

Bidder/Offeror: _____

**THIS PAGE IS TO BE FILLED OUT AND RETURNED WITH YOUR BID. FAILURE TO DO SO
MAY SUBJECT YOUR BID TO REJECTION.**

ATTENTION

Federal Employer Identification Number or alternate identification number (e.g., Social Security Number) is used for internal processing, including bid tabulation.

Enter ID number here: _____

Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public.

This page will be removed and shredded, or otherwise kept confidential,
before the procurement file is made available for public inspection.

**STATE OF NORTH CAROLINA
Request for Proposals**

RFP #40-Finance0809

TITLE: THIRD PARTY FINANCING FOR EQUIPMENT

USING DEPARTMENT: Local Education Agencies (LEAs) – 100 County LEAs and 15 City LEAs
PUBLIC SCHOOLS OF NORTH CAROLINA

ISSUE DATE: October 14, 2008

ISSUING AGENCY: DEPARTMENT OF PUBLIC INSTRUCTION

CLOSING DATE: *October 30 – 3:00 p.m.*

Sealed Proposals subject to the conditions made a part hereof will be received until the specified closing date and time noted above for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS AS SHOWN BELOW:

IF DELIVERED BY US POSTAL SERVICE Address as below:	IF DELIVERED BY ANY OTHER MEANS (UPS/FEDEX/ETC.) Address as below:
RFP 40-Finance0809 - SEALED PROPOSAL NC DPI PURCHASING ATTN CHUCK CLEMENTS 6308 MAIL SERVICE CENTER RALEIGH NC 27699-6308	RFP 40-Finance0809 - SEALED PROPOSAL NC DPI PURCHASING ATTN CHUCK CLEMENTS 301 N WILMINGTON ST RALEIGH NC 27601

IMPORTANT NOTE: Indicate firm name and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning this RFP to: **CHUCK CLEMENTS, Section Chief, PURCHASING**
Phone No. (919) 807-3661; FAX No. (919) 807-3660;
E-mail: cclement@dpi.state.nc.us

NOTE: OFFERORS shall carefully examine the terms, conditions, specifications and all other documents and data set forth in this solicitation and any subsequent addenda. The OFFEROR shall not, at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall he/she claim any misunderstanding with regard to the nature, condition or character of the work to be performed under the contract. Questions concerning the specifications in this Request for Proposals will be received until Tuesday, October 21, 2008 at 12 p.m. Prospective OFFERORS are to submit **written questions** to Chuck Clements via e-mail or fax. **NO QUESTIONS WILL BE RECEIVED AFTER Tuesday, October 21st at 12 p.m.**

A summary of all questions and answers will be posted on the Internet as an addendum, located under the RFP# being modified. <http://www.state.nc.us/pandc/>

It is the OFFEROR's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

**Within two days after notification of award of a contract, the vendor must register in
NC E-Procurement @ Your Service (<http://vendor.ncgov.com>)**

INTRODUCTION

The North Carolina Department of Public Instruction, Purchasing (NCDPI), is soliciting proposals from the financial community to provide third party financing services for school buses. DPI is seeking equipment financing to be made available to North Carolina Local Education Agencies (LEAs) through fixed rate loans based on North Carolina General Statute 115C-528. A description of the process and relevant background is included as Attachment A. A detailed listing of proposed equipment (the Equipment) is included in this Request for Proposal as Attachment B. The successful OFFEROR shall comply with the specifications and requirements as stipulated herein. Any award that is made as a result of this RFP shall become a part of NC Term Contract 070C (School Buses).

FINANCING ARRANGEMENTS

1. NCDPI is not requesting an annual percentage rate nor are the payments to be indexed or prorated based on fluctuating market interest rates. The prices bid for each of three equal payments for each configuration of bus to be financed are fixed for the duration of this contract.
2. Time Line:
 - a. October 14-30, 2008 – OFFERORs respond to RFP
 - b. November, 2008 NCDPI awards financing contract; Master Facilitator Agreement signed. (OFFEROR now referred to as CONTRACTOR.)
 - c. November, 2008 LEAs order school buses; LEAs sign master replacement bus financing agreement.
 - d. January-April, 2009 – School buses delivered to LEA's; payment number 1 paid from LEA's by NCDPI, to CONTRACTOR; CONTRACTOR pays school bus manufacturer for school buses.
3. The proposed amount of this contract is approximately **\$69.9** million based on replacement buses to be funded by the Department of Public Instruction as a result of legislative appropriation and a small number of buses (up to 5) funded by local education agencies. The actual principal amount will be determined as a result of the proposed payment amount. Total payments will be **\$69.9** million or less, with annual payments not to exceed **\$23.3** million.
4. NCDPI received bids from school bus manufacturers that offer buses to the state of North Carolina. Cash price (terms Net 30) offers were received in December, 2007. A term contract was awarded January 10, 2008 to Thomas Built Buses, High Point, North Carolina.
5. As directed by the General Assembly, NCDPI will make allotments to each LEA receiving replacement school buses under this acquisition. At the time that such buses are delivered, NCDPI and the LEA will inspect the buses and verify their condition, approving that they meet state specifications and are acceptable to be included in the state school bus fleet. Documentation of this approval will be provided to the OFFEROR (CONTRACTOR), indicating that payment is forthcoming from the LEA within 10 days and that payment will be due from the OFFEROR (CONTRACTOR) to the school bus manufacturer within 30 days.
6. LEA PAYMENTS. Repayment of monies by North Carolina LEAs will be on an annual basis. The first of three equal payments for each school bus will be made by the appropriate LEA to the OFFEROR (CONTRACTOR) within 10 days of the acceptance of the school bus. The second of the three equal payments will be made by the LEA by November 15, 2009 or within 10 days of the acceptance of the school bus, whichever is later. The third of the three equal payments will be made by the LEA by November 15, 2010.
7. OFFEROR (CONTRACTOR) PAYMENTS TO SCHOOL BUS VENDOR. Payment of the full purchase price of each bus must be made by OFFEROR (CONTRACTOR) to Thomas Built Buses not later than 30 days of the acceptance of each bus.
8. CONTRACT ADMINISTRATOR. **NCDPI Section Chief for Transportation Services** is designated as the Contract Administrator (project coordinator) for the Department for the purposes of this RFP.
9. 4 LEAs (Dare, Moore and Gaston County Schools and Clinton City Schools) plan to use this contract to finance the purchase of school buses from their own, non-state funding sources. This involves a total of eleven buses at an estimated total cost of \$880,000. The LEAs will provide payment on the same payment schedule as the state replacement buses and will provide evidence of their credit-worthiness upon request of CONTRACTOR. The LEAs

will also complete a separate contract with CONTRACTOR containing the same payment amounts proposed in response to this RFP. CONTRACTOR agrees to allow these four LEAs to participate in this financing contract upon request of the LEA.

10. No discounts, rebates or other incentives offered by school bus manufacturers or entities other than OFFEROR will be considered in the evaluation of any response to this RFP.

The payment amounts must be guaranteed for at least 60 days from the "Closing Date" of the Request for Proposals.

Contract cannot be assigned in any manner that would allow securitization of the loan and permit it to be sold on behalf of the State of North Carolina by a third party to public investors.

BOND RATING

This financing will **not** be rated and will **not** be bank qualified.

This contract transaction will be based on the credit rating of the State and security interest in the equipment as stated in Article 14 **Security Interest**, page 12.

LEGAL AND OTHER FEES

All costs associated with the financing as described herein shall be the responsibility of the OFFEROR. NCDPI will not pay for any legal or other services associated with this transaction.

THE PROCUREMENT PROCESS

The following is a general description of the process by which a firm will be selected to provide services.

1. Request for Proposals (RFP) is posted to the State's Interactive Purchasing System (IPS).
2. Proposals in **ONE ORIGINAL AND TWO** copies will be received from each OFFEROR in a sealed envelope or package. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
3. All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.
4. At that date and time the package containing the proposals from each responding firm will be opened publicly and the name of the OFFEROR and cost(s) offered will be announced. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of an OFFEROR's pricing position.
5. At their option, the evaluators may request oral presentations or discussion with any or all OFFERORs for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, OFFERORs are cautioned that the evaluators are not required to request clarification; therefore, all proposals shall be complete and reflect the most favorable terms available from the OFFEROR.
6. NCDPI shall award this contract to the OFFEROR whose proposal, in NCDPI's sole discretion, best meets the terms and conditions of this RFP. Proposals will be evaluated according to completeness, content, experience with similar projects, ability of the OFFEROR and its staff, and total cost. The evaluation of the Offer will be based on the *total cost of the three payments* for each type of vehicle. Award of a contract to one OFFEROR does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the State.
7. A group with expertise in Procurement, Contract Management, Budgeting, Operations, Technical and Financial Information will comprise the Review Committee which will evaluate all proposals submitted.
8. To assist the Review Committee to determine the ability of the organization to provide the services described in the proposal, the response shall contain at a minimum the following information:
 - a. Brief history of the organization, including accreditation/licensing status, if applicable.
 - b. OFFEROR's understanding of this procurement.
 - c. OFFEROR's experience, if any, providing similar services to Governmental Entities (States, Cities, Counties). At least four references are required.
 - d. Describe the methodology/approach used for this project including a work plan and time line.
 - e. Provide information regarding key account personnel and business location, how your company plans to service this account including information regarding access to online account information and your company's standard and ad hoc reporting capabilities.

