

## TRANSITION AGREEMENT

This Transition Agreement dated as of June \_\_, 2008 is by and between The Education Resources Institute, