

201190040

Contract No.: _____
CFDA No.: 84.394
Project: Third Party Fiduciary
Fed. Award No.: S394A090055

Contract Agreement
Professional Services Agreement
RFP No. 011-2010
Third-Party Fiduciary Oversight and Funds Management

This agreement "Agreement" is entered into by and between the Department of Education, a line agency of the Government of Guam, "GDOE"; and Alvarez & Marsal Public Sector Services, LLC a, limited liability company, organized in Delaware, "Contractor" or "Third Party Fiduciary Agent". GDOE's primary mailing address is P. O. Box DE, Hagåtña, Guam 96932, and Contractor's primary mailing address is 600 Lexington Avenue, 6th Floor, New York, New York 10022. This Agreement will be effective upon the date signed by the Governor of Guam, "Effective Date".

Recitals

WHEREAS, as a condition of receiving further United States Department of Education ("USDOE") funding, USDOE has mandated that the GDOE contract with a third party service provider, acceptable to the USDOE, to administer its funding to the Guam Department of Education ("GDOE"); and

WHEREAS, the GDOE issued RFP No. 011-2010 (the "RFP") dated March 31, 2010 to solicit proposals from companies interested in serving as third party fiduciary on behalf of the GDOE with respect to the administration of USDOE grant funds issued to the GDOE; and

WHEREAS, Contractor submitted a proposal (hereinafter referred to as "Contractor's Proposal") dated May 5, 2010 in response to the RFP; and

WHEREAS, the GDOE has accepted Contractor's Proposal and the parties have negotiated and arrived at the agreement set forth in this Agreement; and

WHEREAS, the Contractor has proven experience in providing independent fiscal management and oversight for the public sector and third party fiduciary oversight and funds management services; and

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

WHEREAS, the Contractor is familiar with the grant award requirements of USDOE and the GDOE; and

WHEREAS, the Contractor is acceptable to USDOE as indicated in a letter from USDOE to the GDOE, dated _____ which consent shall not be unreasonably withheld.

NOW THEREFORE: in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

Section 1 Notice of Federal Funds:

- A. ARRA Funds -This Agreement involves the use of American Recovery and Reinvestment Act of 2009, Public Law 111 "ARRA", "Recovery Act" funds through United States Department of Education "USDOE".
- B. SFSF Grant Funds: USDOE grants ARRA funds to Government of Guam, under its S394A09005, CFDA # 84.394A and GDOE is a subgrantee/sub-recipients of said ARRA funds used in this Agreement.
- C. ESL Grant Funds. USDOE grants ARRA funds to GDOE direct under its S402A09002 CFDA #84.402A, and GDOE is a grantee of said ARRA funds used in this Agreement.
- D. Other Federal program funds from the USDOE and other federal agencies are received by GDOE, in addition to annual appropriations from the Government of Guam.
- E. "High risk grantee" status is in place for all Federal programs funds received by GDOE from USDOE and all other Federal Agencies, by USDOE letter dated November 25, 2009, and the subsequent June 21, 2010 letter.
- F. Special Conditions are set forth in the USDOE letters dated November 25, 2009 and June 21, 2010(which are incorporated herein as if fully re-written) and referred to as "Special Conditions".
- G. Professional outplacement independent contractor services, consulting services and fiduciary services are the subject of this Agreement and a complex relationship between GDOE and Contractor is set forth in Attachment A and Attachment B of the Special Conditions, collectively "Attachments", individually as "Attachment A and Attachment B"; and in this Agreement and the related procurement documents; GDOE's RFP 011-2010, Contractor's Written Proposal and subsequent submissions, this Agreement and its attachments, and all the applicable Federal laws, rules, regulations and applicable OMB circulars and applicable guide documents; all collectively referred to as "Services".
- H. A fiduciary relationship is established between Contractor as fiduciary and GDOE as principal; such that Contractor is deemed to hold the highest standard of care imposed at either equity or law and is expected to be extremely loyal to the person they owe the duty (the "principal"): they must not put their personal interests before the duty, and must not profit from their position as a fiduciary, unless the principal consents. The fiduciary relationship is highlighted by good faith, loyalty and care, as to its exercise of such fiduciary duties. The specific fiduciary duties are set forth in the Special Conditions; and in the nature of the purpose of the Federal funds programs to fund Guam Public Education Federal Funds Programs.
- I. A consultant who is an expert in Federal funds management and high risk grantee school systems like GDOE, who is able to guide GDOE, and manage USDOE funded programs including the ARRA funded programs in keeping with the USDOE mandatory time lines and requirement, is what Contractor has represented itself to be, and GDOE is entrusting its Federal funds programs that affect the people and students in Guam as part of this Agreement, relying on Contractor's professional services, and remain responsible for its own oversight responsibilities by Federal and local Statutes and Regulations.
- J. Consultant is at all times under this Agreement an independent contractor for hire, and not an employee of GDOE.
- K. Mutual responsibilities between Contractor and GDOE are established by USDOE in Attachment A and Attachment B; as well as the continuing role and availability of USDOE as to issues that may arise in the Special Conditions.

- L. Contractor maintains that it possesses the capacity and ability to act as Third Party Fiduciary for USDOE grant funds awarded to GDOE under this Agreement. In the event that the Contractor fails to act as fiduciary solely as a result of its own actions, and GDOE is subject to sanctions, including but not limited to a lapse of funds, the Contractor shall be liable for any and all damages incurred as a result of its inability to act as a Third Party Fiduciary on behalf of GDOE.

Section 2 Reports- Use of ARRA funds:

- A. **Compliance with ARRA requirements.** As a condition of the ARRA funding, the federal government and the Government of Guam requires certain reports regarding the use of funds. The responsibility for providing such reports may be delegated by recipients. As such GDOE hereby delegates such responsibilities to Contractor. Contractor agrees to abide by all applicable requirements of ARRA, including the reporting requirements. Receipt of funds by Contractor under this Agreement is contingent upon compliance with those reporting requirements which include but are not limited to the requirements set forth in this Section 2.
- B. **Registration in Central Contractor Registration (CCR)** Contractor agrees that if required by the USDOE's Education Grants Management System, the Government of Guam or GDOE to register, Contractor agrees that both it and its subcontractors/subgrantees shall comply with any and all registration requirements in Central Contractor Registration of Data Universal Numbering Systems (DUNS) Number and Taxpayer Identification Number (TIN).
- C. **Section 1512 of the ARRA** OMB Memorandum M-09-21 dated June 22, 2009 outlines the standard data elements and federal implementation guidance for use in complying with the reporting requirements under Section 1512 of the ARRA
- a. Each Contractor must supply their DUNS number and an estimate of the number of jobs created and number of jobs retained as a result of the award of ARRA funds.
 - b. A detailed list of all projects or activities for which ARRA funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; and an estimate of the number of jobs created and the number of jobs retained by the project or activity; the primary place of performance of the work, including the city, state, congressional district and country.
 - c. Contractors shall provide the names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards. Any other information reasonably requested by the Department of Education or required by Guam or federal law or regulation.
 - d. Contractor agrees to continue to check GDOE's websites, and the websites provided above for new Federal funds requirements. ARRA compliance requirements and GDOE must submit reports no later than the fifth (5th) of the month to the Government of Guam, BBMR. Vendors must submit reports to GDOE and to other entities where required, in the form, and in the manner required guidance is subject to change and update procedures of the USDOE and the Federal Government. *** Please note that any reference to the 10th of the month anywhere in the ARRA funds requirements is deemed to be the 3rd of

the month as between Contractor and GDOE; or such other date of the month that is determined to meet GDOE's requirement to report to Government of Guam's BBMR by the 5th of the month. **

D. American Recovery and Reinvestment Act—Reporting Requirements. (a) *Definitions.* As used in this clause— “*Contract*”, as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see FAR Part 16. “*First-tier subcontract*” means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act. “*Jobs created*” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter. “*Jobs retained*” means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter. “*Total compensation*” means the cash and noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c) (2)): (1) *Salary and bonus.* (2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments. (3) *Earnings for services under non-equity incentive plans.* Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees. (4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans. (5) *Above-market earnings on deferred compensation which is not tax-qualified.* (6) *Other compensation.* For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

- a. This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

- b. Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.
- c. The Contractor shall report the following information, using the online reporting tools located at <http://www.FederalReporting.gov>
 - i. (1) The Government contract and order number, as applicable.
 - ii. (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
 - iii. (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
 - iv. (4) Program or project title, if any.
 - v. (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
 - vi. (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
 - vii. (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide— (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and (ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.
- d. **Names and total compensation of each of the five most highly compensated officers** of the Contractor for the calendar year in which the contract is awarded if— (i) In the Contractor's preceding fiscal year, the Contractor received— (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- e. For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

- (10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows: (i) unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company. (ii) Name of the subcontractor. (iii) Amount of the subcontract award. (iv) Date of the subcontract award. (v) The applicable North American Industry Classification System (NAICS) code. (vi) Funding agency. (vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract. (viii) Subcontract number (the contract number assigned by the prime contractor). (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable. (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable. (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if— (A) In the subcontractor's preceding fiscal year, the subcontractor received— (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- E. **GDOE as a recipient under Section 1512 Reports as follows:** This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act or ARRA") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public. The first report is due no later than ten calendar days after the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. Recipients and their first-tier subrecipients (but not vendors for goods and services as distinguished in § ____,210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profits Organizations) must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. The recipient shall report the information described in Section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov., and will provide any additional information required by the Department, unless the information is pre-populated in www.FederalReporting.gov and in any additional form required by the Department. At a minimum, grantees shall anticipate reporting: The total amounts of ARRA funds received and expended or obligated; The name, description, an devaluation of the project or activity's

completion status; and an estimate of the number of jobs that were saved or created with the funds

- F. Job Posting Requirements.** Vendors who receive ARRA funded contracts are required to post jobs created and retained as a result of stimulus funds on the Government of Guam Job Bank at <http://guamdol.net/recovery/reporting/reporting.html>. Contractor shall comply with all job posting requirements as part of this Agreement

G. WEBSITE URL INFORMATION UPDATE.

- a. ARRA Federal Program Funds URL(s) Contractor agrees that in addition to the terms and conditions set forth in the RFP that all applicable statutes, regulations, OMB Circulars, and guidelines, including Title XIV of the American Recovery and Reinvestment Act of 2009, the General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR) apply. URL(s) GDOE's Federal Program: Guam's Local ARRA website <http://www.recovery.guam.gov> Guam Office of Public Accountability <http://www.guamopa.com> Here are links to ARRA SFSF resources on USDOE's website: USDOE SFSF General Guidance: <http://www.2.ed.gov/programs/statesstabilization/applicant.html> USDOE SFST Technical Guidance webinars: <http://www.2.ed.gov/policy/gen/leg/recovery/web-conferences.html> Government of Guam, GDOE and the USDOE utilize website URL information updates, tip sheets, forms, circulars and other means to communicate any updated procedures and reporting requirements applicable to the GDOE and any all contractors and subcontractors under ARRA federally funded in whole or in part procurements. Contractor assures the GDOE that it has the capacity and will continue to maintain the capacity to be in full compliance in a complete and timely matter with the current local and federal reporting requirement required of ARRA funded federal program.2.204-11.

Section 3 Access to Records- ARRA funds

- A. Contractor agrees that the Government of Guam, USDOE, the Comptroller, the Inspector General or their designee, the USDOE, or any of its duly authorized representatives, at any time during the term of this Agreement, shall have access to, and the right to audit and examine any pertinent books, documents, paper, and records of Contractor related to Contractor's charges and performance under this Agreement.
- B. Such records shall be kept by Contractor for a period of three (3) years after final payment under this Agreement, unless the Government of Guam, GDOE, USDOE, the Comptroller, the Inspector General or their designee, the USDOE any overpayments disclosed by any such audit. However, if any litigation claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.
- C. Contractor agrees that it shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of

Contractor/subrecipient or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

- D. Contractor shall make sure that the Access to Records and Right to audit clauses in this Section 3 are in all its subcontracts under this Agreement.
- E. Contractor agrees that GDOE with reasonable prior written notice within normal business hours, shall have access to, and the right to audit and examine any pertinent books, documents, paper and records of Contractor's charges and performance under this Agreement. Contractor shall not unreasonably withhold access.