- f. The OFFEROR shall register with the North Carolina Secretary of State and shall be responsible for all applicable license and taxes.

To further assist the Review Committee, NCDPI reserves the right to request the following items, to be received by NCDPI within 5 business days of date of written request.

- a. Audited financial statements (balance sheets and income statements), or similar evidence of financial condition, for the past three fiscal years.
 - b. A copy of your company's current annual report
9. The OFFEROR's proposal must demonstrate that the OFFEROR has the experience, resources and expertise to perform the required goods/services and associated work as specified herein. NCDPI may make such reasonable investigations as deemed proper and necessary to determine the ability of the OFFEROR to perform the work. The OFFEROR shall furnish to NCDPI all such information and data for this purchase as may be requested. NCDPI reserves the right to inspect OFFEROR's physical facilities prior to award to satisfy questions regarding the OFFEROR's capabilities.
The OFFEROR must have a minimum of three (3) years experience providing similar services to Governmental Entities (State, Cities, Counties) and be able to start providing the required services within fifteen (15) days from execution of agreement.
NCDPI further reserves the right to reject any proposal if evidence revealed by investigation of such OFFEROR fails to satisfy NCDPI that such OFFEROR is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
 10. OFFERORS are cautioned, this is a request for offers, not a request to contract, and the State reserves the unqualified right to accept or reject any and all offers, to waive any informality in proposals, and, unless otherwise specified by the OFFEROR, to accept any item in the proposal when deemed to be in the best interest of the State.
 11. NCDPI will require the successful OFFEROR to enter into this contractual agreement on or before November 15, 2008, or on such date as established in writing by NCDPI.

COST PROPOSAL

All OFFERORS shall complete and return the Cost Proposal page seven (7) included in this RFP Document. Proposals shall include three equal payments and total cost for each configuration of school bus.

EXECUTION OF PROPOSAL BY OFFEROR

By submitting this proposal, the potential contractor certifies the following:

- This proposal is signed by an authorized representative of the firm.
- The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
- All labor costs, direct and indirect, have been determined and included in the proposed cost.
- The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.
- The OFFEROR is registered in NC E-Procurement @ Your Service or agrees to register within two days after notification of contract award. **Important- Please note "Third Party Financing" services are exempted from payment of the 1.75% processing fee.**

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 60 days from the date of the opening, to furnish the subject services per the Cost Proposal.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____ FAX: _____

E-MAIL: _____

Principal Place of Business if different from above (See General Information on Submitting Proposals, Item 18.)

BY: _____ TITLE: _____ DATE: _____

(Signature)

(Typed or printed name)

ACCEPTANCE OF PROPOSAL

NC Dept of Public Instruction

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.

COST PROPOSAL – List ACTUAL PAYMENTS. Note: Each of the three payments must be equal.

	Note - State Contract Vendor: Thomas Built Buses			Company Name: _____		
			(a)	(b)	(c)	(d)
Category	<u>School Bus Configuration</u>	Purchase Price	Payment # 1 – within 10 Days of acceptance	Payment # 2 11/15/09 or with payment #1 (whichever is later)	Payment # 3 11/15/10	3 Payment Total (a)+(b)+(c)
1	41 passenger	\$72,746	\$	Same as payment # 1	Same as payment # 1	\$
2	41 pass w/lift	\$76,622	\$	Same as payment # 1	Same as payment # 1	\$
3	41 pass w/lift flat floor	\$79,939	\$	Same as payment # 1	Same as payment # 1	\$
4	54 passenger	\$75,365	\$	Same as payment # 1	Same as payment # 1	\$
5	54 pass w/lift	\$79,487	\$	Same as payment # 1	Same as payment # 1	\$
6	54 pass w/l flat floor	\$83,228	\$	Same as payment # 1	Same as payment # 1	\$
7	66 passenger	\$76,746	\$	Same as payment # 1	Same as payment # 1	\$
8	66 passenger w/lift	\$80,728	\$	Same as payment # 1	Same as payment # 1	\$
9	66 pass w/lift flat floor	\$85,840	\$	Same as payment # 1	Same as payment # 1	\$
10	72 passenger	\$78,141	\$	Same as payment # 1	Same as payment # 1	\$
11	72 pass w/lift	\$82,069	\$	Same as payment # 1	Same as payment # 1	\$
12	72 pass w/lift flat floor	\$87,970	\$	Same as payment # 1	Same as payment # 1	\$
13	Options (see note 2 below*)	\$100	\$	Same as payment # 1	Same as payment # 1	\$

NOTE 1: Bidders must ensure that the total of the three payments listed on each line is sufficient to cover the entire purchase price of the bus as shown. Any deviation must be explained in detail. The North Carolina State Board of Education (the Board) intends that it will make three payments to OFFEROR in sufficient amount to ensure that the school bus Vendor is paid in full.

NOTE 2: Some buses may have a different number of child restraint seats which will cause an addition or deduction to the price of the bus. Line 13 will be used to calculate financing on purchase prices that deviate from the standard prices listed in items 1-12.

Company Name: _____

REFERENCES/CLIENT NAMES

OFFEROR shall supply references of government agencies and/or private firms for which it has done similar or related work during the past three years.

1.

Agency or Firm Name:

Business Address:

Contact Person:

Phone Number:

2.

Agency or Firm Name:

Business Address:

Contact Person:

Phone Number:

3.

Agency or Firm Name:

Business Address:

Contact Person:

Phone Number:

4.

Agency or Firm Name:

Business Address:

Contact Person:

Phone Number:

GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in this paragraph by signature to the proposal.
2. **CERTIFICATION:** By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
3. **ORAL EXPLANATIONS:** The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

It is desirable that all responses meet the following requirements:

- All copies are printed **double sided**.
 - All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
 - Unless absolutely necessary, all proposals and copies should **minimize or eliminate use of non-recyclable or non-re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.
6. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.
 7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 90 days. Although the contract is expected to be awarded prior to that time, the 90 day period is requested to allow for unforeseen delays.
 8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
 9. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.
 10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.
 11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
 12. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.
 13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.

14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

15. PROTEST PROCEDURES:

When an offeror wants to protest a contract awarded by the Secretary of Administration or by an agency over \$25,000 resulting from this solicitation, they must submit a written request to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received in the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award. When an offeror wants to protest a contract awarded by an agency or university resulting from this solicitation that is over \$10,000 but less than \$25,000 for any agency, or any contract awarded by a university, they must submit a written request to the issuing procurement officer at the address of the issuing agency. This request must be received in that office within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Contract status and Award notices are posted on the Internet at <http://www.state.nc.us/pandc/>. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519. (See Protest Information at <http://www.doa.state.nc.us/PandC/protests.pdf> for more information.)

16. **TABULATIONS:** The Division has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from our Internet web site: <http://www.state.nc.us/pandc/>. Click on the IPS BIDS icon, click on Search for Bid, enter the RFP number, and then search. Tabulations will normally be available at this web site not later than one working day after opening. Lengthy tabulations may not be available on the Internet, and requests for these verbally or in writing cannot be honored.
17. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: <http://www.state.nc.us/pandc/>.
18. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The "Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
THIRD-PARTY FINANCING

1. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
2. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
3. **PAYMENT TERMS:** The using agency is responsible for payments under the contract.
4. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by race, color, religion, sex, national origin or disability.
5. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
6. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contract or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
7. **IMPLEMENTATION:** This Contract shall be implemented by Purchase Order(s) issued by the using agency.
8. **DEFINITIONS:** For purposes of this Contract, the following definitions will apply:
 - a. Equipment: The goods enumerated on the IFB and the Purchase Order(s), including replacement, repair parts, additional attachments and accessories.
 - b. Acceptance: The written acknowledgment by the State that the Equipment has been accepted and is performing satisfactorily.
 - c. Acceptance Date: the date when the Equipment is accepted by the State and is operating satisfactorily.
 - d. Assignee: the person(s) to whom Contractor transfers its payment rights pursuant to the section entitled "Assignment".
9. **ACCEPTANCE OF EQUIPMENT:** The State will provide a written acknowledgment to the Contractor when the Equipment is accepted and performing satisfactorily.
10. **ASSIGNMENT:** The State agrees not to sell, assign, lease, pledge or otherwise encumber or suffer a lien upon or against any interest in the Contract or the Equipment or to remove the Equipment from its place of installation (or base) without the Contractor's prior written consent. Consent to any one of the foregoing actions applies only in the given instance and is not consent to any subsequent like acts by the State or any other person. The State recognizes that the Contractor 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 the Contractor's right to receive payments obligate the State to anyone except the Contractor. The State merely recognizes financial assignment as a convenience to the Contractor and will hold the Contractor responsible for fulfillment of all contract obligations. Payments under an assignment of financial rights must be in accordance with the General Statutes of North Carolina as follows:
 - a. Check made payable to the Contractor and Contractor endorses it over to the Assignee.
 - b. Check made payable to the Contractor and forwarded directly to Assignee.
 - c. Check made payable jointly to the Contractor and Assignee and forwarded directly to the Assignee.
11. **CONTRACT TERMINATION:** This Contract is effective from the date of acceptance by the State until terminated, in whole or in part, as provided below:
 - a. Termination for Non-Available Funds: The State's obligations to pay any amounts due under the Contract are contingent upon availability and continuation of funds for that purpose, and in the event of the non-availability of funds the State may terminate this Contract by giving the Contractor thirty (30) days prior written notice. All payment obligations of the State will cease upon the date of termination. Notwithstanding the foregoing, the State agrees (I) not to effect termination of the Contract under this provision if funds are available to continue the Contract for this or functionally similar equipment, and (ii) that it will use its best efforts to obtain approval of the necessary funds to continue the Contract by taking appropriate action to request adequate funds to continue the Contract in force. In the event the State returns the Equipment pursuant to the terms of this paragraph, the Contractor shall retain all sums paid hereunder by State.
 - b. Activity Discontinuance: This Contract may be terminated with thirty (30) days written notice to the Contractor if the organizational activity within the State agency using the Equipment is discontinued or disestablished. Notwithstanding the foregoing if such organizational activity is transferred to another agency, department or other instrumentality of the State, then this Contract shall not be subject to termination under this Section.
 - c. Return of the Equipment: Penalty Charges: In any case of termination, as stated in paragraphs (a) and (b) above, the State shall return the Equipment, along with all repair and other related records, in good operating condition (i.e., in a condition equal to the condition of the Equipment as when it was originally delivered to the State subject to normal wear, tear and usage) to the Contractor, at the State's sole cost and expense, at a location to be mutually agreed upon.
 - d. Prepayment: If no event of default exists, the State will have the right, upon providing the Contractor with thirty (30) days prior written notice, to prepay its obligation for the amount set forth according to respective dates provided in the Purchase Order(s) or prorated by Contractor to another specified date.

