UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE DEPUTY SECRETARY

June 21, 2012

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 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 these special conditions. These special conditions are also 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.

Since August 25, 2006, the Virgin Islands has contracted with a third party fiduciary agent, because the Virgin Islands has yet to implement all of the requirements under the Compliance Agreement with the Department that ended on September 23, 2005. As of June 24, 2010, the Virgin Islands has entered into a contract with Thompson, Cobb, Bazilio, and Associates (TCBA or Agent) to perform the third party fiduciary duties previously performed by Alvarez and Marsal, LLC (A&M). Because the services of a third-party fiscal management agent continue to be necessary to ensure that the Virgin Islands is managing and administering Department funds in accordance with applicable Federal requirements, 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 and remains unresolved 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 continues to monitor the working relationship between the Virgin Islands, in particular VIDE, and the Agent, TCBA. 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 (VIDH), the Virgin Islands Department of Human Services (VIDHS), and the Virgin Islands Department of Property and Procurement (VIDPP) work cooperatively with the Agent and fully comply with these special conditions to ensure fiscal accountability. These Department-wide special conditions are in addition to and separate from any programmatic special conditions.

These special conditions also prescribe requirements for the Virgin Islands to continue to make significant improvements in all aspects of its fiscal management of Department grant funds, including through development, full implementation, and transition to a credible central financial management system (CFMS) and the execution and completion of a Corrective Action Plan (CAP). Specifically, the special conditions require continued quarterly detailed reporting under the CAP on the status of both the CFMS and the improved fiscal management procedures and controls required by the 2002 Compliance Agreement and other recent ED audits and alert memoranda.

Additionally, these special conditions require VIDE's compliance with regulations enforced by the Department's Office for Civil Rights (OCR) and cooperation with OCR on all complaint investigations involving VIDE. The special conditions also require VIDE to take the appropriate actions necessary to fully implement two resolution agreements currently being monitored by OCR (Case Nos. 02901042 & 02041242).

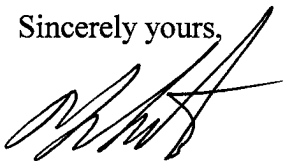
As noted under Section II.H of the conditions, before the Virgin Islands may expend Department grant funds under the grant awards to which these special conditions are attached, the Virgin Islands must incorporate these special conditions as an addendum to the contract signed on June 24, 2010 between the Virgin Islands and TCBA.

Please be aware that, in addition to these enclosed special conditions, the Department may impose additional special conditions on specific grants from the Department, as necessary. 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.

This approach enables us to provide funds to the Virgin Islands, while the Virgin Islands continues its efforts to complete the implementation and transition to the new 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. The Department continues its commitment to provide essential funding as well as to work closely with you to improve the delivery of Federally supported education services, and will continue to provide technical assistance as necessary.

If you have any questions, please contact me at (202) 245-8278.

Sincerely yours,



Philip A. Maestri
Director, Risk Management Service

Enclosures

Electronic cc:

Honorable John de Jongh, Governor
Dr. LaVerne Terry, Commissioner, Department of Education
Ms. Donna Gregory, Assistant Commissioner, Department of Education
Ms. Debra Gottlieb, Director, Office of Management and Budget
Ms. Lynn Millin, Commissioner, Department of Property and Procurement
Mr. Angel Dawson, Commissioner, Department of Finance

U.S. Virgin Islands
Virgin Islands Department of Education
Virgin Islands Department of Health
Virgin Islands Department of Human Services
Federal Fiscal Year (FFY) 2012 Special Conditions

PREAMBLE: These special conditions are imposed on all FFY 2012 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 because, as explained further below, the Virgin Islands has not been able to demonstrate that it has the capacity to ensure fiscal management of Department grant funds in order to ensure compliance with Federal grant requirements and fiscal accountability without the use of a third party fiduciary agent. 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, in 2002 the Department entered into a three-year Compliance Agreement (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 credible financial management system (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 through 2011, 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 yet 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 is continuing these 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), 34 CFR Part 80, 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 – i.e., under contract and capable of performing all duties and responsibilities thereunder – 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. The contract with A&M had a termination date of April 25, 2009.