Section 4 Misuse of Funds:

- A. Contractor agrees not to misuse Federal funds. Contractor is advised that misuse of ARRA funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal grants, recoupment of monies provided under an award, and civil and/or criminal penalties.
 - a. **Inspector General Hotline**-Anyone knowing of fraud, waste, or abuse involving U.S. Department of Education funds or programs should call, write, or e-mail the Office of Inspector General Call toll-free: The Inspector General Hotline 1-800-MISUSED (1-800-647-8733) Or write: Inspector General Hotline U.S. Department of Education Office of Inspector General 400 Maryland Avenue, S.W. Washington, D.C. 20202 Or e-mail: Oig.hotline@ed.gov Reports report may be made anonymously or in confidence.
 - b. **OPA HOTLINE**-Enables the people of Guam and government employees to report improper acts committed by public officials of the Government of Guam. Call the OPA HOTLINE: (671) 47 AUDIT (671) 472-8348 ; <http://www.guamopa.org>
- B. Contractor agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Information about the Office of Inspector General Hotline is available at: <http://www.oig.hhs.gov/fraud/hotline/>
 - a. Contractor shall conduct compliance trainings, and display posters and other information; as provided by the USDOE Inspector General's Office and other Federal and Local government agencies.
 - b. **Contractor shall make sure that the False Claims Act clauses above are in all its subcontracts under this Agreement.**
- C. **Whistleblower Protection** Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractor of ARRA funds, including the Government of Guam and the Department of Education, and all contractors and grantees of the Government of Guam and the Department of Education, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA. Pub. L. 111-5.

- D. Enforceability** \Contractor agrees that if the Contractor or one of its subcontractors/subgrantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, GDOE may withhold or suspend, in whole or in part, funds awarded under the Agreement, or recover misspent funds following an audit. This provision is in addition to all other remedies available under all applicable state and federal laws. **This is an ARRA funded procurement and the federal and local laws and regulations applicable to the ARRA funds, flow down to Contractor, and Contractors subcontractor, and others who receive the ARRA funds in whole or in part as part of the transaction.**
- E. Suspension/Debarment** Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from covered transaction by any federal department or agency; (b) have, within a three (3) year period preceding this Contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements of receiving stolen property, and (d) have, within a three (3) year period preceding this Contract, had one or more public transactions (federal, state or local) terminated for cause or default. See Excluded Parties List System at www.epls.gov
- F. Availability of Funding:** The initial two (2) years of this Agreement will be supported in part with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 thereafter the Agreement will involve other sources of funds. Contractor acknowledges that this Agreement is subject to the availability of funding. In the event that funding is insufficient or otherwise not available to fund this Agreement, GDOE shall provide immediate written notice to Contractor.
- G. Conflicting Requirements with ARRA Requirements:** Contractor agrees that, to the extent ARRA requirements conflict with other terms and conditions of this Agreement and other local and federal laws, rules and requirements the ARRA requirements shall control.
- H. Prohibition on Use of ARRA funds:** Contractor agrees that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects. Contractor agrees that they shall only use ARRA federal funds as permitted by law.

Section 5 USDOE Changes to GDOE's Special Conditions.

Contractor and GDOE agree and acknowledge that USDOE, may at its discretion, revise or supplement the Special Conditions. In the event USDOE revises or supplements the Special

Conditions, the parties shall as necessary, amend the terms and provisions of this Agreement so that such terms and provisions correspond with and do not conflict with the new USDOE Special Conditions, and incorporate the new USDOE Special Conditions as a new Addendum in this Agreement.

Section 6 GDOE's Regaining Sole Fiscal Management Responsibilities:

- A. Contractor and GDOE agree and acknowledge that is the crucial over-riding objective of GDOE to regain sole fiscal management responsibilities for all its federal program funds. In keeping with that end GDOE will be seeking to increase its own fiscal management systems in a credible way. Contractor agrees to provide information and coordinate information exchanges with GDOE to minimize duplicate transaction processing as GDOE develops its own capacity with regard to this project.
- B. Contractor and GDOE are entering into this Agreement envisioning that the level of effort required by Contractor, and the length of time of this Agreement will extend into the future will be directly affected by GDOE's success in achieving its own capacity.
- C. GDOE's own achievement goals in the initial two (2) years this Agreement is in effect are as follows:

GDOE'S OWN ACHIVEMENT GOALS

A fixed asset system has been implemented and, in two successive annual audits, has been found to be free of audit findings, or exceptions.

For two (2) consecutive fiscal years, GDOE's cash management practices have consistently drawn down Federal funds as required by Attachment A and Attachment B;

External auditors report no negative audit findings in two consecutive fiscal years related to cash management;

Questioned costs are no more than five percent (5%) of federal program costs for two consecutive fiscal years.

GDOE has adequate procurement procedures that are monitored and enforced as certified by the External Auditor and Public Auditor.

- D. Services provided by Contractor in this Agreement include improving internal controls for all the processes detailed in GDOE's Compliance Road Map/ Corrective Action Plan (to be developed as part of Contractor's Services specified in Section 10 Statement of Work Exhibit 2 and to achieve more effective and efficient business and financial operations throughout GDOE as set forth in Attachment A and Attachment B. In order to accomplish this Project goal this Agreement contains as part of its Deliverables, initial and monthly reports from Contractor to GDOE, with quarterly reports on progress to be provided by Contractor to USDOE; and to be approved by USDOE.

Section 7 Contract Term:

This Contract shall be in force and in effect commencing on the date signed by the Governor to a base period of two (2) years thereafter. This Contract is subject for review and renewal with terms to be negotiated by the parties, for up to four (4) successive twelve (12) month terms.

GDOE shall give written notice of its intent to renew the Contract at least one hundred twenty (120) calendar days prior to the expiration of the term of the Contract.

Provision of Services under the initial base period or any extension period of this contract is subject to the availability of funds as appropriated by the Guam Legislature or made available through Federal grants. In the event that funding should cease to be available for Services, GDOE shall give the Contractor no less than ninety days prior written notice.

Section 8 Starting and Completion Dates:

Contractor agrees to commence work within ten (10) business days after receipt of this Agreement signed by the Governor of Guam and issuance of a written notice to proceed "NTP", by GDOE, with the official date to commence Services affixed to the NTP. Contractor shall commence work thereafter diligently and continuously to the earlier of completion or termination of this Agreement. In no event shall the Contractor commence said work or place any materials on site thereof prior to receipt of signed Agreement and issuance of NTP from GDOE.

GDOE shall not be liable to Contractor for any Services performed prior to the approval of this Agreement by the Governor of Guam and issuance of written NTP of GDOE. Contractor hereby waives any and all claims for Services performed in expectation of this Agreement prior to its approval by the Governor and issuance of a written NTP.

Section 9 Contract Documents:

It is hereby mutually agreed that the documents set forth in Section 21 Order of Precedence are incorporated herein, Section 9 as if fully rewritten, and with the following attached Exhibits:

- Exhibit 1, Flow through Terms and Conditions,
- Exhibit 2 SOW Milestones-Deliverables,
- Exhibit 3 Specimen Invoices,
- Exhibit 4 Non Disclosure Agreement and
- Exhibit 5 USDOE Special Conditions Letter date June 21, 2010

which are attached, bound herewith or incorporated herein by reference shall constitute the Agreement documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full.

Section 10 Statement of Work:

Contractor shall perform Services according to the schedule of Milestones and Deliverables given in Exhibit 2, (hereinafter "the Work"). Exhibit 2 is incorporated herein as if fully rewritten, and as may be amended from time to time per the amendment procedures of this Agreement (hereinafter "the Statement of Work", or "SOW").

Contractor and GDOE mutually represent that the SOW addresses and incorporates the provisions and requirements of Attachment A and Attachment B, and applicable portions of

GDOE's RFP 011-2010, Contractor's written Proposal, Contractor's written presentation materials clarifying its written proposal, said documents incorporated herein as if fully re-written.

Contractor shall provide the following Services incorporating appropriate internal control methodologies that comply with appropriate accounting principles.

1. Manage all USDOE grant funds received by the GDOE, unless otherwise noted in USDOE grant award documents, including directly managing the funds in a depository account(s) controlled by Contractor; and
 - a. Provide dollar limit validations as well as line item budget comparisons (using line item budgets provided by the GDOE grantee agencies) to prevent over limit spending and non-allowable grant spending
 - b. Establish, maintain and manage separate bank accounts for the funds under USDOE grants; notify when grant funds are needed for a disbursement; monitor the drawdown of funds; notify USDOE in writing if the agency fails to draw down funds in a timely manner; and undertake drawdown responsibilities if USDOE determines that it is necessary for the Contractor to do so.
 - c. Use fiscal control and accounting procedures that meet the requirements imposed on non-State USDOE grantees in accordance with 34 CFR 80.20(b) and 80.21.
 - d. Permit funds to be spent only for allowable costs of programs under the USDOE grants, in accordance with 34 CFR 80.22.
2. Implement a methodology to periodically monitor fixed assets inventory previously procured by GDOE agencies that are recipients of USDOE grant funds, as well as such assets acquired during the term of the Contract, and, if requested by the GDOE, implement improved approaches to physically secure fixed assets.
3. Establish and implement policies and procedure to ensure that goods or services procured by USDOE grant funds are properly inventoried by GDOE within 24 hours of GDOE's receipt of such good or services. The inventory process shall include inspecting the goods or services and determining whether to accept or, if the goods or services are nonconforming, not accept the goods or services. The policies and procedures shall ensure that upon acceptance of goods or services, vendors shall promptly receive payment by electronic fund transfer (EFT). Payment by paper draft shall be permitted only in cases where EFT is not available or possible for a particular vendor. Contractor shall set out said policies and procedures in a written manual for use by GDOE and shall train the employees of GDOE agencies in the proper implementation of said policies and procedures. Contractor shall have six (6) months from the effective date of the Contract to establish and implement the policies and procedures described in this paragraph, prepare the manual setting out said policies and procedures, and train the employees of GDOE in the proper implementation of said policies and procedures.
4. Process payments and disbursements, maintain records for GDOE unless otherwise noted in USDOE grant award documents, and reconcile these records to GDOE's financial records, and to the USDOE Grants Administration and Payment System (GAPS). Contractor shall be responsible for the following:
 - a. Transitioning the Contractor's accounting system chart of accounts to the GDOE chart of accounts.
 - b. Transitioning Contractor's accounting system, processes, policies and procedures to GDOE
 - c. Providing GDOE with monthly reports including bank reconciliations records; the reports must show that GDOE financial records maintained in Contractor's accounting system are uploaded to the central system accompanied by reconciliation documentation to ensure no missing records or data. Reports must be submitted to GDOE no later than the 5th of each month.
 - d. Maintaining records for the USDOE grants that fully show the amount of funds under the grant; how GDOE uses the funds; the total cost of the 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). Retain records in accordance with the provisions of 34 CFR 80.42, and recognize that records maintained on behalf of the GDOE are not exempt under 34 CFR 80.42(a) (2) from the record retention requirements.
 - e. Comply with the Cash Management Improvement Act (CMIA).
5. Establish an approach to process and turnaround requests from GDOE for acquiring goods and services, whether it is the ordering of materials or services, within 48 hours for small purchases and within 5 days for large purchases (i.e. computers, etc.) and comply with the procurement provisions in 34 CFR 80.36 and Title 5 Chapter 5 of the Guam Annotated Code, and the GDOE procurement regulations. Manage procurement and financial processing through encumbrance, pre-encumbrance, bid/quote and contract management and comply with the procurement provisions in 34 CFR 80.36(b)-(j) and Title 5, Chapter 5 of the Guam Annotated Code.