- e. The State's Rights on Prepayment or Payment in Full: Upon (i) the State's exercising of its right of prepayment or (ii) the State's having satisfied all of its monetary and other obligations hereunder, Contractor will release its security interest in the Equipment.

12. **DEFAULT AND REMEDIES:**

Default: Any of the following events will constitute an event of default under this Contract:

- a. The State fails to make any payment required when due and such failure continues after written notice by Contractor; or
- b. The State fails to observe or perform any other covenants, conditions or agreements of the Contract and such failure continues for thirty (30) days without cure after the Contractor provides the State written notice of the failure.
- c. The Contractor fails to apply any payment required to be paid under this Agreement towards retirement of the State obligation hereunder.
- d. The Contractor fails to perform under this Agreement, or otherwise observe, keep or perform any provision of this Agreement required to be observed, kept or performed by Contractor.

Remedies: In the event of default as specified above, failure by either the Contractor or State to remedy such default within a period of thirty (30) days from receipt of written demand by either party, the Contractor or the State may, at its respective option as may be applicable, take any of the following actions:

- a. Proceed by appropriate court action(s) to enforce performance of the applicable covenants of this Contract or to recover damages for breach. In the case of such action by the Contractor, damages shall be limited to the then unpaid balance due and payable under the terms of the Contract.
- b. The Contractor may upon proper notice or demand upon the State, take possession of the Equipment and sell the same in a commercially reasonable manner and apply the proceeds of any such sale, after deducting all costs and expense incurred with the recovery, repair, storage and sale of the Equipment against any remaining obligations of the State hereunder. Any remaining sales proceeds shall be paid to the State.
- c. The State may terminate the Contract and direct the Contractor to remove all equipment at the Contractor's expense with no costs to be incurred by the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

- 13. **TITLE:** Title to the Equipment is to be conveyed to the State by the Equipment vendor effective upon State acceptance in writing of Equipment and such title shall thereafter remain vested in the State.
- 14. **SECURITY INTEREST:** The State shall grant and convey a security interest in the Equipment to the Contractor, which the Contractor shall retain throughout the term of the Contract. The State will not change or remove any insignia or lettering which Contractor may place on the Equipment to indicate its interest therein. The State will keep the Equipment free from any lien, encumbrance or legal process and the State will discharge such claims as it is responsible for creating or causing. In no event is the State subject to the Uniform Commercial Code.
- 15. **FILING:** Notwithstanding the foregoing paragraph, the State authorizes the Contractor to make Contractor's security interest a matter of public record by the filing of the contractual documents.
- 16. **WARRANTIES AND REPRESENTATIONS OF THE STATE:** The State represents and warrants to Contractor and, so long as this Contract is in effect or any part of State obligations to Contractor remain unfulfilled, shall continue to represent and warrant at all times that:
 - a. The contracting agency of the State is a fully organized and validly existing political subdivision or agency of the State of North Carolina and has the power and authority to enter on behalf of the State into the Contract and to carry out the terms thereof.
 - b. The Contract and the performance of State's obligations thereunder have been duly and validly authorized and approved under all laws and regulations and procedures applicable to the State; the consent of all necessary persons or bodies has been obtained, and, the execution of the Contract by the State has been duly and validly executed and delivered by authorized representatives of the State and constitutes a valid, legal and binding obligation of the State enforceable against the State in accordance with its terms.
- 17. **HEADINGS:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of this Contract.
- 18. **SEVERABILITY:** In the event any portion of this Contract shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of the Contract shall continue in full force and effect.
- 19. **CARE AND USE OF EQUIPMENT:** State, at its own expense, will obtain remedial and preventive maintenance to keep the Equipment in good operating condition and appearance.

20. **INSURANCE:** The State is covered under a program of self insurance. The State will provide to Contractor a letter or other document from its insuring authority evidencing the existence of the continuing self-insurance program insuring the full insurable value of each commercial unit of the equipment against loss from fire and hazards. The State will provide a minimum of ten (10) days written notice to Contractor of any change or cancellation of said self insurance program. In the event the State is not covered under a program of self insurance or the State's self insurance program is unavailable or terminated, the State agrees to procure and maintain with a carrier authorized to do business in North Carolina and acceptable to Contractor, which acceptance shall not be unreasonably withheld, such fire, theft, and extended coverage insurance on the Equipment as is necessary to insure the full insurable value of each commercial unit of the Equipment against risk of loss or damage, and providing for a minimum of ten (10) days written notice of change or cancellation to Contractor. Each policy of insurance shall be endorsed with such insurance coverage. This Agreement does not provide for or require any insurance coverage for bodily injury and property damage to others.
21. **SPECIAL PROVISION:** The Internal Revenue Code of 1986 (Section 149(c)) requires the filing of certain documentation containing pertinent information. Transactions of \$100,000.00 or more require an IRS FORM 8038G, while those less than \$100,000.00 are reported on IRS Form 8038CG. Failure to submit these reports may result in the tax exempt status of the subject transaction being disallowed.

It is the intent of the State to work with the Contractor in completing and filing these required documents; however, the primary responsibility will rest with the Contractor. This Contract will not be effective until such forms have been submitted and acknowledged by the State as part of its written acknowledgment of Equipment. Information copies of these forms must be provided to:

Department of State Treasurer
State and Local Government Finance
North Salisbury Street
Raleigh NC 27611

The forms shall reflect the issuer's name as "State of North Carolina", Using Agency Name, State of North Carolina.

22. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
23. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
24. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
25. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract.

Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.

ATTACHMENT A.
Financing for School Bus Purchases
Public Schools of North Carolina

Background and Requirements

This request for proposals (RFP) invites vendors to submit proposals for the financing of the purchase of new school buses to be used by the Public Schools of North Carolina. This action is authorized by the North Carolina General Assembly, Session Law 2007-323. The successful OFFEROR agrees to finance the purchase of school buses for any local education agency (LEA) in North Carolina. The school buses are to be purchased from the state contract for school buses and activity buses. The total number of school buses to be purchased will depend on the payment amounts offered. Total available funding for school buses will not exceed \$70.9 million (\$69.9 from state replacement sources and \$1 million from LEA sources) over three years.

Background

The State of North Carolina funds the vast majority of the school bus transportation program statewide. There are 115 LEAs in the state, transporting over 700,000 students daily for 180 school days per year. Through an appropriation from the North Carolina General Assembly, the North Carolina Department of Public Instruction (DPI) allots a block grant to each LEA for operation of the school transportation system. From this block grant, the LEA pays expenses for drivers, benefits, other personnel, fuel, tires, etc. Of all eligible expenditures for school transportation, the state funds approximately 94%.

Through a separate legislative appropriation, the Department of Public Instruction replaces school buses as needed, based on mileage and age criteria. Note that if an LEA needs to add an additional bus to its fleet, the LEA must purchase the initial bus from local funding. However, after the bus is included in the state replacement system for school buses, the state will provide a replacement bus.

Current replacement criteria are as follows.

Model years 1986-1993	160,000 miles or 20 years, whichever comes first
Model years 1994-up	200,000 miles or 20 years, whichever comes first

When a bus is replaced, it is removed from the state replacement program and the LEA is allowed to retain it as a spare bus. Typically, an existing spare bus will be removed from the county – either or sold or transferred to another county as a spare bus. Historically, DPI has issued a purchase order to the state contract vendor for school buses and paid for the buses upon delivery. The state contract requires that buses be delivered within 270 days of the order. The bus is then immediately turned over to the LEA and titled in the name of the LEA.

