

## **MASTER FACILITATOR AGREEMENT**

**THIS MASTER FACILITATOR AGREEMENT** (this “Agreement”), dated as of May 22, 2003, is by and between the **NORTH CAROLINA STATE BOARD OF EDUCATION** (the “Board”), and **CARLYLE CAPITAL MARKETS INC.** (“CCMI”), a Texas corporation.

### **WITNESSETH:**

**WHEREAS**, pursuant to G.S. 115C-240(e), the Board is authorized to fund public school transportation operations and, pursuant to G.S. 115C-249, the replacement of school buses and other vehicles; and

**WHEREAS**, the Board has promulgated criteria by which buses in the statewide fleet are to be replaced in a given year; and

**WHEREAS**, the Board, through the Department of Public Instruction (“DPI”) has identified buses (the “Buses”) for replacement for use by the local boards of education (each, a “LEA”) at an approximate aggregate cost of \$28 million; and

**WHEREAS**, pursuant to G.S. 115C-528, an LEA may purchase or finance the purchase of school buses; and

**WHEREAS**, of the funds appropriated to the Board for the 2002-2003 fiscal year, the North Carolina General Assembly has authorized the Board to use up to \$10 million for allotments to the LEAs to pay the cost of Bus financing for the first year; and

**WHEREAS**, pursuant to a solicitation for third party financing (#40-Finance), DPI has selected Carlyle Capital Markets Inc. (“CCMI”) to provide financing for the replacement Buses; and

**WHEREAS**, each LEA will enter into a Master Replacement Bus Financing Agreement (each, a “Financing Agreement”) with CCMI pursuant to which the LEAs will finance the purchase of the Buses through CCMI, on the terms and conditions as provided therein; and

**WHEREAS**, from time to time, each LEA will submit an Appendix (each, an “Appendix”) to CCMI to facilitate the acquisition of one or more Buses; and

**WHEREAS**, for purposes of financing, the Buses will be considered to be accepted at the time that the Buses are accepted by the respective LEA; and

**WHEREAS**, the Board, for convenience and ease of administration has agreed to collect Installment Payments from the LEAs as due under the Financing Agreements and to remit the collective payments to CCMI or its assignee; and

**WHEREAS**, the Board has included in its request to the North Carolina Office of State Budget and Management, an appropriation request in an amount sufficient to provide for all Installment Payments due and owing for fiscal years 2003-2004 and 2004-2005 on behalf of the LEAs and such appropriation request is reflected in the budget proposed by the Governor of the State of North Carolina for such fiscal years.

**NOW, THEREFORE**, the Board and CCMI agree:

1. The Board agrees to allocate to the LEAs all necessary funds appropriated by the General Assembly to the LEAs for the acquisition of the Buses acquired pursuant to the Financing Agreements. The Board agrees to direct those funds to CCMI or its assignee for Installment Payments on behalf of the LEAs pursuant to the Financing Agreements.

2. The Board will collect the Installments Payments from the LEA and will cause the Installment Payments to be paid to Deutsche Bank National Trust Company (the "Trustee"), as CCMI's assignee, on the dates and in the amounts set forth "Part 2--Payment Schedule" in the applicable Appendix to each Financing Agreement.

3. In the event that during fiscal year 2003-2004 or fiscal year 2004-2005 sufficient funds are not appropriated for the payment of the total of all Installment Payments required to be paid pursuant to the Financing Agreements, then any LEA under the North Carolina General Contract Terms and Conditions - Third Party Financing included in each respective Financing Agreement, may terminate its Financing Agreement together with each and every one of the Appendices.

4. The State Board further intends and hereby covenants that it will (i) include in its proposed budgets for fiscal years 2003-2004 and 2004-2005 an appropriation in an amount sufficient to provide for all Installment Payment due and owing for such fiscal years on behalf of the LEAs; (ii) include in such proposed budget and accompanying material submitted for each such fiscal year adequate information and recommendations regarding the purchase of the Buses, the public purposes served, and the Installment Payments required therefor; (iii) do all things lawfully within its power to request the appropriation of all funds anticipated by this Agreement; and (iv) use its best efforts to secure the timely approval and appropriation in the budget for each of the fiscal years of any and all such amounts as may become due under this Agreement.

5. If the State Board shall take any official action, or if any other fact or circumstance shall occur, regarding the State Board's proposed budget with respect to the total amount of the Installment Payments collected by the State Board on behalf of each of the LEAs, or any amended or supplemental appropriation that may be proposed with respect to the Installment Payment that adversely affects the securing of timely approval and appropriation of funds therefor, the State Board shall promptly notify CCMI or its assigns thereof.