6. Verify the receipt of goods and services delivered in addition to processing payments. Provide GDOE with weekly reports detailing the status of Purchase orders. Develop and submit to GDOE a written procedure and process that Contract will use to verify the receipt of goods and services.
7. Establish and maintain a process for managing all property procured with a purchase price of \$500 or greater, consistent with the requirements of 34 CFR section 80.32(d), including reconciling the inventory to be conducted by the GDOE under the special conditions attached to its USDOE grants with existing property records. Develop a system for maintaining property records and for identifying property acquired by USDOE grant funds, and establish a control system to prevent loss, damage, or theft of the property, and periodically monitor fixed assets previously procured by GDOE as well as assets acquired during the term of this Contract.
8. Provide financial status information upon request to USDOE and/or other oversight entities.
9. Provide financial status information upon request to the GDOE, and the Government of Guam.
10. Ensure security of confidential information and records in accordance with all applicable Guam and federal laws and rules and regulations.
11. Ensure compliance with all applicable legal standards under Guam and federal law.
12. Contractor will develop reporting parameters in the system (Report Writer Capabilities) to ensure reports are generated from data housed in the system that can be developed into reports in line with the requirements of 34 CFR Parts 75, 76, and 80, as well as GAAP, GASB, Guam and federal law and rules and regulations, and, other funding source requirements and all other applicable legal standards. Comply generally with the requirements in 34 CFR 80.41, and produce quarterly reports concerning financial transactions of GDOE under the USDOE grants for submission to and GDOE and USDOE, detailing for each of the USDOE grants: (a) the date of the prospective vendor's receipt of, 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 prospective vendor; 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 provided to the prospective Contractor by GDOE. These reports shall be due within 10 working days after the end of each quarter.
13. Provide GDOE supporting documentation for draw down requests. Deposit funds drawn down under USDOE grants into the separate bank account established for the USDOE grants; deposit any matching funds for discretionary grants included in the USDOE grants into the separate bank account; and expend funds from the separate bank account solely for allowable purposes under the USDOE grants.
14. Take steps to prevent the lapsing of funds available under the USDOE 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), and in accordance with 34 CFR 80.20(b) (7) for funds under USDOE grants not included.
15. Permit funds under the USDOE grants to be charged only for costs resulting from obligations that were properly made during the funds' period of availability, including any carryover period, and liquidate obligations no later than 90 days after the funding period, in accordance with 34 CFR 80.23.
16. Establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under the USDOE grants, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among the USDOE grants, based on accurate time distribution and time and attendance records, all in accordance with OMB Circular A-87.
17. Use accurate methods to allocate funds correctly between direct and indirect costs; and ensure that the charging of direct and indirect costs against the USDOE grants is consistent with the requirements of OMB Circular A-87 and 34 CFR 75.560-564 (discretionary grants), 34 CFR 76.560-569 (formula grants), and 34 CFR 80.22.
18. Review and provide critical analysis of the Compliance Agreement, the CMIA Agreement, audit and other reports that have been issued by the federal GDOE, including the U.S. Department of Education, Office of the Inspector General, relating to the administration of USDOE grant funds in Guam and of any such reports and agreements that may be issued or entered into during the term of this Contract and establishment of procedures and protocols to correct deficiencies identified in such reports and agreements and ensure compliance with all recommendations, requirements, and directives set out in such reports and agreements.

(In the event of a conflict with terms of 1 -18 of this chart and the attached Exhibit 2, the parties intend for the Exhibit to have precedence.)

Section 11 Compensation:

Contractor shall be paid for work performed and reimbursed for allowable costs as set forth in Section 10 Statement of Work.

Section 12 GDOE Procurement

1. Contractor shall perform federal funds procurement for GDOE as part of its Services. Contractor shall comply with all applicable federal, local, laws, regulations, rules and Executive Orders, and GDOE's own applicable Rules and Regulations. Contractor shall ensure all certifications and compliance programs and processes are in place in keeping with the preceding. GDOE is a line agency of the Government of Guam, and the Superintendent of the GDOE is its authorized Chief Procurement Officer; and as such, may delegate responsibilities but remains responsible for procurement; and Contractor agrees that all Services rendered, and any third party software products, and will be done in accordance with the GDOE's line agency authority. The Guam Attorney General's Office must review and approve all procurement involving \$500,000.00 or more prior to the issuance of the issuance, of any request for proposal, or invitation for bid, 5 GCA Section § 5150.
2. Contractor represents that it in addition to Federal laws and regulations, it has done due diligence as to local Guam procurement laws, rules and commence under this Agreement, proceed in a manner that provides guidance to GDOE, and where required in the SOW, or by subsequent request of the USDOE or GDOE, undertake the Federal funds procurement for GDOE. No additional time or cost will be charged for Contractor's own education and development of its internal processes in manner tailored to Guam local laws and regulations or GDOE's own Rules and Regulations.
3. In the event that Contractor's proposal includes a price proposal for a third party solution provider or software or other services; Contractor's stated price, includes the time and services required to tailor the third party solution providers product to Guam laws and regulation and GDOE's procurement rules and regulations, in addition to the Federal funds, laws and regulations.
4. GDOE is utilizing this outplacement service agreement in lieu of hiring additional employees to meet its ARRA Federal funds obligations.
5. Contractor specially acknowledges and represents that it shall handle GDOE's procurement and related process in keeping with the time commitments of ARRA; where all funds received are to be spent by September 20, 2011 and that procurement activity with regard to the funds receipt is to commence as soon as possible, in no event later than sixty (60) calendar days from the date Services commence under this Agreement, for Federal funds already in existence at GDOE, and within sixty (60) calendar days, if not sooner as to all future ARRA Federal funds. In the event Contractor is not able to meet the performance requirement of the sixty (60) calendar days, it will provide five (5) working days, prior written notice to the GDOE Project Manager; and to the Superintendent.

Section 13 Administration of ARRA

- A. The parties acknowledge that the compensation specified in Section 11 of this Agreement includes Contractor's Services in managing and administering ARRA formula grant funds awarded to GDOE, as well as funds awarded through the Governor's office to GDOE under the ARRA State Fiscal Stabilization Fund (SFSF) and ARRA non-State Fiscal Stabilization Fund (non-SFSF).
- B. The Contactor states that it has performed a criminal background check on all employees, personnel, subcontractors or others providing work or services under this contract and will continue to do so as a matter of course as to all future employees, personnel, subcontractor or other contract employees providing Work or Services under this Agreement The Contractor further states that it has done a thorough background check on all employees, personnel, subcontractors, and others contract employees and verifies that those persons or companies are qualified and possess the training and skills necessary to perform the work and services required under this contract. Contractor has also provided a certificate of liability insurance, which names GDOE as an additional insured party. A copy of the certification of liability insurance is to be provided by Contractor to GDOE prior to commencement of any Services.
- C. In addition to this reporting under Section 13 of this Agreement, Contractor agrees to provide any and all other reports required by the ARRA funds. Compensation in Section 11 of this Agreement is in part from ARRA federal funds, and as part of receipt of compensation under this Agreement Contractor, subcontractors and others are subject to ARRA requirements that follow and flow through to those who receive ARRA federal fund monies through contract payments.
- D. Contractor agrees to the terms and conditions set forth in GDOE's Federal funds and ARRA Federal funds terms and conditions, certifications and assurances; and to flow through where applicable to its own, subcontractors and other vendors receiving Federal funds and ARRA Federal funds through Contractor as part of this Agreement.
- E. Contractor shall in its Services under this Agreement manage GDOE's compliance with all Federal funds, and ARRA Federal fund terms, conditions, certifications and assurances, in keeping with all Federal and local laws, rules and regulations, including GDOE's procurement regulations, "GDOE Procurement Regulations".
- F. In the event a dispute arises between the parties relating to the permissible use and application of USDOE grant funds, the parties agree to first seek USDOE's assistance in resolving the issues. In such instance, as noted in the Special Conditions (Section II.A.3), USDOE may issue "decisions or advice" in resolution of the unresolved issue. If USDOE issues a "decision" rather than simply providing "advice," the decision is final and binding. If USDOE simply provides "advice," the parties may proceed with the formal dispute resolution provided for in this Section 38 Mandatory Dispute Resolution, with respect to all other disputes, the parties shall proceed directly with the Section 38 Mandatory Dispute Resolution procedure.

Section 14 Financial Management Information System

- A. Contractor acknowledges that, during the term of this Agreement, GDOE intends to procure and implement a Financial Management Information System (FMIS) with the capability to handle financial transactions in a manner that is fully compliant with EDGAR, and other federal grant requirements.
- B. As necessary during the implementation and such time as the GDOE system is operational:
 - (i) Contractor shall use its commercially reasonable best effort to supply GDOE and the FMIS contractor copies of current transactions data and historical databases, that will allow GDOE to maintain its own auditable financial records of the federal grant funds that Contractor manages and;
 - (ii) Contractor shall advise GDOE and the FMIS contractor on the definition of a chart of accounts and similar matters that will expedite the exchange of information between Contractor's and GDOE's financial systems and;
 - (iii) Contractor shall facilitate with GDOE and the FMIS contractor as to compliance of the new FMIS with applicable federal regulations and guidelines.
- C. GDOE and Contractor agree that Services required by Contractor pursuant to this Section 15 shall be negotiated and set forth as Work and compensated pursuant to the terms of this Agreement.
- D. Both parties agree to cooperate fully and in a commercially reasonable manner to permit GDOE to procure and implement a FMIS system as efficiently and effectively as possible.

Section 15 Third Party Software

- A. Contractor shall provide its own financial management system that fully complies with the requirements of EDGAR and all other applicable federal grant standards; (including but not limited to ARRA); and that can operate independently from GDOE.
- B. The parties hereby acknowledge and agree that the Tyler-MUNIS financial management system ("Tyler-MUNIS") is for the purposes of this Agreement, a credible financial management system that meets generally accepted accounting principles for purposes of audit and examination of any books, documents, papers, and records in support of or in connection with the Agreement.
- C. Contractor is utilizing Tyler-MUNIS in the performance of its Services under this Agreement.
- D. No implementation of software or modification of software, including but not limited to modifications to meet GDOE's fiscal year of October 1st through September 30th are part of this Agreement.
- E. In the event that Contractor is required to modify Tyler-MUNIS to conform to GDOE processes, the parties may evaluate the requested modification services and to the extent permissible and allowable costs under this Agreement, pursuant to such evaluation the parties may negotiate in

good faith to amend Services to account for documented additional fees, costs and expenses associated with such modification services.

- F. Both parties agree to cooperate fully and in commercially reasonable good faith to expeditiously and efficiently as possible have Contractor's financial management system up and operable.

Section 16 Initial Thirty, Sixty and Ninety Day Protocol and Accelerated Roll-Out of Services

Time is of the essence in this Agreement; and the parties agree to use commercially reasonable best efforts in commencing Services under this Agreement, especially in the initial thirty, sixty and ninety day periods.

An independent evaluation of the protocols and accelerated roll-out of Services may be requested and conducted by the parties at any or all of the periods of the initial thirty, sixty and ninety days; as well as at any time in the future it is deemed advisable by the parties.

It is the mutual goal of the parties; to establish and efficient and effective relationship initially and throughout this Agreement.

Section 17 Professional Standards:

Contractor agrees to maintain professional standards applicable to its profession, and other contractors in the profession doing business in the Territory of Guam and the Governmental Accounting Standards Board (GASB), and other applicable standards in federal or Guam law, regulations or rules. At all times pertinent to this Agreement Contractor shall maintain all professional certifications and business licenses required in Guam and other states in which it does any portions of Services in this Agreement.

Section 18 Contract Administration:

By written notice to GDOE, Contractor shall name a managing director (and an alternate who can act in the managing director's absence) to function as Contractor's project manager for the Services covered by this Agreement. Contractor's project manager shall be vested with full authority to make decisions on Contractor's behalf as needed to assure Contractor's performance.

By written notice to Contractor, GDOE shall name a project manager (and an alternate who can act in the project manager's absence) who shall be vested with the authority to supervise Contractor and enforce the terms of this Agreement.

GDOE may at any time, by written order of GDOE's project manager make any change in the Work to be performed hereunder, provided that such change does not affect the total budget for this Agreement

If a proposed change causes an increase or decrease in the costs of performing the Services under this Agreement, or in the time required for this performance, GDOE's project manager shall first obtain written approval from the Guam Superintendent of Education and Contractor. In such cases, an equitable

adjustment shall be made to Exhibit 2 and the Agreement shall be modified in writing and signed by Contractor's and GDOE's project managers.

CONTRACTOR will not be bound by any interpretation or modification of this Agreement or by any direction to or request of GDOE coming from any other source.

Section 19 Justification of Delay:

Unless delayed by GDOE or USDOE and Contractor has advised GDOE in writing, Contractor shall complete Services within the agreed upon completion(s) dates; for Milestones and Deliverables as set forth in of Section 10 Statement of Work and for the Agreement overall completion date as set forth in Section 7 Contract Term. If, however, Contractor cannot comply with the completion requirements, it is Contractor's responsibility to advise GDOE in writing to explain the cause and reasons for the delay, at a reasonable time in advance of any such completion(s) date(s); so that GDOE may make alternative arrangements and if necessary provide Government of Guam and, or USDOE with the information. Contractors acknowledges that "time is of the essence" in its performance of Services under this Agreement, and in addition to the relationship between the parties to this Agreement, there is added public accountability, reporting and transparency involved for ARRA Federal funds are part of this Agreement, and as part of Services, Contractor is responsible for GDOE's Federal funds, including but not limited to ARRA Federal funds. Contractor has held itself out to GDOE as holding special knowledge and skills in its ability to manage and guide "high risk grantees's of the USDOE" in their Federal funds management, including ARRA. It is crucial covenant between GDOE and Contractor, that Contractor manage applicable times of completion, in keeping with the terms of this Agreement and in full compliance with all applicable Federal and Guam laws, rules and regulations, and in keeping with the any of the Federal fund agencies funds are received from, including but not limited to the USDOE.

