whole or in part from Department grant awards; an assessment to determine whether employees are being compensated at their approved salaries/pay rates and from appropriate funding sources; and other tests to ensure that payroll earnings, deductions, and withholdings correspond to information contained in the employee master file. The Agent must carry out the responsibilities under this paragraph consistent with Federal requirements in OMB Circular A-87.

13. 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 respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (GDOE's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the Agent and comply with the applicable 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.

14. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that GDOE needs under the grants. The Agent must have authority to enter into contracts with vendors on behalf of GDOE, and, in doing so, must comply with the provisions for procurement set forth in 34 CFR §§ 80.36(b)-(j).

15. Within 24 hours of the Agent's receipt of a vendor invoice, the Agent must provide a copy of the invoice to GDOE and ensure that the goods or services delivered are available for inspection and acceptance or rejection by GDOE 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. Consideration may be given for reasonable delays due to any time differences that may exist between GDOE and its vendors. The Agent must pay vendors for the delivered goods or services and must, to the extent 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 if EFT is not available or possible for a particular vendor.

16. The Agent must manage all tangible personal property procured under the grants in accordance with the requirements of 34 CFR §§ 80.32(a) and (c)-(g).

17. The Agent must maintain records that fully show the amount of funds under each grant, how GDOE 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 GDOE, must retain records in accordance with the provisions of 34 CFR § 80.42 of EDGAR, and recognizes that records maintained on behalf of GDOE 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 GDOE 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. Specifically, the Agent must produce quarterly reports concerning financial transactions of GDOE for submission to the Department, detailing for each grant award, including for each individual program for which GDOE is 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 Attachment A, section 6, and must be reconciled with the Department's GAPS/G5. 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. As GDOE implements and transfers to a new FMIS, the Agent must work with GDOE 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 FMIS, communicating information from the Agent to the contractor implementing the new FMIS, and providing feedback to GDOE and the Department on GDOE's implementation of the new FMIS.

24. Except as noted herein, the Agent must comply with all provisions of EDGAR applicable to the Department grants awarded to GDOE.