“Insurance”

The state is self-insured with respect to damage to school buses. When a bus is involved in a collision, it is up to the LEA to make the needed repairs to the vehicle. If there is an insurance claim from the other party, these funds will offset the cost of repair. If there is no insurance claim (e.g. if the school bus driver was at fault), then the LEA must make repairs using funds from its block grant allotment. If a bus is declared a total loss where, in the estimation of DPI Transportation Consultants, the cost to replace the bus exceeds its value, then the state replaces the bus. The same process applies to school bus damage caused by vandalism, fire, flood, storms or other natural disasters. Activity buses are insured by each LEA.

Historical Data

The following table shows the number of replacement buses purchased by the DPI for North Carolina LEAs during the past years. The dollar amount of these purchases is also indicated.

Year	Number Buses	Purchase Amount
1992-93	401	\$ 14,793,541
1993-94	1000	\$ 37,235,742
1994-95	960	\$ 37,403,213
1995-96	995	\$ 40,306,843
1996-97	978	\$ 42,261,861
1997-98	905	\$ 41,015,613
1998-99	1022	\$ 45,646,083
1999-00	591	\$ 28,154,995
2000-01	1061	\$ 18,787,764
2001-02	162	\$ 9,650,784
2002-03	37	\$ 2,193,867
2002-03	472 financed	\$28,976,911 (total amount financed, to be paid in 3 equal payments over 3 years)
2003-04	31	\$1,859,374
2003-04	756 financed	\$44,847,198 (total amount financed, to be paid in 3 equal payments over 3 years)
2004-05	10	\$ 634,314
2004-05	612 Financed	\$37,947,889 (total amount financed, to be paid in 3 equal payments over 3 years)
2005-06	31	\$ 1,929,257
2005-06	476	\$30,371,550 (total amount financed, to be paid in 3 equal payments over 3 years)
2006-07	21	\$1,376,057
2006-07	1165 Financed	\$80,423,810 (total amount financed, to be paid in 3 equal payments over 3 years)
2007-08	15	\$1,083,109
2007-08	660 Financed	\$50,720,189 (total amount financed, to be paid in 3 equal payments over 3 years)

The Process

- Based on the payment schedule and the number of buses that can be purchased (costs not to exceed \$69.9 million), DPI will identify the exact buses to be replaced. A summary of the priority buses is contained in Attachment B of this RFP. The DPI staff is in the process of identifying specific types of buses to replace each of these priority buses. For each LEA, funding (first year payments including finance charges) will be allotted to that LEA.
- The state term contract for school buses requires delivery to a location within 75 miles of Asheboro, NC. Acceptance of the buses by DPI and LEA, will take place at such location. It is anticipated that buses will be delivered to and accepted from that location in lots of 50 buses or more.
- It is anticipated that orders will be placed during November and December, 2008 and that buses will be accepted from February – June, 2009. Upon acceptance of the buses, payment will be due to the vendor. Within 10 days of acceptance of the equipment, the LEA will make the first payment to the OFFEROR. Within 30 days of the acceptance of the equipment, the OFFEROR must make full payment to the vendor. The second and third payments to the OFFEROR will take place as described in the body of this RFP.
- The General Assembly has a good track record of appropriating funds for the replacement of school buses as seen in the table above.

- LEAs that wish to finance the purchase of additional school buses from non-state funds may use this contract and will provide appropriate approval documentation to the OFFEROR and will initiate separate contracts with the OFFEROR.

ATTACHMENT B – Replacement Vehicles

ESTIMATED QUANTITIES ONLY

NOTE: This list is subject to change, but the distribution of vehicle sizes will remain similar to this list. Actual quantities will depend on the amount of the financed payments.

Type of Bus	Estimated # Buses	Purchase Price (Estimated Bus Pricing with average CSRS seat deduct)	Estimated Total Purchase Cost Before Finance Charges
41 Passenger	0	\$ 72,746	\$ -
41 Passenger w/lift	1	\$ 76,622	\$ 76,622
41 Passenger w/lift and flat floor	22	\$ 79,939	\$ 1,758,658
53 Passenger	14	\$ 75,365	\$ 1,055,110
53 Passenger w/lift	25	\$ 79,487	\$ 1,987,175
53 Passenger w/lift and flat floor	0	\$ 83,228	\$ 0
66 Passenger	139	\$ 76,746	\$ 10,667,694
66 Passenger w/lift	20	\$ 80,728	\$ 1,614,560
66 Passenger w/lift and flat floor	0	\$ 85,840	\$ -
72 Passenger	603	\$ 78,141	\$ 47,119,023
72 Passenger w/lift	42	\$ 82,069	\$ 3,446,898
72 Passenger w/lift and flat floor	15	\$ 87,970	\$ 1,319,550
Estimated Child Restraint Seat Deduction (total for all buses)			-\$ 300,000
TOTAL	881		\$ 68,745,290

MASTER FACILITATOR AGREEMENT

THIS MASTER FACILITATOR AGREEMENT (this “Agreement”), dated as of _____, is by and between the **NORTH CAROLINA STATE BOARD OF EDUCATION** (the “Board”), and _____, hereinafter known as CONTRACTOR.

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 \$69.9 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 2008-2009 fiscal year, the North Carolina General Assembly has authorized the Board to use up to \$23.3 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-0809), DPI has selected CONTRACTOR 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 CONTRACTOR pursuant to which the LEAs will finance the purchase of the Buses through CONTRACTOR, on the terms and conditions as provided therein; and

WHEREAS, as buses are accepted, each LEA will submit an Appendix (each, an “Appendix”) to CONTRACTOR 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 DPI and 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 CONTRACTOR ; and

WHEREAS, the Board has included and will continue to include 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 2009-2010 and 2010-2011 on behalf of the LEAs.

NOW, THEREFORE, the Board and CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, 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 2009-2010 or fiscal year 2010-2011 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 2009-2010 and 2010-2011 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 Board shall take any official action, or if any other fact or circumstance shall occur, regarding the Board's proposed budget with respect to the total amount of the Installment Payments collected by the 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 Board shall promptly notify CONTRACTOR 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 Board for funds with which to replace it. If the 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 Board finds that the replacement of the Bus is necessary in order to enable the LEA to operate properly its transportation system, the 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. Alternatively, the Board may allot to the LEA sufficient funds to fulfill remaining payments due.

7. The State recognizes that CONTRACTOR 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 CONTRACTOR's right to receive payments obligate the State to anyone except CONTRACTOR. The State merely recognizes financial assignment as a convenience to CONTRACTOR and will hold CONTRACTOR responsible for fulfillment of all contract obligations.

8. 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

CONTRACTOR within 72 hours of execution of such Acceptance Certificate. CONTRACTOR agrees to transmit by facsimile transfer any Payment Schedule within 72 hours of receipt of such Acceptance Certificate.

9. 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 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.

10. No waiver by the 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.

11. CONTRACTOR, 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 CONTRACTOR, the Accepted Buses will be purchased AS IS. In no event shall CONTRACTOR be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of the existence, furnishing, functioning, or the use of the Accepted Buses by the LEAs.

12. This Agreement may only be revised with the prior written consent of the Board and CONTRACTOR, 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 above written

NORTH CAROLINA STATE BOARD OF EDUCATION

By: _____
State Superintendent

By: _____
Associate State Superintendent, Finance

CONTRACTOR

By: _____

Exhibit "B"

Form of Acceptance Certificate

DATE: _____

Re: Acceptance Certificate No. __ to Master Facilitator Agreement (the "Agreement"), dated as of _____, 2008, made and entered into by and between the **North Carolina State Board of Education** (the "Board") and _____, hereinafter referred to as CONTRACTOR; and that certain Master Replacement Bus Financing Agreement executed by the Local Education Agency indicated below (the "LEA") and CONTRACTOR (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 Board, acting hereby, each certify and represent to, and agree with CONTRACTOR 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 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

FORM OF MASTER REPLACEMENT BUS FINANCING AGREEMENT

THIS MASTER REPLACEMENT BUS FINANCING AGREEMENT, dated as of ____, 2008 (this “Agreement”), is made and entered into by and between _____, hereinafter referred to as “CONTRACTOR” and the _____ (hereinafter referred to as “local education agency” or the “LEA”), a political subdivision of the State of North Carolina (the “State”), whose offices are located at _____.

RECITALS

WHEREAS, pursuant to the authority granted by G.S. 115C-240(c) and 115C-528, the LEA is authorized to acquire, own, lease, contract and operate school buses for the transportation of pupils enrolled in the public schools of such LEA, in accordance with the rules and regulations adopted by the North Carolina State Board of Education (the “Board”) under the authority of G.S. 115C-12(17); and

WHEREAS, the General Assembly of the State of North Carolina has authorized the Board to use up to \$23,300,000 for allotments to the various local education agencies of the State for the replacement of school buses for the 2008-2009 fiscal year; and

WHEREAS, pursuant to a solicitation for third party financing, the Board, acting through its Department of Public Instruction (“DPI”) has selected **CONTRACTOR** to provide financing for the replacement of school buses; and

WHEREAS, the LEA desires to purchase certain replacement buses (the “Buses”) and **CONTRACTOR** desires to finance the purchase of the Buses on an installment basis, pursuant to the terms and conditions hereinafter set forth and as authorized by G.S. 115C-240(c) and 115C-528; and

WHEREAS, this Agreement shall be implemented through one or more series of Appendices (as defined herein), with each Appendix constituting a single transaction subject to and entered into pursuant to this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing recitals and the covenants and agreements contained herein, the parties do hereby agree as follows:

ARTICLE I DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Accepted Buses” means those Buses identified on “Part I--List of Accepted Buses” as a part of each Appendix, to be purchased by the LEA and financed, on an installment basis, by **CONTRACTOR** for a term not exceeding the useful life of each Accepted Bus pursuant to this Agreement.

“Agreement” means this Master Replacement Bus Financing Agreement by and between the LEA and **CONTRACTOR**, any duly executed Amendment(s), and the Appendices executed in connection herewith.

“Appendix” means each consecutively numbered Appendix utilized to acquire the Accepted Buses, and includes--

- Part 1--List of Accepted Buses indicating the total cost of the Accepted Buses
- Part 2--Payment Schedule
- Part 3--Disbursement Request, with Acceptance Certificate
- Form 8038-G and UCC-1 Financing Statements, if applicable

“Buses” means the aggregate listing of anticipated replacement buses identified by DPI to be acquired by the LEA and identified on Exhibit B attached to this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, together with all published rulings, regulations and court decisions with respect thereto.

“Contract Documents” consist of--

- this Agreement
- Exhibit A--North Carolina General Contract Terms and Conditions Third-Party Financing
- Exhibit B--Aggregate List of Replacement Buses Anticipated to be Acquired by the LEA
- Exhibit C--General Certificate of the LEA
- each Appendix
- any other documents deemed necessary by **CONTRACTOR** and/or the LEA. Where the terms and provisions of the Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of the Agreement shall prevail over the other Contract Documents.

“DPI” means the North Carolina Department of Public Instruction.

“Financing Term” means, with respect to the Accepted Buses acquired pursuant to an Appendix, the term of its related Payment Schedule.

“Installment Payment Date” means, with respect to an Appendix, each date set forth in its related Payment Schedule on which the payment of an installment of principal or interest must be made by the LEA.

“Installment Payments” means one or more of the periodic payments made by the LEA pursuant to Section 4.01 hereof and at the times and in the amounts set forth in the Payment Schedule with respect to each Appendix, and that are payable in consideration of **CONTRACTOR**’s financing of the Accepted Buses for the benefit of the LEA and other obligations under this Agreement. Exact installment payment amounts are listed in **CONTRACTOR**’s cost proposal in response to RFP #40-Finance07.

“LEA” or local education agency means _____, a political subdivision of the State of North Carolina, and its successors and permitted assignees.

“Master Facilitator Agreement” means the Master Facilitator Agreement executed between **CONTRACTOR** and the Board, dated as of _____.

“Payment Schedule” means the schedule of payments set forth in Part 2 to each Appendix to be made by the LEA in consideration of **CONTRACTOR**’s financing of the Accepted Buses pursuant to this Agreement.

“Prepayment Price” means the amount which the LEA may, in its discretion, pay to **CONTRACTOR** to prepay all Installment Payments with respect to an Appendix. With respect to the LEA’s option to prepay all Installment Payments with respect to an Appendix, the “Prepayment Price”

shall be set forth on “Part 2--Payment Schedule” to the applicable Appendix after paying the Installment Payment and all other amounts due on or before such date for prepayment.

“**State**” means the State of North Carolina.

“**Vendor**” means any manufacturer of the Buses as well as the agents or dealers of the manufacturer from whom the Buses were originally purchased or are being purchased.

ARTICLE II GENERAL

Section 2.01 Purpose of this Agreement. The purpose of this Agreement is to provide for the terms of the financing of the Accepted Buses by **CONTRACTOR** on behalf of the LEA. Each transaction implemented and entered into hereunder shall be deemed to be a separate and distinct legal and binding obligation of the LEA and **CONTRACTOR** with this Agreement being applicable thereto independent of additional transactions that may be entered into by **CONTRACTOR** and the LEA hereunder.

Section 2.02 Agreement to Finance. **CONTRACTOR** agrees to provide financing for the Accepted Buses described in “Part 1--List of Accepted Buses” to each properly executed Appendix for the consideration indicated in “Part 2--Payment Schedule” of the related Appendix to the LEA, and the LEA agrees to accept the terms of the financing provided by **CONTRACTOR** for each of the Accepted Buses. The LEA shall be entitled to retain possession of the Accepted Buses as long as it is not in default under this Agreement.

ARTICLE III IMPLEMENTATION OF THE AGREEMENT

Section 3.01 General Contract Terms and Conditions. The North Carolina General Contract Terms and Conditions Third-Party Financing attached hereto as Exhibit A are incorporated herein by reference. All references to the term “the State” in Exhibit A are deemed to mean the “LEA”, with the exception of references to “the State” contained in Section 8(b) and Section 8(c), and in Section 20, “Insurance”, which are unchanged.

Section 3.02 Ordering of the Buses. The DPI has identified certain Buses for replacement for use by the LEA, which are listed on the attached Exhibit B and incorporated herein by reference. The LEA will issue a Purchase Order for the Buses to the Vendor.

Section 3.03 Delivery of the Buses. In response to the LEA Purchase Order, subject to the terms of the current state term contract for school buses, Vendor will deliver one or more replacement Buses to the DPI on behalf of the LEA. Upon delivery, the DPI and the LEA will inspect the replacement Buses to ascertain that the replacement Buses meet the State’s replacement criteria.

Section 3.04 Acceptance of the Buses. Upon acceptance of the replacement Buses, the DPI and/or the LEA will notify **CONTRACTOR** of the aggregate cost of the Accepted Buses. The LEA will provide to **CONTRACTOR** a properly completed Appendix, including a listing of the “Part 1--List of Accepted Buses” as well as notifying **CONTRACTOR** as to the aggregate cost of the Accepted Buses. **CONTRACTOR** will be responsible for preparing “Part 2--Payment Schedule” for each Appendix. In accordance with the Master Facilitator Agreement, **CONTRACTOR** will provide copies of “Part 2--Payment Schedule” for each Appendix to the Board.

Section 3.05 Vendor Payment. Pursuant to the Master Facilitator Agreement, the Board will allocate funds to the LEAs for the acquisition of the Buses acquired pursuant to the Financing Agreements. The Board will direct those funds to **CONTRACTOR** to pay the Installment Payments required by this Agreement. Within ten (10) days from the date of acceptance of the Accepted Buses in connection with an Appendix, the Board will direct funds representing the LEA’s first annual Installment Payment to be paid pursuant to “Part 2--Payment Schedule” of an Appendix and will arrange to transfer the Installment Payment to **CONTRACTOR**. No later than thirty (30) days after the LEA accepts the Accepted Buses, **CONTRACTOR** will pay the total cost of the Accepted Buses to the Vendor.

Section 3.06 The Board’s Allocation of Funds to the LEA. Pursuant to the Master Facilitator Agreement, the Board will allocate to the LEA funds appropriated by the General Assembly for the purchase of the Buses and will direct such funds to **CONTRACTOR** for annual Installment Payments. By its execution of this Agreement and of each Appendix, the LEA authorizes the Board to and acknowledges that the Board will direct such funds to **CONTRACTOR**.

ARTICLE IV INSTALLMENT PAYMENTS

Section 4.01 Payment of Installment Payments. Required payments for each bus configuration are quoted by **CONTRACTOR** in its response to RFP #40-Finance0809, which is incorporated into this Agreement by reference thereto. Pursuant to the terms of the Contract Documents, the LEA will pay three equal Installment Payments for each Bus, as set forth on each “Part 2--Payment Schedule”. The total financed cost for the Buses is shown on Exhibit B attached hereto. Each Installment Payment

comprises an interest component and a principal component, as set forth on “Part 2--Payment Schedule” to each Appendix. The Installment Payments will be payable without notice or demand at such address as **CONTRACTOR** has designated and provided in writing to the LEA and to the Board. Pursuant to the Master Facilitator Agreement and subject to Section 4.03 hereof, the Board will direct funds allocated to the LEA by the General Assembly of the State for the replacement of buses to pay, on behalf of the LEA, the Installment Payments to **CONTRACTOR**.

In the event that the Board is unable to direct Installment Payments because the General Assembly fails to allocate funds for the replacement of school buses, the LEA may continue this Agreement, at its option, from alternative sources of funding.

The LEA hereby acknowledges and agrees that the Board will combine the Installment Payments with similar payments from other local education agencies acquiring replacement Buses and will cause the total of the Installment Payments be paid to the **CONTRACTOR**.

Section 4.02 Unconditional Obligation to Pay Installment Payments. There will be no abatement or reduction of payments by the LEA for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claims (real or imaginary) arising out of or related to any defects, damages, malfunctions, breakdowns or infirmities of the Accepted Buses. The LEA assumes and shall bear the entire risk of loss and damage to the Accepted Buses from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to pay such amount is terminated as otherwise provided herein.