Section 20 Contractor Default Failure to Perform

The following conditions shall be considered indicators that Contractor is out of compliance with or in breach of this Agreement if not corrected within 30 days after receiving written notice from GDOE:

Contractor's failure to deliver the products, reports, or results specified in Exhibit 2 by their scheduled completion dates, unless such failure is caused by GDOE or another third party; and Contractor has advised GDOE as set forth in Section 19 Justification for Delay.

A finding by the USDOE or an A-133 external auditor that an act of the Contractor's administration of USDOE grant funds covered by this agreement is out of compliance with any applicable federal funds administration rule or regulation, due solely to Contractor's action.

The discovery that Contractor has made a material misrepresentation in this Agreement..

A determination by USDOE, based on any act or failure to act of Contractor, that results in the withholding or repayment by GDOE of federal funding to which GDOE is otherwise entitled.

Contractor's inability or unwillingness to take corrective actions that the GDOE project manager may reasonably require to obtain Contractor's compliance with the terms of this Agreement.

Upon a finding that Contractor is in default, the GDOE project manager shall give written notice to Contractor's project manager of this allegation. Contractor shall have fourteen (14) calendar days (to provide a written response and propose corrective action. If Contractor and GDOE's project manager are not able to reach a mutually satisfactory resolution of the allegation of default, GDOE's project manager may take one or more of the following steps:

Withhold payment for invoiced work that is not satisfactory in GDOE's reasonable estimation.

Require Contractor, at Contractor's cost, to re-perform unsatisfactory Services; and in the event there is software or hardware that is charged to GDOE as part of this Agreement to replace defective hardware or software.

Require Contractor to replace an unsatisfactory employee or subcontractor in GDOE's reasonable estimation.

Secure equivalent services from an alternate provider and charge the costs of these services to Contractor subject to the terms of this Agreement.

Initiate proceedings to cancel this Agreement and replace Contractor as GDOE's third part fiduciary

If Contractor believes that GDOE's project manager's decision is unwarranted, Contractor may pursue Dispute Resolution as set forth in Section 38 of this Agreement.

Section 21 Order of Precedence

The parties agree to the following order of precedence in the event there is a conflict in the terms and conditions of this Agreement and its attachments (attached and or incorporated by reference as if fully re-written)

1. All ARRA federal laws, rules and regulations
2. All USDOE EDGAR federal laws, rules and regulations
3. Special Conditions (GDOE high risk grantee- USDOE requirements)- including Exhibit 5
4. Notice of Grant Award SFSF including Attachment T
5. Government of Guam laws, rules and regulations
6. GDOE's Procurement Regulations
7. Exhibit 2 Milestones and Deliverables dated 8-18-2010
8. This Agreement
9. Exhibit 1, Flow through Terms and Conditions
10. Exhibit 3 Specimen Invoices
11. Exhibit 4 Non Disclosure Agreement
12. RFP-011-2010
13. Written Materials--submitted at Oral Presentation
14. Contractor's Written Proposal

Section 22 Entire Agreement

The contents and provisions of the RFP, the contents and provisions of Contractor's Proposal, and the terms and provisions of the Exhibits attached to this Agreement are incorporated into and made a part of this Agreement. This Agreement constitutes the entire Agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Agreement, are merged and integrated herein.

Section 23 Right to Withhold:

If Services under this Agreement is not performed in accordance with the terms hereof in GDOE's reasonable estimation, and is not corrected within the 30 day cure period GDOE will have the right to withhold out of any payment due to Contractor, such sums as the GDOE may deem reasonably ample to protect it against loss or to assure payment of claims arising there from, and, at its option, the GDOE may apply such sums in such manner as the GDOE may deem proper to secure itself or to satisfy such claims. The GDOE will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold. Any withholding under this Section shall be subject to the Dispute Resolution procedure set out in Section 38 of this Agreement, as well as all applicable Federal and local laws and regulations.

Section 24 Force Majeure:

Contractor and/or the GDOE (other than its payment obligation) shall be excused from performance under this Agreement for any period that Contractor or the GDOE is prevented from performing any Services in whole or in part as a result of acts of God, typhoons, earthquakes, floods, epidemics, fire, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party invoking the section (each of the foregoing deemed a "Force Majeure"), provided that Contractor or the GDOE have prudently and promptly acted to take any and all reasonably necessary preventive and/or corrective steps that are within Contractor's or the GDOE's control to ensure that Contractor or the GDOE can promptly perform. Such non-performance (collectively, a Force Majeure Event) shall not be deemed a breach of the Agreement. This clause shall not relieve the Contractor of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties. The party delayed by a Force Majeure Event shall immediately notify the other party by telephone (to be confirmed in writing, via hand delivery return receipt, within FIVE (5) days of the inception of such delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform, and shall resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists. The parties shall meet to discuss and determine a revised timetable for completion of any Services delayed by a Force Majeur Event under this Agreement.

Section 25 Condition Precedent:

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

Notices: Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GDOE: Nerissa Bretania Underwood, Ph.D.
Superintendent of Education
Guam Department of Education
P.O. Box DE
Hagatna, Guam 96932
Telephone No.: (671) 300-1547
Fax No.: (671) 472-5003

cc:

GDOE Legal Counsel
Department of Education
P.O. Box DE
Hagatna, Guam 96932
Telephone No.: (671) 300-1537

Contractor: Alvarez & Marsal Public Sector Service, LLC
600 Lexington Avenue, 6th Floor
Attention: Legal Department
Telephone No.: (212) 759-4433
Tax No.: (212) 759-5532

cc: Anita P. Arriola, Esq.
Arriola, Cowan & Arriola
259 Martyr Street, Suite 201
Hagatna, Guam 96910
Telephone No. (671) 477-9730

Section 26 Licensure:

Contractor covenants that it has: obtained all of the applicable licenses or permits, temporary or otherwise, as required by the Government of Guam, and familiarized itself with the applicable

provisions of Guam law pertaining to professions and occupations. Contractor shall maintain all applicable licenses and permits as required to by the Government of Guam pertaining to professions and occupations, at all times pertinent under this Agreement.

Taxes: Contractor acknowledges, that it is subject to Guam income tax, as well as other taxes on Guam transactions. Contractor states that is current on all Federal, local and Guam tax obligations on the date of its signature below.

Section 27 Covenant Against Contingency Fees:

Contractor warrants that no person has been employed to solicit or secure any resultant contract upon agreement for commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give GDOE, the right to terminate this Agreement, or at its discretion, to deduct from the Agreement price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to a commission payable by contractors upon contracts or sales secured or made through a bona fide established commercial or selling agency maintained by Contractor for the purpose of securing business.

Section 28 Debarment Certification:

By execution of this Agreement, Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. Contractor shall include this provision in each of its sub-contracts hereunder. In the event the contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, Contractor or sub-contractor agrees that it shall not be entitled to payment for any work performed under this Agreement or sub-contract and that Contractor or sub-contractor shall promptly reimburse GDOE for any progress payments heretofore made. If, during the term of this Agreement, Contractor shall become ineligible to receive Agreement payments using Federal funds, this Agreement shall be terminated forthwith for cause and Contractor shall not be entitled to payment for any Services performed under this Agreement or sub-contract after the effective date of such ineligibility.

Section 29 False Claims:

Contractor warrants that it shall not, with respect to this Agreement, make or present any claim upon or against the GDOE, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Guam law and under Federal statutes rules and regulations. GDOE as a Department of line agency warrants that it shall not, with respect to this Agreement, make or present any claim upon or against the Contractor, or any officer, employee, subcontractor, affiliate of Contractor, knowing such claim to be false, fictitious or fraudulent.

Section 30 Termination

A. Either party may terminate this Agreement for material breach upon forty five (45) days prior written notice on the other party, and after providing the other party with a thirty (30) day prior opportunity to cure the breach.

- B. Either party may, at any time, terminate this Agreement for its convenience and without cause by providing the other party a written Notice of Termination specifying the extent of termination and the effective date, which in the event it is GDOE terminating per this subsection 30 (b) shall not be less than ninety (90) calendar days from the date of the notice; and in the event it is Contractor terminating per this subsection 30(b) shall not be less than one hundred and fifty (150) calendar days from the date of the notice.
- C. Upon receipt of a Notice of Termination, and except as directed by the GDOE, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause: Cease operations as specified in the notice; Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the contract; Terminate all subcontracts to the extent they relate to the work terminated; Take actions reasonably necessary, or that the GDOE may reasonably direct, for the protection and preservation of the work and property related to this contract that is in the possession of the Contractor and in which the GDOE has or may have acquired an interest; transfer title and delivery to the GDOE of all work in process, completed work, material produced or acquired for the work terminated;

In the case of any termination, Contractor shall be entitled to receive payment for Services executed and reasonable allowable costs incurred in connection with such Services (as otherwise payable and reimbursable in accordance with Section 10. Statement of Work) up to the effective date of such termination.

All Deliverables and any information, data, reports, prepared as part of Services shall, if and when paid for by the GDOE, become the property of the GDOE. Both parties agree to cooperate fully at GDOE's expense with the transition of any data or other processes required for GDOE to be able to maintain its normal day to day transactions and processes as a public school system.

Section 31 Partial Termination:

The performance of Services under this Agreement may be terminated by the GDOE in part, whenever the GDOE shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a prior thirty (30) day written Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. Contractor shall be entitled to receive payment for Services provided to the date of termination, including payment for the period of the notice.

Section 32 Contractor Project Personnel:

Contractor shall, in writing, provide the GDOE with the names and qualifications, which shall include references and curriculum vitae, of all Key Personnel and Operating Personnel that will be providing services under this Agreement.

Key Personnel shall be subject to the approval of the GDOE. The GDOE's approval process for Key Personnel may, at the discretion of the GDOE, include a face to face interview. Once approved by the

GDOE, Key Personnel may not be removed from the project without the prior approval of the GDOE, provided that no such approval shall be required where personnel are removed due to illness, death, or termination of employment. In the event the GDOE approves the removal of any Key Personnel, Contractor shall provide the name and qualifications, which shall include references and curriculum vitae, of the replacement Key Personnel. All replacement Key Personnel shall be subject to the approval of the GDOE, which approval process may, at the discretion of the GDOE, include a face to face interview. Contractor's Key Personnel shall be of similar caliber, and meet the same professional standards, as the members who were part of Contractor's initial project team. "Key Personnel" shall mean an employee of the Contractor serving in a supervisory capacity or in a position that includes any responsibility or authority to make discretionary decisions with respect to the services to be performed under this Contract. Key Personnel includes, but is not limited to, all managers. "Operating Personnel" shall mean any person employed by the Contractor with respect to this Contract who is not in a supervisory capacity with the authority to make discretionary decisions with respect to the services to be performed under this Contract and whose duties involve performing the specific tasks described in the scope of service under this Contract under the supervision and direction of the Contractor's Key Personnel. All Key Personnel assigned to this Contract shall be employees of the Contractor. Contractor may not subcontract any Key Personnel positions. Contractor shall assign a Key Personnel employee to act as Contractor Project Manager with respect to this Contract. The Contractor Project Manager shall have the responsibility of managing the project under this Contract on behalf of the Contractor. Also, the parties agree that any performance issues or other issues and concerns that the GDOE may have with respect to the Contract shall first be communicated to the Contractor Project Manager. The GDOE shall have the right to request the removal of any Key Personnel and any Operating Personnel that is an employee of the Contractor. Upon such request, Contractor shall, within THIRTY (30) days, remove the subject individual or individuals from the project and present the names and qualifications, including references and curriculum vitae, of replacement Key Personnel or Operating Personnel, as the case may be. Individuals selected to replace Key Personnel shall be subject to the approval of the GDOE. Individuals selected to replace Operating Personnel may commence performance of their duties upon the GDOE's receipt of the names and qualifications of said individuals. In addition, the GDOE shall have the right to recommend the removal of any Operating Personnel that is a subcontractor of the Contractor. In the event Contractor acts upon the GDOE's recommendation, it shall within THIRTY (30) days of the removal of such Operating Personnel subcontractor present the names and qualifications, which shall include references and curriculum vitae, of a replacement subcontractor for review by the GDOE. Individuals or entities selected to replace an Operating Personnel subcontractor may commence performance of their duties upon the GDOE's receipt of the names and qualifications of said individuals or entities. In the event any Key Personnel or Operating Personnel is removed from the project, Contractor shall re-allocate work assignments and duties as necessary among existing personnel in order for Services under the Agreement to continue.