To allow time for the Virgin Islands to complete the steps necessary to procure the

services of a new Agent that would carry out all of the responsibilities and requirements set forth in Attachment A, the Virgin Islands and A&M executed several extensions of the A&M contract, under which A&M continued to carry out the third party fiduciary responsibilities through the end of October 2010. This extension also provided sufficient time to complete negotiations with the new Agent, as well as to transition the third party fiduciary responsibilities from the incumbent to the new Agent. On June 24, 2010, the Virgin Islands entered into a contract with Thompson, Cobb, Bazilio, and Associates (TCBA or Agent) to serve as the new third party fiduciary agent. TCBA officially assumed the duties of the third party fiduciary on September 2, 2010 after a formal transition meeting between representatives from ED (Risk Management Service and Office of the Inspector General), the Virgin Islands, VIDE, VIDH, VIDHS, and the Virgin Islands Departments of Finance (VIDF) and Property and Procurement (VIDPP). The Virgin Islands, and all of its agencies, including VIDE, VIDHS, VIDH, VIDF and VIDPP, must adhere to the special conditions described in this Section II.A under the contract with TCBA.

The Department does not and will not authorize the obligation, liquidation or 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 financial 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 and remains unresolved between the Agent and the Virgin Islands, VIDE, VIDH, or VIDHS 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. The Virgin Islands, VIDE, VIDH, and VIDHS agree to the Department's assistance in the resolution of any such unresolved dispute and agree that this assistance may require compliance with the Department's requests for additional information from the Virgin Islands, VIDE, VIDH, or VIDHS, and from the Agent, conference calls among representatives from these entities, and decisions or advice from the Department in resolution of the unresolved dispute. This does not preclude the Virgin Islands and the Agent from including formal dispute resolution mechanisms

in their contract.

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, including requirements that apply under EDGAR, ARRA, and applicable Federal program statutes and regulations.

5. The Virgin Islands, VIDE, VIDH, and VIDHS remain responsible for the provision of program services under the respective grants, including the review and approval (where applicable) of local educational agency (LEA) applications for subgrants under State formula grant programs, determination of LEA allocations, and notification to the LEAs regarding their allocations under the grants.

6. The Department's grant awards to VIDH under Part C of the Individuals with Disabilities Education Act (IDEA) for FFYs 2006 through 2012 include special conditions, which are attached to, and specified in, the respective IDEA Part C grant award letters (Part C Special Conditions). These Part C Special Conditions require VIDH to use a separate third party fiduciary agent, Lutheran Social Services (LSS), to ensure the continued fiscal accountability of IDEA Part C funds and the timely payment of providers of IDEA Part C services. Under these special conditions, VIDH's IDEA Part C grant funds may not be used to pay any costs charged by TCBA.

7. The Virgin Islands, VIDE, or VIDHS, prior to any drawdowns 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 drawdowns of funds under the grants from the Department's Grant Administration and Payment System (G5) 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 any applicable 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 for that entity (i.e., VIDE or VIDHS) 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.

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 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, 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 FFYs 2006 through 2012. The Virgin Islands, VIDE, and VIDHS acknowledge that the Agent also has the duty 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 the appropriate entity, 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(s) on the same day that funds are drawn from the account(s) 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 Department funds, the Virgin Islands, VIDE, and VIDHS must provide the Agent

with the amount and nature of 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 and properly executed time distribution and time and attendance records and semiannual certifications, as appropriate for each employee. 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 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 (the Virgin Islands' 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.

15. When necessary, 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, the Virgin Islands and its Agent 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 tangible personal property procured under ED grants is managed in accordance with the requirements of 34 CFR §§ 80.32(a) and (c)-(g) to ensure that such property with a purchase price of $500 or greater is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property. The Virgin Islands (through VIDPP or another agency designated by the Governor) must conduct a physical inventory of

its equipment (as defined in 34 CFR § 80.3) with a purchase price of $500 or greater that was acquired with ED grant funds at any time, and provide a copy of the inventory to the Agent upon request.

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 the appropriate Virgin Islands 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, VIDH, and VIDHS 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 also applicable to grants awarded by the Department to the Virgin Islands, VIDE, VIDH, and VIDHS. This includes, for example, the drug-free workplace requirements in Part 84 of EDGAR, which are applicable to the Virgin Islands, VIDE, VIDH, 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 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, under the Department's grants.

B. Implementation of Corrective Action Plan (CAP)

VIDE shall continue to execute the CAP developed and delivered to ED on October 1, 2009. VIDE shall continue to provide a quarterly report to the Department on its progress in implementing the various measures required under the CAP, including a description of activities and progress for each task during the reporting period, documentation of measures of performance and results, and other data or documentation as specified within the action steps for each task. Any changes in the task completion dates included in the baselined CAP must first be approved by the Department. VIDE should make every effort to avoid the need to change task completion dates. The due dates for the quarterly reports are:

- April 1, 2012 to June 30, 2012 – Due on or before July 15, 2012
- July 1, 2012 to September 30, 2012 – Due on or before October 15, 2012

- October 1, 2012 to December 31, 2012 - Due on or before January 15, 2013
- January 1, 2013 to March 31, 2013 – Due on or before April 15, 2013
- April 1, 2013 to June 30, 2013 – Due on or before July 15, 2013
- July 1, 2013 to September 30, 2013 – Due on or before October 15, 2013

The Virgin Islands stated during the third party fiduciary transition meeting held in St. Thomas on September 2, 2010 that it has completed the process of establishing and implementing the CFMS and improved fiscal management procedures and controls required by the 2002 Compliance Agreement and other recent ED audits and alert memoranda, including Control Number ED-OIG/A04J0004 - *Virgin Islands Department of Education's Current Efforts to Address Prior Audit Findings* (January 2010) and Control Number ED-OIG/L04J0015 - *Virgin Islands Department of Education's Current Efforts to Address Prior Audit Findings.* ED is seeking information and evidence substantiating the Virgin Islands' assertion that it has, in fact, established and implemented the CFMS and the required improved fiscal management procedures and controls, as a basis for assessing possible readiness, and establishing a projected timeframe, for the transition of fiscal management responsibilities for ED grants back to the Virgin Islands. The information provided by the quarterly CAP reports, among other sources, and the progress demonstrated through the quarterly reporting, will be part of this evidence.

C. 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 be a high-risk grantee and require 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.

D. Cooperation with the Department's Office for Civil Rights and Compliance with Civil Rights Regulations

VIDE must ensure that it complies with the regulations enforced by the Department's Office for Civil Rights (OCR) and cooperates with OCR's investigations including:

responding to requests for data in a timely manner; addressing compliance concerns cited by OCR in a timely manner; and submitting complete and timely monitoring reports. Specifically, VIDE will respond to data requests, including scheduling staff interviews, within 15 days of receiving OCR's request. VIDE will also take the appropriate actions specified by OCR to address all compliance concerns cited by OCR and resulting from a complaint or compliance review investigation, within the timeframes specified by OCR. VIDE will also provide documentation in its monitoring reports demonstrating that actions have been taken within the timeframes specified by OCR. Finally, VIDE will take the appropriate actions necessary to fully implement two resolution agreements currently being monitored by OCR (Case Nos. 02901042 & 02041242). Specifically, VIDE will complete all outstanding physical modifications identified by OCR during its May 2012 on-site inspection no later than September 30, 2012.

E. 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.

F. 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 Department grant award will negatively impact the ability of the Virgin Islands, VIDE, VIDH, or VIDHS to continue to receive grant funds from the Department. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

G. 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 demonstrates, to the Department's satisfaction, the ability to manage the Department's funds and property purchased for use under the grants in a manner that complies with applicable Federal requirements concerning accountability and funds management.

H. 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 14, 2011, and attached as an Addendum to the current contract with TCBA, to the extent that any provisions in these special conditions have been modified and are now inconsistent with those in the Addendum.

I. 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 Deputy Secretary
Risk Management Service
U.S. Department of Education
550 12th Street, S.W., Room 11053
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 2006 through 2012 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 2006 through 2012 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. The Department's grant awards to VIDH under IDEA Part C for FFYs 2006 through 2012 include special conditions requiring VIDH to use LSS to ensure the continued fiscal accountability of IDEA Part C funds and the timely payment of providers of IDEA Part C services. In addition, VIDH's IDEA Part C grant funds may not be used to pay any costs charged by the Agent to the Virgin Islands or VIDH under the contract between the Virgin Islands and the Agent.

4. The Virgin Islands, VIDE, or VIDHS, prior to any drawdowns 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 any applicable 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 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 from FFYs 2006 through 2012. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with the appropriate entity, 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 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.

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 2006 through 2012 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 and properly executed time distribution and time and attendance records and semiannual certifications, as appropriate for each employee. 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 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 (the Virgin Islands' 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.

15. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that the Virgin Islands, VIDE, and VIDHS need under the grants. 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(s) 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(s) 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 tangible personal 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.A.7 and must be reconciled with the Department's G5 system. 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 and transitions staff to the new CFMS.

24. The Agent recognizes that, notwithstanding the citation of specific EDGAR requirements in these special conditions, there are other provisions of EDGAR not specifically cited above that are also applicable to grants awarded by the Department to the Virgin Islands, VIDE, VIDH, and VIDHS. This includes, for example, the drug-free workplace requirements in Part 84 of EDGAR, which are applicable to the Agent, and the definition of terms in Part 77 of EDGAR.