6. Pursuant to G.S. 115C-249(f), if any Bus is damaged or destroyed by fire, collision or otherwise, the LEA may apply to the State Board for funds with which to replace it. If the State Board finds that the Accepted Bus has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board finds that the replacement of the Bus is necessary in order to enable the LEA to operate properly its transportation system, the State Board shall allot the LEA from the funds held by it for the replacement of school buses, or from funds hereafter appropriated by the General Assembly of the State of North Carolina for that purpose, a sum sufficient to purchase free and clear a new bus\_ to be used as a replacement for the damaged or destroyed Bus and upon such allocation, such sum shall be paid over to or for the account of the LEA for such purpose. The replacement Bus will be substituted as a security interest for the financing of the damaged or destroyed Bus.

7. The State recognizes that CCMI may assign its right to receive payment under this contract with written permission of the State. In no event does the recognition of assignment of CCMI's right to receive payments obligate the State to anyone except CCMI. The State merely recognizes

financial assignment as a convenience to CCMI and will hold CCMI responsible for fulfillment of all contract obligations.

8. The State Board agrees that it will obtain an approving opinion of the Office of the Attorney General of the State of North Carolina addressing, among other factors, the State Board's authority to enter into this Agreement and the binding nature of this Agreement. The opinion will also address the validity of the form of the Financing Agreement to be executed by each participating LEA, the LEA's authority to enter into the Financing Agreement and the binding nature of the Financing Agreement. A form of the opinion is attached hereto as Exhibit "A".

9. The DPI agrees to coordinate the inspection and acceptance of the Buses by the respective LEAs at the vendor's facilities in the state of North Carolina. To the extent possible, Buses will be inspected by the DPI and accepted by one or more LEAs in lots of at least fifty (50). The DPI agrees to perform a visual inspection of each Bus to determine whether the Bus is acceptable to be included in the State's fleet. Each LEA will inspect the Buses ordered by it. Upon satisfactory inspection of one or more Buses by the LEA, and approval by the DPI, the respective LEA and the DPI may complete and execute the Form of Acceptance Certificate attached to this Agreement as Exhibit "B". An identical form of the Acceptance Certificate is attached to the Disbursement Request, which is Part 3 of each Financing Agreement. Execution of the Acceptance Certificate constitutes acceptance of the buses for any Master Replacement Bus Financing Agreement. The DPI agrees to transmit any Acceptance Certificate by facsimile transfer to CCMI at (972/404-1231) within 72 hours of execution of such Acceptance Certificate.

10. This Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute one and the same instrument. The State Board agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Agreement.


11. No waiver of the State Board of any term or condition of this Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Agreement.

12. CCMI and its assignees, not being a "seller" of the Accepted Buses, as such term is used in the Uniform Commercial Code nor a seller's agent, hereby expressly disclaim, and make no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Accepted Buses, or any other warranty with respect thereto and, as to CCMI and its assignees, the Accepted Buses will be purchased AS IS. In no event shall CCMI or its assignees be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of this Agreement, the Financing Agreements, or the existence, furnishing, functioning, or the use of the Accepted Buses by the LEAs..

13. This Agreement may not be revised without the prior written consent of CCMI, as the third-party financier under each of Financing Agreements.

IN WITNESSETH WHEREOF, we have set our hands unto this Agreement as of the date first above written.

**STATE OF NORTH CAROLINA STATE BOARD OF  
EDUCATION**

By:   
Michael E. Ward  
State Superintendent

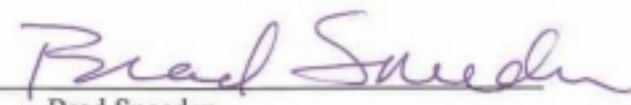
By:   
Brad Sneed  
Deputy State Superintendent

**CARLYLE CAPITAL MARKETS INC.**

By:   
Barry L. Friedman  
President

Acknowledged and Accepted with respect to Section 9 and Exhibit B.

**DEPARTMENT OF PUBLIC INSTRUCTION**

By:   
Brad Sneed  
Deputy State Superintendent

**Exhibit "A"**

**Form of Approving Opinion**

\_\_\_\_\_, 2003

State of North Carolina State Board of Education  
DPI Transportation Services  
6323 Mail Service Center  
Raleigh, North Carolina 27699-6323

Carlyle Capital Markets Inc.  
14755 Preston Road, Suite 424  
Dallas, Texas 75254

Re: Master Facilitator Agreement dated as of May 22, 2003, by and between the North Carolina State Board of Education, and Carlyle Capital Markets Inc.; and form of Master Replacement Bus Financing Agreement, to be by and between CCMI, as the third-party financier, and various Local Boards of Education of the State of North Carolina, and various Appendices to be entered into from time to time

Ladies and Gentlemen:

As counsel to the North Carolina State Department of Administration and the North Carolina State Board of Education (each, the "Board"), we have reviewed the execution and delivery of the Master Facilitator Agreement (the "Agreement") between the Board and Carlyle Capital Markets Inc. ("CCMI").