Section 33 Documents, Printouts, etc:

All documents, books, records, instructional materials, programs, printouts, software, and memoranda of every description derived there from and pertaining to this Agreement shall become the property of the GDOE and shall be turned over to it at the termination or expiration of this Agreement. . The parties agree that Contractor shall retain all right, title and interest in all of its pre-existing intellectual property and all methodologies, processes, techniques, ideas, concepts, electronic and written workpapers, trade secrets, and know-how embodied in any Deliverables or that Contractor may develop or supply in

connection with this Agreement ("Contractor Knowledge"). The parties agree that Contractor may use Contractor Knowledge for any purpose. Contractor hereby grants to GDOE a non-exclusive, irrevocable, nontransferable, royalty-free license to use Contractor Knowledge and to create and use derivative works derived from Contractor Knowledge, so long as in doing so GDOE does not breach any obligation of confidentiality. GDOE may, solely for governmental purposes, use, copy, distribute internally and modify the Deliverables, except to the extent required by law. GDOE shall not, without Contractor's prior written consent, disclose to a third party, publicly quote or make reference to the Deliverables, except to the extent required by law. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the GDOE or to the extent required by law.

Section 34 Ownership of Documents and Information:

- A. All documents, technical communications, books, records, instructional materials, programs, application software developed, findings, conclusion, opinions printouts and memoranda of every description derived there from and pertaining to this Agreement, but not including Contractor's administrative communications, records, files including electronic files and working papers relating to this Agreement, shall be the sole and exclusive property of the GDOE, free and clear of any claim or retention rights by the Contractor. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the GDOE or to the extent required by law. The parties agree that Contractor shall retain all right, title and interest in all Contractor Knowledge (as defined in Section 33). The parties agree that Contractor may use Contractor Knowledge for any purpose. In particular, in the course of performance hereunder Contractor may use (and may authorize the GDOE's personnel to use) proprietary assessment tools to assist in engagement completion. The GDOE shall have a royalty-free, non-exclusive and irrevocable license to use Contractor Knowledge and Contractor's proprietary assessment tools for internal governmental purposes within the Government of Guam (it being understood that Contractor Knowledge and tools may be shared with other governmental entities within the Island of Guam subject to the terms of this Agreement, however any such other entities should be advised that such Contractor Knowledge and tools were not developed for use by such other entities and may not be adequate to the needs of such other entities; and therefore Contractor takes no responsibility or liability for the use of such Contractor Knowledge and tools by any entity other than GDOE) only except as may be required by law. GDOE may not otherwise use or distribute such Contractor Knowledge and proprietary assessment tools for the benefit of others, except where required by law.
- B. GDOE retains all ownership rights, including but not limited to ownership and licenses for any and all application software, operational codes, and plans developed with respect to, derived from, or pertaining to the Contractor's Services under this Agreement or the Services of subcontractors procured by Contractor to perform under this Agreement. Neither Contractor nor any of its subcontractors shall have any ownership rights or interests with respect to any application software, operational codes, or any work product or intellectual property developed with respect to, derived from, or pertaining to the Services under this Agreement. With respect to proprietary assessment, application, and operational tools and methods pertaining to the project under this Agreement that

are not derived from or developed with respect to Contractor's or any subcontractor's Services under the Agreement, Contractor shall assign and transfer to the GDOE its ownership rights and interests in said proprietary tools and methods. The Contractor shall make available to the GDOE at any time the most current versions of all program source code, data dictionary and all relevant documentation on computer readable media, and shall provide interim copies upon request of GDOE. Concurrent with the final delivery of the software, the Contractor shall provide the GDOE with at least ONE (1) copy of the source code, in computer readable media, for each application program modified and/or enhanced under this Agreement. Contractor shall transfer and assign its ownership and/or other licensee/user rights to any software, including all updates and version thereto, or structured methodology (used to develop, document, modify, test, compile, or otherwise assist in the project) that was used or purchased for this project to the GDOE at the completion of the project without additional cost to the GDOE.

- C. GDOE retains all ownership rights and warranties to all computer hardware and/or equipment purchased and/or installed by the Contractor on behalf of GDOE for the operation or maintenance of the software of this project. The parties agree that computer hardware and/or equipment that is owned by Contractor and not purchased and/or installed by Contractor on behalf of GDOE under this Agreement, shall remain the property of the Contractor.
- D. Excepted from the provisions of this Section 34 are all programs and documentation which is licensed material acquired by Contractor and/or its subcontractors in connection with this Agreement. Contractor shall assign all such licensed material to GDOE, to the extent they are assignable and Contractor and /or its subcontractors in good faith will seek to have them assignable to GDOE.
- E. Contractor reserves the right to publish documents and information not deemed Confidential Information, as defined in Section 35 herein, describing the results of, or created during, the work performed under this Contract. Contractor will not publish any item with the name of GDOE without the prior written consent of GDOE.

Section 35 Confidential Information:

"Confidential Information" shall mean all data, including but not limited to materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information concerning GDOE personnel and relating to GDOE's operations and functions and classified as confidential under Guam and federal statutes and rules and regulations. Contractor agrees that the Confidential Information is to be considered confidential and proprietary to GDOE and Contractor shall hold the same in confidence except as otherwise permitted herein, shall not use the Confidential Information for any purpose other than performing the Services except with the specific prior written authorization of GDOE, and shall disclose it only to its officers, directors, affiliates, subcontractors or employees (collectively "Representatives") with a specific need to know and for whom a non-disclosure agreement has been duly executed (Exhibit 4) or who are otherwise bound by confidentiality obligations in an executed writing. Contractor shall be responsible for any breach of these confidentiality obligations by its Representatives. Contractor will not disclose, publish or otherwise reveal any of the Confidential Information received from the GDOE to any other party whatsoever except as permitted herein and except with the specific prior written authorization of

GDOE. Contractor shall take all necessary steps to safeguard the Confidentiality Information in conformity with federal and Guam statutes and rules and regulation. The provisions of this Section shall not apply to Confidential Information that Contractor is required to disclose by law or by court order or government request. In such event the Contractor shall give GDOE at least ten (10) days prior notice (if legally permitted to do so) of disclosing Confidential Information, which notice shall include the legal authority or government request or court order compelling the disclosure of Confidential Information and state the specific Confidential Information that the Contractor is compelled to disclose by law or court order. GDOE shall have the right to challenge any demand for the disclosure of Confidential Information made by court order or under the authority of law. In addition the Government and GDOE understand that in order for Contractor to perform its Services it will be necessary for Contractor's personnel and its representatives to have discussions with USDOE and disclose GDOE Confidential Information to USDOE. The parties agree that Contractor may undertake such discussions and disclosures, with USDOE, to the limited extent necessary, in keeping with its Services under this Agreement; without violating this Agreement and without providing any such prior notice to GDOE. This clause shall survive any expiration or termination of this Agreement.

Section 36 Copyrights:

- A. Contractor warrants that all products designed and delivered by Contractor hereunder do not infringe upon or violate any patent, copyright, trade secret, or other proprietary right of a third party. In the event of a claim by a third party against the GDOE, the GDOE shall promptly provide Contractor with copies of all documents and papers served upon the GDOE, and Contractor shall defend such claim in the name of the GDOE, but at Contractor's expense, and shall indemnify and hold harmless the GDOE against any loss, expense, or liability arising out of such claim, whether or not such claim is successful.
- B. In the event that any order of a court of competent jurisdiction shall prevent the GDOE from using all or any part of such product(s), Contractor at Contractor's sole option, shall either (i) obtain for the GDOE, at Contractor's expense, the right for the GDOE to continue using all of such product(s), including the alleged infringing portion, or (ii) replace such infringing portion of such product(s) to make it non-infringing.
- C. Notice: USDOE pursuant to 34 CFR Section 80.34 reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use; for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant: and
(b) Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

This clause shall survive any expiration or termination of this Agreement.

Section 37 Waivers and Amendments:

No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representative, and specifying with particularity the nature and extent of such waiver,

modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing.

Section 38 Dispute Resolution

- A. GDOE and Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then the Consultant shall request the GDOE Procurement Officer in writing to issue a final decision within sixty (60) days after receipt of the written request. If the GDOE Procurement Officer does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then Contractor may proceed as though GDOE had issued a decision adverse to Contractor.
- B. GDOE Procurement Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.
- C. GDOE Procurement Officer's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision.
- D. This subsection applies to appeals of GDOE's decision on a dispute. For money owed by or to GDOE under this Agreement, Contractor shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen (18) months after the decision is rendered by the Government or from the date when a decision should have been rendered. For all other claims by or against GDOE arising under this Agreement, the Office of the Public Accountability has jurisdiction over the appeal from the decision of the GDOE Procurement Officer. Appeals to the Office of the Public Accountability must be made within sixty (60) days of GDOE's decision or from the date the decision should have been made.
- E. Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- F. Contractor shall comply with the GDOE's decision and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where the Contractor claims a material breach of this Agreement by GDOE. However, if the Government determines in writing that continuation of Services under this Agreement is essential to the public's health or safety, then Contractor shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the GDOE.
- G. Claims against Government. Contractor expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 5) applies with respect only to claims of money owed by or to Contractor against GDOE if the claim arises out of or in connection with this Agreement. The

Consultant also expressly recognizes that all other claims by Contractor against GDOE are subject to the Guam Procurement Law (Title 5 GCA Chapter 5).

- H. **Consent to Jurisdiction.** Contractor hereby expressly consents to the jurisdiction of and the forum of courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by the Guam Procurement Law. Contractor waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.
- I. The parties acknowledge and agree that nothing in this Dispute Resolution Section 38 is intended to require Contractor to provide Services without compensation that would otherwise be due to Contractor under the Agreement.
- J. GDOE Procurement Officer will use reasonable efforts to comply with any written request from Contractor within fourteen (14) calendar days.

Section 39 Insurance:

Contractor agrees to procure and maintain in effect insurance policies in the amount and with the type of coverage shown below.

Workers compensation insurance in the form and amount required by the law of the Government of Guam.

Commercial General Liability insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or Combined single-limit bodily injury and property damage.

Professional Liability insurance in a form acceptable to the Government and with a limit of liability of not less than \$1,000,000.

Section 40 Indemnification – Limitation of Liability:

A. Contractor shall without further or additional litigation proceedings hold harmless GDOE, its members, managers, agents employees, and representatives (each a "Government Party" and collectively, "the Government Parties") from, for and against any and all damages, expenses and fees arising from or in connection with Contractor's performance under the Agreement as finally determined and adjudicated to be caused by Contractor's gross negligence, willful misconduct or fraud. As used in this Agreement, "gross negligence" means a standard of conduct beyond negligence whereby a person or entity with conscious and voluntary disregard of consequences of his/her/its action or inaction. This clause shall survive expiration or termination of this Agreement.

B. The total aggregate liability of Contractor, its members, managers, agents, employees, and representatives (collectively "Contractor Parties") under this Agreement to the GDOE and its successors and assigns shall be limited to the actual damages incurred by GDOE, its successors and assigns, respectively. Further, in no event shall the total aggregate liability of Contractor and the other Contractor Parties under this Agreement to GDOE and its successors and assigns exceed the total amount of the fees received and retained by Contractor hereunder. The limitation of liability for

damages caused by Contractor's gross negligence, willful misconduct, fraud or breach of Section 1(l) of this Agreement shall equal two times Contractor's average annual fees hereunder. While the Contractor is responsible for providing the Services and deliverables, Contractor bears no responsibility for the performance of the software, hardware, or implementation providers.

This clause shall survive expiration or termination of this Agreement.

Section 41 Restriction on Sex Offenders:

Contractor warrants that no person shall provide services relative to this contract who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed in the Sex Offender Registry. Any such person who is discovered to have been so convicted shall be immediately removed from working at Guam Department of Education and the Superintendent shall be informed within twenty-four (24) hours. Failure to take corrective action after notice may result in the temporary suspension of the contract at the discretion of the GDOE.