Section 4.03 Nonappropriation. The LEA’s obligation to pay any amounts due under this Agreement is conditioned upon availability and continuation of funds for that purpose as stated in Section 11 of Appendix A - North Carolina General Contract Terms and Conditions - Third Party Financing. Notwithstanding the foregoing, the LEA agrees that it will use its best efforts to obtain approval of the necessary funds to continue this Agreement by taking appropriate action to request adequate funds to continue the Agreement in force. In the event the LEA returns the Accepted Buses pursuant to the terms of this Agreement, **CONTRACTOR** shall retain all sums paid hereunder.

Section 4.04 Late Payments. Any Installment Payment or other payment required to be paid under this Agreement which is not received by the **CONTRACTOR** at its designated address on or before the date specified on the Payment Schedule shall be considered past due. Any past due amounts shall bear interest at the lesser of 12% per annum or the maximum rate allowed by applicable law.

ARTICLE V

TITLE TO ACCEPTED BUSES; SECURITY INTEREST

5.01. Title; Security Interest. Title to each Accepted Bus shall and does vest immediately in the LEA upon acceptance of the Bus by the DPI and the delivery of an Acceptance Certificate to **CONTRACTOR** by the DPI; provided, however, in the event of termination of this Agreement pursuant to Section 8.02 (a) and Section 8.02(b) hereof, title to the Accepted Buses will immediately vest in **CONTRACTOR**.

Upon any vesting of title to the Accepted Buses in **CONTRACTOR** pursuant to the preceding sentence, the LEA shall deliver the Accepted Buses to **CONTRACTOR** promptly without fraud or delay and in good order, condition and repair, except for reasonable wear and tear, free and clear of all lettings,

liens and encumbrances created or suffered by the LEA, and without any payment or allowance whatever by **CONTRACTOR** on account of any improvements made by the LEA, to a mutually-agreed upon location in the State of North Carolina. **CONTRACTOR** will have all legal and equitable rights and remedies to take possession of the Accepted Buses.

In order to further secure its obligations hereunder, the LEA hereby (i) grants to **CONTRACTOR** a first and prior security interest in any and all right, title, and interest of the LEA in the Accepted Buses and on any proceeds therefrom; (ii) agrees that this Agreement may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

5.02. Liens. The LEA shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or claim on or with respect to the Accepted Buses or any interest therein, except for the lien and security interest of **CONTRACTOR** therein. The LEA shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance, or claim if the same shall arise at any time.

5.03. Payment to Bus Vendor. Immediately following acceptance, NCSBE, on behalf of the LEA will execute and deliver to **CONTRACTOR** "Part 3--Disbursement Request" together with each of the documents referenced thereon. The actual Disbursement Request used by DPI will include the aggregate cost of the Accepted Buses for any affected LEA. The LEA will request that payment be made to the Vendor within thirty (30) days, pursuant to the Disbursement Request.

Within ten (10) days of the acceptance of the Accepted Buses by the LEA and the DPI, the Board, on behalf of the LEA, will transmit the first annual Installment Payment as indicated on the Payment Schedule for the Accepted Buses.

. Within thirty (30) days of the LEA's acceptance of the Accepted Buses, **CONTRACTOR** will render payment to the Vendor. .

ARTICLE VI RESPONSIBILITIES OF THE LOCAL EDUCATION AGENCY

Section 6.01 Maintenance of the Accepted Buses. The LEA agrees that for each Accepted Bus described in Part I to an Appendix, the LEA, at its own cost and expense, shall maintain, preserve and keep such Accepted Bus in good repair, working order and condition subject to reasonable wear and tear, as outlined in the Preventative Maintenance and Vehicle Replacement Manual promulgated by the DPI.

Section 6.02 Inspection. **CONTRACTOR** shall have the right upon reasonable prior notice to the LEA to enter into and upon the premises where the Accepted Buses are located to inspect them and observe their use during normal business hours.

Section 6.03 Taxes. The LEA agrees to pay or cause to be paid when due all taxes related to the Accepted Buses and the LEA's obligations hereunder, including but not limited to, all license or registration fees, gross receipts tax, sales and use tax, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the

ownership, possession or use of the Accepted Buses by any governmental body or agency, together with any interest and penalties, other than taxes on or measured by the net income of **CONTRACTOR**, if any.

Section 6.04 Damage, Destruction, and Insurance. The State of North Carolina is covered under a program of self-insurance. Pursuant to the G.S. 115C-249(f), if any Accepted Bus is damaged or destroyed by fire, collision or otherwise, the LEA may apply to the Board for funds with which to replace it. If the 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 Board finds that the replacement of the Accepted Bus is necessary in order to enable the LEA to operate properly its transportation system, the 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 for that purpose, a sum sufficient to purchase a new bus to be used as a replacement for the damaged or destroyed Accepted 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. Alternatively, the LEA, with funds provided by the Board, may pay the remaining balance of the damaged or destroyed bus.

Section 6.05 Federal Taxation. The LEA will not take or permit any of its officers to take any action with respect to the Agreement or the Buses which would cause the interest component of any Installment Payment payable under any Appendix to become subject to federal income taxation under the Code and will take all actions legally and reasonably within its powers necessary to ensure that the interest will not become subject to federal income taxation under the Code.

ARTICLE VII DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE ACCEPTED BUSES

Section 7.01 Disclaimer of Warranties. (a) **CONTRACTOR , 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 CONTRACTOR ,THE LEA PURCHASES THE ACCEPTED BUSES AS IS.** In no event shall **CONTRACTOR** be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of the existence, furnishing, functioning, or LEA's use of the Accepted Buses.

(b) Each execution of an Appendix shall constitute acknowledgment by (and as to (i) and (ii), a representation of) the LEA that: (i) the Accepted Buses are of a size, design, capacity and manufacture selected by the LEA and DPI; (ii) the LEA is satisfied that the Accepted Buses are suitable for its purpose; (iii) **CONTRACTOR** is not a vendor or a manufacturer or dealer in property of such kind; and (iv) **CONTRACTOR** has disclaimed any representation or warranty or covenant as set forth in Section 7.01(a) above.

Section 7.02 Vendor's Warranties. **CONTRACTOR** irrevocably appoints the LEA its agent and attorney-in-fact during the term of this Agreement, so long as the LEA shall not be in default hereunder for the purpose of asserting from time to time whatever claims and rights which **CONTRACTOR** may have against the Vendor, including warranty claims with respect to the Accepted Buses, but for no other purpose whatsoever. The LEA's sole remedy for the breach of a warranty shall be

against the Vendor and not against **CONTRACTOR**, nor shall such matters have any effect whatsoever of this Agreement, including the LEA's obligation to make timely Installment Payments hereunder. The LEA expressly acknowledges that **CONTRACTOR** makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties from the Vendor.

Section 7.03 Use of the Accepted Buses. The LEA will not install, use, operate or maintain the Accepted Buses improperly, carelessly, in violation of any applicable law or regulations or in a manner contrary to that contemplated by this Agreement. The LEA shall obtain and maintain all permits and licenses necessary for the operation of the Accepted Buses.

Section 7.04 Quiet Enjoyment. The LEA shall be entitled to possess and use the Accepted Buses during the Financing Term of the related Appendix without interruption by **CONTRACTOR**, provided that the LEA has duly performed its obligations under this Agreement. Any Accepted Bus acquired under terms of this Agreement may be operated at any time at the convenience of the LEA (exclusive of time required for preventive maintenance, remedial maintenance and/or approved engineering changes). The LEA may make Accepted Buses available to other users, provided that the Accepted Buses are used for governmental purpose, as allowed by North Carolina General Statutes.

ARTICLE VIII

TERMINATION ON ACCOUNT OF NONAPPROPRIATION OF FUNDS; EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Termination on Account of Nonappropriation of Funds. Notwithstanding any contrary provision in this Agreement, the LEA may, at its option, terminate this Agreement as to all (but not less than all) the Accepted Buses that are the subject of each and every Appendix entered into herewith, as of the end of any fiscal year, if funds are not appropriated for the next fiscal year in an amount equal to the aggregate of all Installment Payments due during such next fiscal year for the purpose of making the Installment Payments. The LEA agrees to provide **CONTRACTOR** with written notice immediately upon the occurrence of nonappropriation.

If the LEA terminates this Agreement because of nonappropriation of funds in accordance with the provisions of this Section 8.01, the LEA shall return the Accepted Buses to **CONTRACTOR** in the manner described in Section 5.01 hereof and all obligations of the LEA to pay Installment Payments coming due following such termination shall cease without penalty or expense to the LEA of any kind.

Section 8.02 Events of Default. Any of the following events shall constitute an Event of Default under this Agreement:

- (a) The LEA fails to make any Installment Payment when due for which payment funds have been lawfully appropriated and are lawfully available, or shall fail to perform or observe any term or condition or covenant of this Agreement or any schedule or supplemental hereto; or
- (b) The LEA fails to perform as required for a period of thirty (30) days after written notice to the LEA by **CONTRACTOR**, specifying such failure and requesting that it be remedied;
- (c) **CONTRACTOR** fails to pay the vendor as required under this Agreement.
- (d) **CONTRACTOR** fails to perform as required under this Agreement.