The Board has entered into the Agreement to facilitate fulfillment of its constitutional obligation to administer the North Carolina public school system. More specifically, the Board has entered into the Agreement pursuant to the Board's authority to control the conditions under which local boards of education (each, an "LEA") purchase replacement school buses under financing contracts authorized under N.C.G.S. § 115C-528 and the Act of September 20, 2002, 2002 N.C. Sess. Laws c. 126, s. 7.14 ("An Act to Modify the Current Operations Appropriations Act of 2001 and to Make Other Changes in the Budget Operation of the State") and to facilitate fulfillment of the Board's obligations under N.C.G.S. §§ 115C-12(17) and 240 to operate a public school transportation system and its obligation under N.C.G.S. §§ 115C-249 to allocate funds to LEAs for the purchase of replacement school buses. Unless otherwise defined herein, all terms having a defined meaning in the Agreement shall have the same meaning when used herein. We have reviewed the Agreement and are of the opinion that:

1. The Board has the full power and authority to enter into and deliver, and to perform all obligations of the Board under, the Agreement.
2. The execution, delivery and performance by the Board of the Agreement have been duly authorized by all necessary action on the part of the Board.
3. The Agreement constitutes a legal, valid, and binding obligation of the Board, enforceable in accordance with its terms.

4. The entering into and performance of the Agreement will not violate any judgment, order, law or regulation applicable to the Board or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the Buses pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement, or other instrument by which the Board is a party or by which it or its assets may be bound.

5. There are no actions, suits or proceedings pending or, to my knowledge, threatened against or affecting the Board in any court or before any governmental commission, board or authority, which, if adversely determined, will have a material, adverse effect on the ability of the Board to perform its obligations under the Agreement.

6. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery of the Agreement or the acquisition of the Buses.

7. The Board has observed and complied with all public bidding procedures regarding the award of the transaction contemplated in the Agreement.

8. The Agreement is in accordance with and does not violate the usury statutes of the State of North Carolina.

In addition, we have reviewed the form of the Master Replacement Bus Financing Agreement (the "Financing Agreement"), to be by and between CCMI, as the third-party financier, and various LEAs and are of the opinion that:

1. Each LEA is a political subdivision of the State of North Carolina, duly organized and existing under the laws and constitution of the State.

2. Pursuant to 2002 N.C. Sess. Laws c. 126, s. 7.14 and N.C.G.S. § 115C-528, each LEA has the full power and authority to enter into and deliver, and to perform all its obligations under the Financing Agreement.

2. Upon execution by the Financing Agreement by the respective LEA, the Financing Agreement will constitute a legal, valid, and binding obligation of the respective LEA, enforceable in accordance with its respective terms, and upon acceptance of the Buses by the individual LEAs, will create a valid and enforceable lien on the Buses for the benefit of CCMI and its assigns.

3. Once executed by an LEA, the Financing Agreement will constitute a legal, valid, and binding obligation, enforceable in accordance with its respective terms.

4. Once an LEA has accepted a bus or buses subject to the Financing Agreement, such acceptance will create a valid and enforceable lien on the bus or buses for the benefit of CCMI.

We understand that the opinions expressed herein may be relied upon by CCMI, its special tax counsel, and any subsequent assignee of CCMI's interest in the Agreement and the respective Financing Agreements.

ROY COOPER  
Attorney General

Thomas J. Ziko  
Special Deputy Attorney General

Teresa L. White  
Special Deputy Attorney General

N.C. Department of Justice  
P.O. Box 629  
Raleigh, NC 27602

**Exhibit "B"**

**Form of Acceptance Certificate**

**DATE:** \_\_\_\_\_

Re: Acceptance Certificate No. \_\_ to Master Facilitator Agreement (the "Agreement"), dated as of May 23, 2003, made and entered into by and between the **North Carolina State Board of Education** (the "State Board") and Carlyle Capital Markets Inc. ("CCMI"); CCMI 03.4283EQ; and that certain Master Replacement Bus Financing Agreement executed by the Local Education Agency indicated below (the "LEA") and CCMI (the "Financing Agreement"). Unless otherwise defined herein, all terms shall have the meaning ascribed thereto by the Agreement.

Ladies and Gentlemen:

Please refer to the above-described Agreement. In accordance with the terms of the Agreement, the LEA, together with the Department of Public Instruction (the "DPI"), acting on behalf of the State Board, acting hereby, each certify and represent to, and agree with CCMI as follows:

A. The Accepted Buses described on **Attachment A** hereto been inspected by the LEA and the DPI on behalf of the Board on or before the date hereof.

B. The LEA and the DPI have conducted such inspection of the Accepted Buses as each deems necessary and appropriate and hereby respectively acknowledge that the Accepted Buses are acceptable to be included in the State of North Carolina's bus fleet, effective the date hereof.

C. The Accepted Buses described on **Attachment A** are insured pursuant to a program of self-insurance as provided by the State Board.

Yours truly,

**DEPARTMENT OF PUBLIC INSTRUCTION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
as the LEA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Attachment "A"**

**The Accepted Buses**

Name of Local Education Agency  
or County Number

Bus Number

VIN

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