Section 42 Trafficking In Persons:

Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), **2 CFR 175** Contractor agrees that both it and its subcontractors shall comply with 2 CFR 175 (b) and as follows: with the following changes: Paragraphs a.2.ii.B and b.2.ii. are revised as follows: a.2.ii.B. Imputed to you or the subrecipient using the standards and due process for imputing conduct of an individual or an organization that are provided in 34 CFR part 85. b.2. ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that provide in 34 CFR part 85.

The Government of Guam, GDOE, or the Secretary of the USDOE may terminate any work, contract, grant, subgrant without penalty for any violation of these provisions by the Contractor. Contractor agrees that both it and its subcontractors shall comply with 2 CFR 175. 2 CFR 175 prohibits Contractor or its subcontractors from engaging in severe forms of trafficking in persons during the time that there is an Agreement in effect; from procuring or engaging in severe forms of trafficking in persons during the period of time that the Agreement is in effect; from procuring a commercial sex act during the period of time that the Agreement is in effect; or using force labor in the performance of the contract or subcontracts under this Agreement.

Section 43 Prohibition of Text Messaging and Emailing While Driving

Prohibition of Text Messaging and Emailing While Driving During Official Federal Funds Project Work: E.O. 13513, "Federal Leadership On Reducing Text Messaging While Driving", October 1, 2009.

Contractor agrees that both it and its subcontractors shall comply with E.O. 13513. Contractor agrees that both it and its subcontractors are prohibited from text messaging while driving during official federal funds project work/or grant work or from using government supplied electronic equipment to text message or email when driving.

Section 44 Miscellaneous:

A. Conflict of Limited English Proficiency: "LEP"

Contractor certifies that, to the extent programs are offered as part of its Services, that Contractor certifies that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure the LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please see the website www.lep.gov. Where applicable Contractor agrees to have a LEP Policy or LEP Plan in place.

B. National Environmental Policy Act ("NEPA", and Related Laws).

Contractor understands that all U.S. D.O.E. awards federal funds are subject to the National Environmental Policy Act (NEPA, 42 U.S.C. section 4321 et seq.) and other related Federal laws (including the National Historic Preservation Act), if applicable. Contractor agrees to assist GDOE, and USDOE in carrying out its responsibilities under NEPA and related laws, if applicable. (See 28 C.F.R. Part 61, App. D.) The Vendor also agrees to comply with all Federal, State, and local environmental laws and regulations applicable to the development and implementation of the activities to be funded under this agreement.

C. Energy Conservation.

All contracts must contain any mandatory standards and policies relating to energy efficiency which are contained in any Guam energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89. Stat. 871)

D. Federal, State and Local Tax Obligations:

Contractor by entering submitting its signature on this Agreement asserts and self-certifies that all Federal, State and local tax obligations have been or will be satisfied prior to receiving ARRA Federal fund payments. Contractor agrees to require all of its subcontractors assert and self certify that all Federal, State and local tax obligations have been or will be satisfied prior to their receiving ARRA Federal fund payments

E. On the Job Seat Belt Policy: 23 U.S.C. 402 and 402, and 29 U.S.C. 668.

Contractor agrees to encourage adoption and enforcement of on-the-job seat belt policies and programs for its employees, contractors, and sub recipients when operating company-owned, rented, or personally owned vehicles pursuant to 23 U.S.C. 402 and 402, and 29 U.S.C. 668.

F. Allowable Costs-Source Documentation and Reports-Time Distribution Reports –

(1) Allowable costs under this Agreement shall be as established by 34 CFR EDGAR Section 80.22 and as set forth under ARRA. Contractor is a for profit corporation and governed by 48 CFR part 31 Cost Contract Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the USDOE.

(2) Source Documentation (34 CFR 80.20 (6)) is required to be kept by GDOE for costs verification, including but not limited to actual receipts, weekly payroll records, travel vouchers, etc. and when requested by GDOE for verification of payments and cost certifications by Contractor, as to Contractor's own invoices under this Agreement. Contractor agrees without qualification to provide in a timely manner any such source documentation requested by GDOE.

(3) In the event that there is deemed a finding by USDOE, that a cost is not permissible or non-allowable under the federal grant rules, regulations and laws that is paid to Contractor by GDOE, and GDOE is charged back the cost by UDOE as unallowable; then pursuant to this subsection Section 44 (F); GDOE retains and reserves the right to recover any such charged back amounts to GDOE as against Contractor. This subsection shall survive any expiration or termination of this Agreement. GDOE, is utilizing Contractor as a Third Party Fiduciary Agent and is reliant on Contractor's highest degree of care, and experience and expertise as to federal grant rules, regulations and laws.

This subsection 44 (F) (3) shall have no effect if Contractor's Services for that portion of the Work are being paid for out of local government of Guam funds.

(4) In the event that the Government of Guam and/or USDOE required GDOE to submit Time Distribution Reports of Contractor for ARRA reporting purposes; then Contractor agrees to submit quarterly periodic certifications to the GDOE for submittal to the Office of the Governor that the employee hired or contracted under this project will work solely on that project for the period covered by the certification; and to maintain and submit personnel time distribution sheets to document hours worked for activities related to this award. The periodic certification must be submitted within 5 days after the individual is hired or contracted and every 5 days after the quarter ends on a calendar year basis.

G. Segregation of Funds:

Contractor agrees that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA. Contractor agrees to comply with all rules, regulations and guidance regarding costs/price information. To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)(Recovery Act) as required by Congress and in accordance with 45 CFR 74.21 and 92.20 "Uniform Administrative Requirements for Grants and Agreements", as applicable, and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. GDOE is a recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first

characters in Item 9d of Part III on the SF-SAC. GDOE must separately identify to each subrecipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to Contractor shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program. Contractor agrees to on its SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow GDPE to properly monitor Contractors expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

H. Social Economic Programs

FAR 52.212-8 Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637 (d) (2) and (3), incorporated herein as if fully rewritten as to Contractor and any subcontracts that exceed \$ 550,000.

I. Drug Free Work Place

GDOE maintains a drug free work place in compliance with Drug-Free Workplace Act of 1988 (Pub. L. 100-690) and Contractor and subcontractors agree to comply with the Drug-Free Work Place Act.

DRUG-FREE WORKPLACE (MAY 2001)

(a) *Definitions.* As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs;

and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

J. **Clean Air Act and Federal Water Pollution Control Act**

Contractor and subcontractors shall abide by the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended--Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended

(33 U.S.C. 1251 et seq.). Violations shall be reported to ED and the Regional Office of the Environmental Protection Agency (EPA).

K. Discovery or Inventions

Contractor and GDOE are not contracting for any Services/ Work that constitutes as a Discovery or Invention under this Agreement as initially executed.

Pursuant to 34 CFR Part 80.36 (i) (8) required notification is given by GDOE to Contractor:

USDOE's requirements relating to discoveries, inventions, copy rights and rights in data as set forth in A-102 Section _ .36 apply and Patent Rights in Inventions Made With Federal Assistance 35 USC 202-204, as implemented by 37 CFR401 apply where applicable.

L. Byrd Anti-Lobbying Certification

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- applies to contracts over \$100,000. Contractor as part of this Agreement certifies compliance with 31 U.S.C. 1352 and agrees to provide a copy of the Byrd Anti-Lobbying certification to GDOE, and to require any subcontractors of \$100,000 or more to file a Byrd Anti-Lobbying certification.. Contractor represents that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are to be forwarded from Contractor and its subcontractors up to GDOE.

M. Ethical Standards.

With respect to this Agreement and any other contract that Contractor may have, or wish to enter into, with any government of Guam agency, Contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

N. Prohibition against Gratuities and Kickbacks.

With respect to this Agreement and any other contract that Contractor may have or wish to enter into with any government of Guam agency, Contractor represents that he has not violated, is not violating, and promises that he will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

O. Prohibition against Contingent Fees.

Contractor represents that he has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except

for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this Agreement or any other contract with the government of Guam or its agencies.

Section 45 Non Discrimination

- A. Contractor shall comply with all federal and Government of Guam anti-discrimination and equal opportunity statutes regulations, and Executive Orders that apply to expenditures of funds under Federal grants, contracts and this Agreement, (including but not limited) to Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d, et seq.) as implemented at 28 CFR 42, 504 of the Rehabilitation Act of 1973(29 U.S.C. Sections 701 et seq.) as implemented at 28 CFR 41, Title IX of the Education Amendments of 1972 (20 U.S.C. Sections 1681-1688) as implemented at 45 CFR 86, the Age Discrimination Act of 1975 (29 U.S.C. Sections 6101-6107) as implemented at 45 CFR 90; Age Discrimination in Employment Act, (29 U.S.C. 621) as implemented at 29 CFR 1625, Executive Order 11246, American with Disabilities Act, P.L. 101-366 and other civil rights laws applicable to recipients of Federal assistance.
- B. Equal Opportunity
- (a) If, during any 12-month period (including the 12 months preceding the award of this Agreement), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performing this contract, Contractor agrees as follows:
- (1) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (3) Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's

commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(12) Notwithstanding any other clause in this Agreement, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

FAR 52.222-26

C. Contractor and any of its subcontracts that employ more than 50 employees and can reasonably be expected to receive a total amounts in excess of \$50,000 in a 12- month period are required to develop a written affirmative action programs within 120 days from the commencement of this Agreement. FAR 22.804.1

Section 46 Conflict of Interest:

Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. In no event shall Contractor be prevented from performing any services unrelated to the Services performed under this Agreement.

Contractor further covenants that no individual officer, director, partner, or principal of the Contractor is: a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the GDOE or any agency, board, commission or independent instrumentality of the GDOE, whether compensation on a salary, fee or contractual basis); or if an individual officer, director, partner, or principal of the Contractor is a territorial officer or employee, such individual has: familiarized itself with the provisions of Title 5, Chapter 5, Guam Code Annotated, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof; not made, negotiated or influenced this contract, in its official capacity; no financial interest in the contract as that term is defined in section 1101, (1) of said Code chapter.

Section 47 Government Not Liable

GDOE assumes no liability for any accident or injury that may occur to Contractor, his or her agents, dependents, or personal property while en route to or from worksite or during any travel mandated by the terms of this Agreement.

Section 48 Assignment:

Contractor shall not assign any rights under this Agreement without the prior written approval of the GDOE (after the GDOE has obtained the prior written approval of USDOE).

Section 49 Liability of Others:

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

Section 50 Delegation:

Except for the Subcontractor, Tyler Munis, and subcontracting for technical support disclosed and part of Contractor's solution set forth in its written proposal; Contractor shall not subcontract or delegate any part of the Services under this Agreement without the prior written approval of the GDOE (after the GDOE has obtained the prior written approval of USDOE), which consent shall not be unreasonably

withheld. Contractor warrants that all subcontractor agreements related to this Agreement shall comply with all applicable local and federal laws and rules and regulations.

Section 51 Severable Provisions:

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions.

Section 52 Venue:

Jurisdiction over any and all disputes or controversies arising under this Agreement shall be exclusive in the courts of the Territory of Guam.

Section 53 Governing Law:

The laws of Guam shall govern the validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement.

Section 54 Other Provisions:

For purposes of this Agreement, a photocopy or facsimile copy of the document or a photocopy or facsimile copy of a signature to the document shall have the same effect as an original. Also, this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF: the parties have entered into this Agreement on the dates indicated by their respective names.

ALVAREZ & MARSAL
Public Sector Services, LLC

Melissa Lynn

Date: 8/26/10

U.S. DEPARTMENT OF EDUCATION

UNKNOWN

Date: _____

CERTIFIED FUNDS AVAILABLE:

M. Atew

KRISTIN ROMERO

Certifying Officer

Date: 9.7.10

Acct. No.: 24-10-22 00 .25. 0230. 8401 *9/7/10*

Document No.: _____

Contract No.: PC1010024

Amount: \$ 4,250,000.00 per annum

APPROVED AS TO FORM:

[Signature]

FRED NISHIHIRA

GDOE Legal Counsel

Date: 8/26/10

APPROVED AS TO FORM AND LEGALITY:

John Weisenberger

JOHN WEISENBERGER

Attorney General of Guam

Date: 9/10/10

DEPARTMENT OF EDUCATION

Government of Guam "GDOE"

[Signature]

NERISSA BRETANIA UNDERWOOD, Ph.D.

Superintendent of Education

Date: 9/01/2010

REVIEWED BY:

[Signature]

BRIAN MAFNAS

Administrator, Supply Management Division

Date: 9.7.10

REVIEWED FOR FEDERAL COMPLIANCE:

[Signature]

IGNACIO SANTOS

Administrator, Federal Programs

Date: 09.07.10

APPROVED:

[Signature]

FELIX P. CAMACHO

Governor of Guam

Date: 13 SEPT. 2010

RECEIVED
SEP 08 2010

IN WITNESS WHEREOF: the parties have entered into this Agreement on the dates indicated by their respective names.