Section 8.03 Remedies on Default. (i) Immediately upon the occurrence of an Event of Default described in Section 8.02(a) hereof or (ii) upon the occurrence of any other Event of Default described in Section 8.02 hereof, and the failure of the LEA or **CONTRACTOR**, as applicable, to remedy such Event of Default within any specified cure period, then the respective parties shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) With or without terminating this Agreement, and upon written notice to the LEA, **CONTRACTOR** may re-enter and take possession of the Accepted Buses; or
- (b) With or without terminating this Agreement, and upon written notice to the LEA, enter and take possession of the Accepted Buses, and sell, lease or sublease all or any part of them in such a manner as will not cause a violation of Section 6.05 hereof, with any excess sales proceeds being paid to the Board.
- (c) The LEA may terminate this Agreement as to the financing of any additional Appendix.

ARTICLE IX PREPAYMENT OPTION

Section 9.01 Prepayment Option. Notwithstanding the provisions of Section 11.d of the General Terms and Conditions attached hereto as Exhibit A, and if no event of default exists, the LEA may at its option elect to prepay the Installment Payments due pursuant to an Appendix in full on the dates indicated on “Part 2--Payment Schedule” attached to each Appendix. The LEA agrees to provide written notice to **CONTRACTOR** of its intention to prepay not less than thirty (30) days prior to the applicable Installment Payment Date.

If the LEA exercises its option to prepay its obligations to pay the Installment Payments pursuant to an Appendix in full, the Prepayment Price shall be the amount shown as such on the Payment Schedule attached to the Appendix.

Section 9.02 LEA’s Rights on Prepayment in Full. Upon (1) the LEA’s exercise of its right to prepay in full in accordance with the preceding subsection or (2) the LEA’s having satisfied all of its monetary and other obligations hereunder, within thirty (30) days thereafter, **CONTRACTOR** shall deliver to the LEA any and all documentation necessary to evidence the termination of **CONTRACTOR**’s interest in the Accepted Buses. The Accepted Buses will be accepted by the LEA at that time on an AS IS, WHERE IS basis, and **CONTRACTOR** makes no warranties or representations of any type as to the Accepted Buses.

ARTICLE X MISCELLANEOUS

Section 10.01 Waiver. No covenant or condition of this Agreement or in any of the other Contract Documents can be waived except by the written consent of the parties. The failure of any party to require strict performance by the other party or any waiver by any party of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or of any other term, covenant or agreement herein.

Section 10.02 Amendments. This Agreement cannot be amended except by written consent of both parties.

Section 10.03 Severability. In the event any portion of this Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

Section 10.04 Notice. All notices made or required to be given pursuant to this Agreement shall be in writing and shall be deemed duly served if and when mailed, certified or registered mail, postage prepaid, return receipt requested, to the other party at its address set forth below or at such other address as such party shall hereafter designate in writing:

If to **CONTRACTOR:**

If to the LEA:

Attention: _____

If to the Board:

North Carolina State Board of Education

DPI Transportation Services

6319 Mail Service Center

Raleigh, North Carolina 27699-6319

Attn: Derek Graham, Section Chief

Section 10.04 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

Section 10.05 Entire Agreement. This Agreement, the Contract Documents, and the Appendices as may be hereafter executed, constitute the entire agreement between the parties with regard to the subject matter hereof.

Section 10.06 Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assignees.

Section 10.07 Time. Time is of the essence of this Agreement and each and all of its supplements and provisions.

Section 10.08 Governing Law. The provisions of this Agreement shall be governed by the laws of the State of North Carolina.

Section 10.09 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto by their duly authorized representatives.

LOCAL EDUCATION AGENCY:

CONTRACTOR:

By: _____

Name: _____

Title: _____

OR

By: _____

Name: _____

Superintendent, on behalf of the Local Education Agency

By: _____

Exhibit “A”

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

THIRD-PARTY FINANCING

1. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
2. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
3. **PAYMENT TERMS:** The using agency is responsible for payments under the contract.
4. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by race, color, religion, sex, national origin or disability.
5. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
6. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contract or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
7. **IMPLEMENTATION:** This Contract shall be implemented by Purchase Order(s) issued by the using agency.
8. **DEFINITIONS:** For purposes of this Contract, the following definitions will apply:
 - a. **Equipment:** The goods enumerated on the IFB and the Purchase Order(s), including replacement, repair parts, additional attachments and accessories.
 - b. **Acceptance:** The written acknowledgment by the State that the Equipment has been accepted and is performing satisfactorily.
 - c. **Acceptance Date:** the date when the Equipment is accepted by the State and is operating satisfactorily.
 - d. **Assignee:** the person(s) to whom Contractor transfers its payment rights pursuant to the section entitled “Assignment”.
9. **ACCEPTANCE OF EQUIPMENT:** The State will provide a written acknowledgment to the Contractor when the Equipment is accepted and performing satisfactorily.
10. **ASSIGNMENT:** The State agrees not to sell, assign, lease, pledge or otherwise encumber or suffer a lien upon or against any interest in the Contract or the Equipment or to remove the Equipment from its place of installation (or base) without the Contractor’s prior written consent. Consent to any one of the foregoing actions applies only in the given instance and is not a consent to any subsequent like acts by the State or any other person. The State recognizes that the Contractor 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 the Contractor’s right to receive payments obligate the State to anyone except the Contractor. The State merely recognizes financial assignment as a convenience to the Contractor and will hold the Contractor responsible for fulfillment of all contract obligations. Payments under an assignment of financial rights must be in accordance with the General Statutes of North Carolina as follows:
 - e. Check made payable to the Contractor and Contractor endorses it over to the Assignee.
 - f. Check made payable to the Contractor and forwarded directly to Assignee.
 - g. Check made payable jointly to the Contractor and Assignee and forwarded directly to the Assignee.
11. **CONTRACT TERMINATION:** This Contract is effective from the date of acceptance by the State until terminated, in whole or in part, as provided below:
 - h. **Termination for Non-Available Funds:** The State’s obligations to pay any amounts due under the Contract are contingent upon availability and continuation of funds for that purpose, and in the event of the non-availability of funds the State may terminate this Contract by giving the Contractor thirty (30) days prior written notice. All payment obligations of the State will cease upon the date of termination. Notwithstanding the foregoing, the State agrees (i) not to effect termination of the Contract under this provision if funds are available to continue the Contract for this or functionally similar equipment, and (ii) that it will use its best efforts to obtain approval of the necessary funds to continue the Contract by taking appropriate action to request adequate funds to continue the Contract in force. In the event the State returns the Equipment pursuant to the terms of this paragraph, the Contractor shall retain all sums paid hereunder by State.

- i. Activity Discontinuance: This Contract may be terminated with thirty (30) days written notice to the Contractor if the organizational activity within the State agency using the Equipment is discontinued or disestablished. Notwithstanding the foregoing if such organizational activity is transferred to another agency, department or other instrumentality of the State, then this Contract shall not be subject to termination under this Section.
- j. Return of the Equipment: Penalty Charges: In any case of termination, as stated in paragraphs (a) and (b) above, the State shall return the Equipment, along with all repair and other related records, in good operating condition (i.e., in a condition equal to the condition of the Equipment as when it was originally delivered to the State subject to normal wear, tear and usage) to the Contractor, at the State's sole cost and expense, at a location to be mutually agreed upon.
- k. Prepayment: If no event of default exists, the State will have the right, upon providing the Contractor with thirty (30) days prior written notice, to prepay its obligation for the amount set forth according to respective dates provided in the Purchase Order(s) or prorated by Contractor to another specified date.
- l. The State's Rights on Prepayment or Payment in Full: Upon (i) the State's exercising of its right of prepayment or (ii) the State's having satisfied all of its monetary and other obligations hereunder, Contractor will release its security interest in the Equipment.

12. DEFAULT AND REMEDIES:

Default: Any of the following events will constitute an event of default under this Contract:

- m. The State fails to make any payment required when due and such failure continues after written notice by Contractor; or
- n. The State fails to observe or perform any other covenants, conditions or agreements of the Contract and such failure continues for thirty (30) days without cure after the Contractor provides the State written notice of the failure.
- o. The Contractor fails to apply any payment required to be paid under this Agreement towards retirement of the State obligation hereunder.
- p. The Contractor fails to perform under this Agreement, or otherwise observe, keep or perform any provision of this Agreement required to be observed, kept or performed by Contractor.

Remedies: In the event of default as specified above, failure by either the Contractor or State to remedy such default within a period of thirty (30) days from receipt of written demand by either party, the Contractor or the State may, at its respective option as may be applicable, take any of the following actions:

- d. Proceed by appropriate court action(s) to enforce performance of the applicable covenants of this Contract or to recover damages for breach. In the case of such action by the Contractor, damages shall be limited to the then unpaid balance due and payable under the terms of the Contract.
- e. The Contractor may upon proper notice or demand upon the State, take possession of the Equipment and sell the same in a commercially reasonable manner and apply the proceeds of any such sale, after deducting all costs and expense incurred with the recovery, repair, storage and sale of the Equipment against any remaining obligations of the State hereunder. Any remaining sales proceeds shall be paid to the State.
- f. The State may terminate the Contract and direct the Contractor to remove all equipment at the Contractor's expense with no costs to be incurred by the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

- 13. TITLE:** Title to the Equipment is to be conveyed to the State by the Equipment vendor effective upon State acceptance in writing of Equipment and such title shall thereafter remain vested in the State.