ALVAREZ & MARSAL
Public Sector Services, LLC

DEPARTMENT OF EDUCATION
Government of Guam "GDOE"

Date: _____

NERISSA BRETANIA UNDERWOOD, Ph.D.
Superintendent of Education
Date: _____

U.S. DEPARTMENT OF EDUCATION

REVIEWED BY:

UNKNOWN
Date: _____

BRIAN MAFNAS
Administrator, Supply Management Division
Date: _____

CERTIFIED FUNDS AVAILABLE:

REVIEWED FOR FEDERAL COMPLIANCE:

KRISTIN ROMERO
Certifying Officer
Date: _____
Acct. No.: _____
Document No.: _____
Contract No.: _____
Amount: _____

IGNACIO SANTOS
Administrator, Federal Programs
Date: _____

APPROVED AS TO FORM:



FRED NISHIHIRA
GDOE Legal Counsel
Date: 8/26/10

APPROVED AS TO FORM AND LEGALITY:

APPROVED:

JOHN WEISENBERGER
Attorney General of Guam
Date: _____

FELIX P. CAMACHO
Governor of Guam
Date: _____

List of Documents

Attached:

- Exhibit 1, Flow through Terms and Conditions,
- Exhibit 2 SOW Milestones-Deliverables,
- Exhibit 3 Specimen Invoices,
- Exhibit 4 Non Disclosure Agreement and
- Exhibit 5 USDOE Special Conditions Letter date June 21, 2010

Non-Attached but in existence at time of execution of the Agreement and incorporated herein as if fully re-written:

1. All ARRA federal laws, rules and regulations
2. All USDOE EDGAR federal laws, rules and regulations
3. Special Conditions (GDOE high risk grantee- USDOE requirements) (in part)
4. Notice of Grant Award SFSF including Attachment T Attachment S
5. Government of Guam laws, rules and regulations
6. GDOE's Procurement Regulations
7. RFP-011-2010
8. Written Materials--submitted at Oral Presentation
9. Contractor's Written Proposal

Documents anticipated to come into existence by the Parties at a Future Date; and incorporate herein as "living documents" to be negotiated and agreed to by the parties on a working level throughout the term of this Agreement

All changes to federal, local and Guam Department of Education laws and regulations as they become effective including but not limited to: ARRA federal laws, rules and regulations, USDOE EDGAR, USDOE Special Conditions (GDOE high risk grantee- USDOE requirements), Government of Guam laws, rules and regulations; GDOE Board Policies and GDOE Standard Operating Policies; GDOE's Procurement Regulations.

And any modifications and agreed to in writing changes to Exhibits 1 thru 3 executed by authorized representatives of each party.

Exhibit 1-Flow-Through Terms and Conditions, Assurances and Certifications All Federal Program Funds

The parties throughout the Agreement set forth express terms and conditions applicable to be flowed through by Contractor to its subcontractors, and others who receive ARRA funds in whole or in part without limiting any of the express terms and conditions of this Agreement and any applicable federal, local or DOE rule or regulation the parties expressly agree as follows:

Terms and Conditions that flow through to Contractor's Subcontractor are set forth in Federal Acquisition Regulations; and Contract Terms and Conditions that flow through to GDOE's contractors are set forth in 34 CFR Section 80.36 (i).

ARRA terms and conditions as set forth in OMB-M15 flow through to both parties contractors and vendors.

Contractor is a for profit company and will utilize the applicable FAR clauses and regulations.

All Federal funded programs which fund this Agreement in whole or in part individually have their own terms and conditions and where applicable will be flowed down by Contractor.

Government of Guam, applicable terms and conditions, assurance and certification will be complied with by Contractor in its agreements with its subcontractors.

Department of Education is a public school system, and in addition to other Federal and Local government laws, has special health and safety laws, rules and regulations required to be adhered to by any persons present on Guam public school properties. In the event Contractors, subcontractors are to be present on Guam public school properties as part of their work for funds flowed through under this Agreement, Contractor shall ensure those applicable terms and conditions are flowed through.

Performance Area (Objective)	Activities (What will be done to achieve the objective)	Evidence of Completion (How will objective be measured)	Timing	Time Line (After signature of contract) Month - Date - Year	Frequency	Payable to A&M
Mobilization	Assemble team and begin operations on Guam	Staffing Roster Deliverables	By first monthly meeting		Once	Phase I
	Establishing basic infrastructure for receipt and disbursement of grant funds	Interim Standard Operating Procedures	Within 30 days after contract signed award		Once	Phase I
	Evaluate backlog of completed grant funding eligible GDOE transactions and prepare drawdown requests to secure reimbursement.	Initial drawdown requests	Within 30 days after contract signed award		Once	Phase I
Infrastructure Installation and Management	Stand up FMIS to accommodate 3 rd Party requirements	Release of system to production environment	Within 90 days of signed contract award		Once	Phase I
	Establish bank accounts	Bank accounts setup completions of test draws successfully arriving in bank account.	Within first 30 days after signed contractor award		Once, unless additional accounts are required for compliance reasons	Phase I
	Build awareness of new internal controls and Policies and Procedures	Training Program Materials and Training Session attendance rosters showing 90% coverage of target population	To begin Phase II, immediately after the first 90 days of contract award		Initial training and then updates as processes change and to start year 2	Phase I
Compliance Management	Transfer all necessary data from the 3 rd party FMIS to GDOE's FMIS, communicating information to GDOE's FMS contractor and providing feedback to GDOE and the USDOE on GDOE's implementation of the FMIS.	Reconciliation report confirming complete and accurate transfer of 3 rd party financial records to GDOE's FMIS	Within 90 days of release of GDOE's FMIS to a production environment		Once	Phase III
	Develop a compliance roadmap equivalent to a Corrective Action Plan	Developed and Approved (GDOE) Corrective Action Plan	Within 45 days of signed contract award		Once	Phase I
	Perform quarterly tracking of CAP	Documented tracking of progress against Plan and incorporation of any required	By the 10th of the month following each quarter post		Quarterly	All Phases

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Performance Area (Objective)	Activities (What will be done to achieve the objective)	Evidence of Completion (How will objective be measured) Deliverables	Timing	Time Line (After signature of contract) Month- Date- Year	Frequency	Payable to A&M
In-Kind Valuation Processes	Support for external audits and facilitating information requests, etc	Responses to information requests and meetings set with external auditors	As required		Annually and as required	All Phases
	Determine the basis for valuations related to cost sharing and matching funds for grant reporting	Maintenance of records sufficient to document the basis of in kind valuations through audit reviews	To support initial grant budget loading and addition of subsequent grant budgets		Annually	All Phases
	Perform inventory management	Inventory reconciliation reports	Within 45 days after signed contract award		Daily management activities reported Monthly	All Phases
	Payroll	Clean draw down request for payroll expenses	Within 45 days of signed contract award		Daily management activities reported Monthly	All Phases
Transactional Support/Daily Operations	Payables	Daily transactions listing	Within 45 days of signed contract award		Daily management activities reported Monthly	All Phases
	Procurement	Monthly summary of completed purchases and procurement actions	Within 45 days of signed contract award		Daily management activities reported Monthly	All Phases
	Records management	EDGAR compliant transaction document files	Within 45 days of signed contract award		Daily management activities reported Monthly	All Phases
Payroll systems	Cash management	Compliant daily bank balance reports	Within 45 days of signed contract award		Daily management activities reported Monthly	All Phases
	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of payroll procedure changes to be implemented	Within 45 days of signed contract award		Once	Phase I
	Implement compliant payroll processes and	Bi-weekly report of payroll exceptions.	Within 45 days of signed		Daily management	Phase I

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Performance Area (Objective)	Activities (What will be done to achieve the objective)	Evidence of Completion (How will objective be measured)	Timing	Time Line (After signature of contract)	Frequency	Payable to A&M
	system setup		contract award	Month- Date- Year	activities	
	Document and maintain records appropriately	Publication and external auditor verification of compliance with SOPs	Within 45 days of signed contract award		Daily management activities reported monthly	All Phases
Cash Management	Implement a system of cash management that provides for cash – neutral or limited use of general funds for federal programs.	Daily bank balance reports and completion of test draws arriving in appropriate bank account.	Within 45 days of signed contract award		Daily management activities reported monthly	Phase I
	Confirm that reimbursement requests are supported by appropriate documentation and documentation is maintained for an appropriate period of time.	Monthly report showing grant status by organization, school or program	Initial - within 45 days of signed contract award Monthly status reports		Daily management activities reported monthly	All Phases
	Confirm that account balances are monitored to prevent the failure to timely obligate and liquidate funds and prevent the lapsing of funds.	Grant award status report and monthly reporting	Within 45 days of signed contract award Monthly status reports		Daily management activities reported monthly	All Phases
Procurement operations and systems	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of procurement procedure changes to be implemented	Within 45 days of signed contract award		Once	Phase I
	Establish contacts and working relationships with prospective vendors that can provide goods and services that GDOE needs under the grants. Enter into contracts with vendors on behalf of GDOE, and, in doing so, must comply with the provisions for procurement.	Review of an authorized vendors list and monthly tracking of procurement actions	Within 45 days of signed contract award. Monthly status reports		Daily management activities reported monthly	All Phases
Fixed Assets /Inventory systems	Establish procurement processes and system functions	Publication and external auditor verification of compliance with SOPs	Within 45 days of signed contract award		Once	Phase I
	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of fixed assets procedure changes to be implemented	Within 45 days of signed contract award		Once	Phase I

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Performance Area (Objective)	Activities (What will be done to achieve the objective)	Evidence of Completion (How will objective be measured) Deliverables	Timing	Time Line (After signature of contract) Month- Date- Year	Frequency	Payable to A&M
	Through active oversight of the warehouse, procurement and inventory, oversee the management of all tangible personal property procured under the grants by the GDOE in accordance with the requirements	Fixed assets inventory reconciliation report	Within 45 days of signed contract award		Daily management activities, annual physical inventories and regular tracking	All Phases
	Awareness building and training of personnel on all management processes	Publication and external auditor verification of compliance with SOPs	Reviewed in quarterly compliance review (internal) and after annual external audit		Daily management activities reported monthly	All Phases
Records Management	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of records management procedure changes to be implemented	Within 45 days of signed contract award		Once	Phase I
	Appropriate records management in compliance with EDGAR requirements and that supporting documentation is maintained for an appropriate period of time. This includes the entry of electronic copies of all supporting documentation into the integrated software system so that it is readily available for audit and or inquiry by various parties including GDOE executive and program offices.	Compliant financial transaction files	Starting 30 days after signed contract award		Daily management activities reported monthly	All Phases
Reporting	Conduct reconciliations on a monthly and quarterly basis	Reconciliation Reports Monthly and Quarterly	Starting 30 days after contract award by the 10 th of the month		Monthly and quarterly	All Phases
	Define other custom reports as necessary to support operations	Special reports and analyses developed as agreed upon with GDOE	Starting 30 days after signed contract award		Initial customization and annual updates	All Phases
	Program management reporting - Standard	Issue memos or emails; monthly program	Starting 30 days after contract		Monthly	All Phases

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Performance Area (Objective)	Activities (What will be done to achieve the objective)	Evidence of Completion (How will objective be measured)	Timing	Time Line (After signature of contract) Month- Date- Year	Frequency	Payable to A&M
	monthly reporting will track status of performance results as well as operating information on drawdowns, procurement status and other pre-defined status indicators. Reporting will also identify any performance risks and issues. Informal, timely information exchange will also occur to share information, resolve issues and address operational concerns.	management reports	award on a mutually agreed upon day.			
Performance Improvements	Identified opportunities to streamline processes and increase operational efficiency	Presentation to GDOE with implementation plans.	At initiation of Phase III of the contract period of performance		Start of Phase III. Year 2 of contract period of performance	Phase II

Other Milestones - these goals are not completely under A&M's control but our activities as a third party include:

- o Federal funds are released
- o Approval of a Comprehensive Corrective Action Plan
- o Getting off the high risk list/release of special conditions
 - Need to have USDOE specifically state what the conditions are for GDOE to be released from special conditions
 - Identify opportunities to accelerate timeframes and associate with contract incentives
- Contract management
 - o Monthly reporting will track A&M's accomplishments with a standard management report on all transactional activities and other major deliverables, etc
 - Any obstacles need to be reporting well in advance of the monthly review to identify strategies to mitigate issues
 - If A&M fails to accomplish monthly and program performance requirements without agreement by GDOE in advance of invoicing, there is potential to impact authorization for invoicing

Revised 8/6/10	Expected Cost	Expected Cost	Phase I	Phase II	Phase III
Category	Expected Cost	Expected Cost	Phase I	Phase II	Phase III

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	ANNUAL, Year 1	ANNUAL, Years 2+			
Fees	\$3,486,326	\$3,413,092	\$1,445,751	\$2,040,575	\$3,413,092
Expenses - Personnel	\$528,674	\$497,308	\$264,337	\$264,337	\$497,308
Expenses - Other	\$235,000	\$189,600	\$117,500	\$117,500	\$189,600
TOTAL	\$4,250,000	\$4,100,000	\$1,827,588	\$2,422,412	\$4,100,000

Contractor shall be reimbursed for expenses incurred and shall be compensated for services rendered in a combined amount not to exceed \$4,250,000 for the first year and \$4,100,000 for the second year of this Contract, according to the following schedule and limitations:

All expenses subject so to 34 CFR Section 80.22 Allowable Costs: - For Profit Organization 48 CFR part 31. Contract Cost Principles and Procedures applies to Contractor costs.

8-20-2010 Final TPA Agreement *[Signature]*

Exhibit 3 Sample Invoice

CFDA No.: 84.394
 Project: Third Party Fiduciary
 Federal Award No.: S394A090055

September 1, 2010

Invoice for August fees and expenses [invoice#: 2010-01]

Pursuant to the original contract between the Guam Department of Education and Alvarez & Marsal Public Sector Services, LLC, please find attached A&M's invoice for August 2010 based upon hours, expenses and performance as detailed in two sections below. Summary information relevant to incurred costs and performance information are attached to this invoice.

Cost Information

Resource	Role	Hours	Rate	Fees	Expenses	Total Fees & Expenses
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Other Expenses

- FMIS
- Supplies
- Fees
- Total Fees and Expenses

\$Total Fees	\$Total Expenses	\$Total Costs
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Performance Information

Attached is the tracking summary of activities against the agreed upon Performance Management plan. Highlights of performance tracking include:

Deliverable/Milestone	Percent Complete/Duration Completed	GDOE Verification	Remaining Action Steps/Plan
Monthly Status Report			

Accordingly, Alvarez & Marsal requests to be paid in the amount of \$XXXX. If you have any questions or would like additional information, please feel free to contact me at anytime.

Sincerely,

Managing Director Attachments
 Cc: Susan Robison, A&M Chief Financial Officer

Exhibit 3 (continued)
Performance Management Tracking

Performance Area	Activities	Evidence of Completion	Monthly Performance Activities	Progress Activities /% Completion
Mobilization	Assemble team and begin operations on Guam	Staffing Roster		
	Establishing basic infrastructure for receipt and disbursement of grant funds	Interim Standard Operating Procedures		
	Evaluate backlog of completed grant funding eligible GDOE transactions and prepare drawdown requests to secure reimbursement.	Initial drawdown requests		
Infrastructure Installation and Management	Stand up FMIS to accommodate 3 rd Party requirements	Release of system to production environment		
	Establish bank accounts	Bank accounts setup completions of test draws successfully arriving in bank account.		
	Build awareness of new internal controls and Policies and Procedures	Training Program Materials and Training Session attendance rosters showing 90% coverage of target population		
	Transfer all necessary data from the 3 rd party FMIS to GDOE's FMIS, communicating information to GDOE's FMS contractor and providing feedback to GDOE and the USDOE on GDOE's implementation of the FMIS.	Reconciliation report confirming complete and accurate transfer of 3 rd party financial records to GDOE's FMIS		
Compliance Management	Develop a compliance roadmap equivalent to a Corrective Action Plan	Developed and Approved Corrective Action Plan		
	Perform quarterly tracking of CAP	Documented tracking of progress against Plan and incorporation of any		

Performance Area	Activities	Evidence of Completion	Monthly Performance Activities	Progress Activities /% Completion
		required changes based upon new process and/or compliance changes		
	Support for external audits and facilitating information requests, etc	Responses to information requests and meetings set with external auditors		
In -Kind Valuation Processes	Determine the basis for valuations related to cost sharing and matching funds for grant reporting	Maintenance of records sufficient to document the basis of in kind valuations through audit reviews		
Transactional Support/Daily Operations	Perform inventory management	Inventory reconciliation reports		
	Payroll	Clean draw down request for payroll expenses		
	Payables	Daily transactions listing		
	Procurement	Monthly summary of completed purchases and procurement actions		
	Records management	EDGAR compliant transaction document files		
	Cash management	Compliant daily bank balance reports		
Payroll systems	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of payroll procedure changes to be implemented		
	Implement compliant payroll processes and system setup	Bi-weekly report of payroll exceptions.		
	Document and maintain records appropriately	Publication and external auditor verification of compliance with SOPs		
Cash Management	Implement a system of cash management that provides for cash –	Daily bank balance reports and completion of test		

Performance Area	Activities	Evidence of Completion	Monthly Performance Activities	Progress Activities /% Completion
	neutral or limited use of general funds for federal programs.	draws arriving in appropriate bank account.		
	Confirm that reimbursement requests are supported by appropriate documentation and documentation is maintained for an appropriate period of time.	Monthly report showing grant status by organization, school or program		
	Confirm that account balances are monitored to prevent the failure to timely obligate and liquidate funds and prevent the lapsing of funds.	Grant award status report and monthly reporting		
Procurement operations and systems	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of procurement procedure changes to be implemented		
	Establish contacts and working relationships with prospective vendors that can provide goods and services that GDOE needs under the grants. Enter into contracts with vendors on behalf of GDOE, and, in doing so, must comply with the provisions for procurement.	Review of an authorized vendors list and monthly tracking o procurement actions		
	Establish procurement processes and system functions	Publication and external auditor verification of compliance with SOPs		
Fixed Assets /Inventory systems	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of fixed assets procedure changes to be implemented		
	Through active oversight of the warehouse, procurement and inventory, oversee the	Fixed assets inventory reconciliation report		

Performance Area	Activities	Evidence of Completion	Monthly Performance Activities	Progress Activities /% Completion
	management of all tangible personal property procured under the grants by the GDOE in accordance with the requirements			
	Awareness building and training of personnel on all management processes	Publication and external auditor verification of compliance with SOPs		
Records Management	Detailed specification of internal control standards and process improvement actions required by CAP	Checklist of records management procedure changes to be implemented		
	Appropriate records management in compliance with EDGAR requirements and that supporting documentation is maintained for an appropriate period of time. This includes the entry of electronic copies of all supporting documentation into the integrated software system so that it is readily available for audit and or inquiry by various parties including GDOE executive and program offices.	Compliant financial transaction files		
Reporting	Conduct reconciliations on a monthly and quarterly basis	Reconciliation Reports Monthly and Quarterly		
	Define other custom reports as necessary to support operations	Special reports and analyses		
	Program management reporting - Standard monthly reporting will track status of performance results as well as operating information on drawdowns, procurement status and	Issue memos or emails; monthly program management reports		

Performance Area	Activities	Evidence of Completion	Monthly Performance Activities	Progress Activities /% Completion
	other pre-defined status indicators. Reporting will also identify any performance risks and issues. Informal, timely information exchange will also occur to share information, resolve issues and address operational concerns.			
Performance Improvements	Identified opportunities to streamline processes and increase operational efficiency	Presentation to GDOE with implementation plans.		

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "Agreement") dated this [redacted] day of [redacted], 2010, by and between Alvarez & Marsal Public Sector Services, LLC ("A&M") and [insert Company name] ("Company").

WITNESSETH:

WHEREAS, A&M and Company, are contemplating entering into certain business transactions; and

WHEREAS, A&M has agreed to provide Company with certain confidential information, including, without limitation, proformas; business plans and records; operating and marketing methods, plans, literature and documents; financial statements; insurance loss and liability information; vendor lists; business strategies and relationships with third parties; trade secrets; business methodologies and techniques; computer software programs and descriptions of functions and features of software; source code; computer hardware systems and designs; and information regarding clients, vendors, employees and affiliates, whether tangible or intangible and in whatever written or verbal medium provided, and whether furnished before or after the date of this Agreement ("Information"); and

WHEREAS, A&M desires to assure the confidentiality of all Information transmitted to Company and to keep the nature of their discussions confidential.

NOW, THEREFORE, in consideration of the mutual covenants and understandings hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Neither Company nor any of its affiliates shall disclose, disseminate, communicate or divulge to any other person, firm, corporation or other entity from the date first above written and at any time thereafter, any of the Information received from A&M, whether such Information is transmitted written, verbal or in any other form, or use any such Information in any way materially detrimental to A&M.
2. Company shall use the same degree of care to avoid disclosure or use of the Information provided by A&M as it employs with respect to its own proprietary Information that it considers important to the operation of its business.
3. A&M agrees that the Information shall not be deemed proprietary, and Company shall not have any obligation with respect to any Information, which:



- a. is or becomes publicly known through no wrongful act of Company; or
 - b. is received on a non-confidential basis from a third party without similar restrictions and without breach of this Agreement; or
 - c. is approved for release by written authorization of A&M. Such authorization shall be signed by a corporate officer of A&M.
4. All written Information and other physical or technological forms of Information delivered by A&M to Company shall be and shall remain the property of A&M. Upon written request by A&M, Company shall promptly follow A&M's instructions to either return or destroy such written or other materials and notes concerning Information disclosed in writing, verbally or in any other form to Company.
5. Company shall have no ownership rights in the Information and agrees that it shall not print, or copy, or permit to be printed or copied, in whole or in part, the Information without the prior written permission of A&M, except as necessary to discuss the aforesaid business transactions among its employees.
6. Company acknowledges that unauthorized disclosure or use of the Information, provided by A&M may cause harm and damage to the business of A&M which may be difficult to ascertain and which may not be adequately compensated in damages at law. Therefore, this Agreement shall be subject to specific performance and any breach or threatened breach hereof shall entitle A&M to a temporary restraining order, preliminary injunctions and permanent injunction restraining Company from such breach. Nothing contained herein shall be construed as prohibiting A&M from pursuing all other remedies available to it for such breach including monetary damages arising out of such breach. If in the absence of a protective order or other remedy or the receipt of a waiver by A&M, Company is nonetheless legally compelled to disclose any Information to any tribunal or else-stand liable for contempt or suffer other censure or penalty, Company may, without liability hereunder, disclose to such tribunal only that portion of the Information which Company is legally required to disclose.
7. If any provisions of this Agreement shall be determined to be invalid or unenforceable by any court or tribunal having jurisdiction over the subject matter hereof, either in whole or in part, as contrary to the laws or public policy, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions and to alter the balance of this Agreement valid and enforceable.

8. This Agreement shall be binding upon and inure to the benefit of the parties, and their successors in interest. This Agreement shall not be assignable by either part hereto without written consent of the other party hereto and any purported assignment without such consent shall be void. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede all previous communication, representations, understandings and agreements, either oral or written between the parties or any officials or representatives thereof. This Agreement may not be changed or modified save by a written agreement signed by the parties hereto or by their successors in interest. This Agreement may be signed in one or more counterparts (by original or facsimile signature), and each of which, when so executed, shall be deemed to be an original, and such counterpart together shall constitute one in the same instrument. A signed facsimile counterpart of this Agreement and any amendments or modification thereto shall have the same effect as a signed original. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ALVAREZ & MARSAL PUBLIC SECTOR SERVICES, LLC
600 Lexington Avenue – 6th Floor
New York, NY 10022

By: _____
Name: _____
Title: _____
Date: _____

[COMPANY NAME]
[Insert address]

By: _____
Name: _____
Title: _____
Date: _____



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

400 MARYLAND AVE., S.W., WASHINGTON, DC 20202-0100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

8-20-2010 Final TPA Agreement

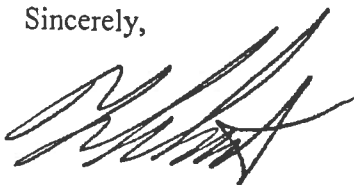
awarded prior to the date of the November 25, 2009 amended special conditions and for ARRA formula grants and SFSF funds, GDOE may continue to draw down funds before the agent is in place and prepared to manage grant funds, as long as the GDOE internal auditor continues to provide the Department with 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 unauditible.

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.

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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.