- 14. SECURITY INTEREST:** The State shall grant and convey a security interest in the Equipment to the Contractor, which the Contractor shall retain throughout the term of the Contract. The State will not change or remove any insignia or lettering which Contractor may place on the Equipment to indicate its interest therein. The State will keep the Equipment free from any lien, encumbrance or legal process and the State will discharge such claims as it is responsible for creating or causing. In no event is the State subject to the Uniform Commercial Code.

15. **FILING:** Notwithstanding the foregoing paragraph, the State authorizes the Contractor to make Contractor's security interest a matter of public record by the filing of the contractual documents.
16. **WARRANTIES AND REPRESENTATIONS OF THE STATE:** The State represents and warrants to Contractor and, so long as this Contract is in effect or any part of State obligations to Contractor remain unfulfilled, shall continue to represent and warrant at all times that:
- q. The contracting agency of the State is a fully organized and validly existing political subdivision or agency of the State of North Carolina and has the power and authority to enter on behalf of the State into the Contract and to carry out the terms thereof.
 - r. The Contract and the performance of State's obligations thereunder have been duly and validly authorized and approved under all laws and regulations and procedures applicable to the State; the consent of all necessary persons or bodies has been obtained, and, the execution of the Contract by the State has been duly and validly executed and delivered by authorized representatives of the State and constitutes a valid, legal and binding obligation of the State enforceable against the State in accordance with its terms.
17. **HEADINGS:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of this Contract.
18. **SEVERABILITY:** In the event any portion of this Contract shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of the Contract shall continue in full force and effect.
19. **CARE AND USE OF EQUIPMENT:** State, at its own expense, will obtain remedial and preventive maintenance to keep the Equipment in good operating condition and appearance.
20. **INSURANCE:** The State is covered under a program of self insurance. The State will provide to Contractor a letter or other document from its insuring authority evidencing the existence of the continuing self-insurance program insuring the full insurable value of each commercial unit of the equipment against loss from fire and hazards. The State will provide a minimum of ten (10) days written notice to Contractor of any change or cancellation of said self insurance program. In the event the State is not covered under a program of self insurance or the State's self insurance program is unavailable or terminated, the State agrees to procure and maintain with a carrier authorized to do business in North Carolina and acceptable to Contractor, which acceptance shall not be unreasonably withheld, such fire, theft, and extended coverage insurance on the Equipment as is necessary to insure the full insurable value of each commercial unit of the Equipment against risk of loss or damage, and providing for a minimum of ten (10) days written notice of change or cancellation to Contractor. Each policy of insurance shall be endorsed with such insurance coverage. This Agreement does not provide for or require any insurance coverage for bodily injury and property damage to others.
21. **SPECIAL PROVISION:** The Internal Revenue Code of 1986 (Section 149(c)) requires the filing of certain documentation containing pertinent information. Transactions of \$100,000.00 or more require an IRS FORM 8038G, while those less than \$100,000.00 are reported on IRS Form 8038CG. Failure to submit these reports may result in the tax exempt status of the subject transaction being disallowed.

It is the intent of the State to work with the Contractor in completing and filing these required documents; however, the primary responsibility will rest with the Contractor. This Contract will not be effective until such forms have been submitted and acknowledged by the State as part of its written acknowledgment of Equipment. Information copies of these forms must be provided to:

Department of State Treasurer
State and Local Government Finance
North Salisbury Street
Raleigh NC 27611

The forms shall reflect the issuer's name as "State of North Carolina", Using Agency Name, State of North Carolina.

22. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.

23. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
24. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
25. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract.

Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.

5/02/2005

Exhibit “B”

Aggregate List of Replacement Buses Anticipated to be Acquired by the LEA

[insert here the complete list of buses that the LEA will finance]

Exhibit "C"

Form of General Certificate of the LEA

CLOSING CERTIFICATE

I, the undersigned, do hereby certify that I am a duly elected or appointed and authorized officer of _____ (the "Local Education Agency" or "LEA"), that I hold the office set forth below my signature, and that I am hereby executing and delivering this certificate for the benefit of all persons interested in that certain Master Replacement Bus Financing Agreement, dated as of _____, 2008 and the Appendices executed in connection therewith (collectively, the "Agreement"), by and between _____ (the "**CONTRACTOR**") and the LEA. The Agreement and all other documents, certificates, or instruments executed by the LEA and CONTRACTOR in connection therewith are referred to herein collectively as the "Contract Documents". Terms defined in the Agreement are used in this certificate with the same meanings as in the Agreement. I do hereby further certify that:

1. I am familiar with and have personal knowledge of the matters hereinafter stated.
2. The LEA is a political subdivision of the State of North Carolina.
3. Each person signing the Contract Documents on behalf of the LEA is a duly elected or appointed, qualified, and acting officer of the LEA holding the office set forth below such person's signature, and each such person's signature appearing thereon is true and genuine.
4. To the best of my knowledge (i) the representations, covenants and warranties of the LEA in the Agreement are true and correct on and as of the date hereof as though made on and as of the date hereof; (ii) the LEA has complied with all terms on its part to be performed or satisfied by it under the Agreement at or prior to the date hereof; and (iii) the Contract Documents remain in full force and effect and no default or breach, or other event that, with the giving of notice or the passage of time or both, would become a default or breach, has occurred thereunder.
5. Each of the Contract Documents has been duly executed and delivered by or on behalf of the LEA and constitutes a legal, valid, and binding obligation of LEA enforceable in accordance with its terms.
6. Except as have been obtained and are in full force and effect as of the date hereof, 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 by the LEA of the Contract Documents or the acquisition of the Accepted Buses.
7. The LEA has taken all actions necessary to provide for all amounts required to be paid under the Agreement during the current fiscal year, and the LEA has or expects to have sufficient unexhausted funds to make such payments as the same become due.
8. The LEA has, to the extent required, complied with all applicable provisions of the applicable laws of the State with respect to the Agreement including without limitation the provisions of the Agreement relating to such public bidding requirements as may be applicable to the Agreement and the acquisition of the Accepted Buses thereunder.

9. To the best of my knowledge, no litigation is pending or threatened in any court to restrain or enjoin the execution or delivery of the Agreement or the payment of the Installment Payments, or in any way contesting or affecting the validity of the Agreement, or contesting the powers of the LEA or contesting the authorization of the Agreement or which, if adversely determined, will have a material, adverse effect on the ability of LEA to perform its obligations under the Contract Documents.

10. The Accepted Buses will be used by the LEA only for the purpose of performing one or more of its essential governmental or proprietary functions consistent with the permissible scope of its authority. None of the Accepted Buses will be leased to or operated by any person in connection with a non-governmental trade or business.

11. The Federal Taxpayer Identification number of the LEA is _____.

EXECUTED on _____, 2008.

By: _____

Name: _____

Title: _____

Form of Appendix #____

Part 1

List of Accepted Buses indicating the total cost of the Accepted Buses

VIN Number:

Total Cost of the Accepted Buses

\$_____

Part 2
Payment Schedule

TO COME

Part 3
Request for Disbursement

2008 REQUEST FOR DISBURSEMENT NO.: _____

RE: Appendix __ to Master Replacement Bus Financing Agreement (the "Agreement"), dated as of (Please refer to LEA on Part-2 - Payment Schedule), 2008, made and entered into by and between (Please refer to LEA on Part-2 - Payment Schedule) (the "LEA") and _____ ("CONTRACTOR")

Please refer to the above-described Agreement. Unless otherwise defined herein, all terms having a defined meaning in the Agreement shall have the same meaning when used herein.

1. The undersigned hereby certifies that:

- (a) This Request for Disbursement is in accordance with the Agreement and Appendix __ and is for payment to the Vendor of the Buses described on Part I--List of Accepted Buses, which Buses have been accepted as stated in the Acceptance Certificate attached to this Request for Disbursement and executed by the DPI and the LEA.
- (b) The amount to be disbursed on this Request for Disbursement has not formed the basis of a previous request for payment and is due and owing.
- (c) The following amount should be disbursed to the Vendor in payment of the Accepted Buses:
 - (1) The amount of the first annual payment
to be paid by the LEA \$ _____
 - (2) Remaining amount to be financed by CONTRACTOR \$ _____
 - (3) Aggregate of amount owed the Vendor \$ _____

2. Please disburse the following amount to the following Payee:

Payee:

Amount: \$ _____

3. By its signature on this Part 3, the LEA agrees that it has reviewed and approved Part 1 and Part 2 of this Appendix. **(Please refer to Part 2 – Payment Schedule)**

EXECUTED as of _____.

as the LEA

By: _____

Name: _____

Title: _____

Acceptance Certificate

DATE: _____

Re: Acceptance Certificate No. ____ to Master Facilitator Agreement (the “Agreement”), dated as of _____, made and entered into by and between the **North Carolina State Board of Education** (the “Board”) and _____ (the “CONTRACTOR”) ; and that certain Master Replacement Bus Financing Agreement executed by the Local Education Agency indicated below (the “LEA”) and CONTRACTOR (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 Board, acting hereby, each certify and represent to, and agree with CONTRACTOR 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 Board.

Yours truly,

DEPARTMENT OF PUBLIC INSTRUCTION

By: _____

Name: _____

Title: _____

_____,
as the LEA

By: _____

Name: _____

Title: _____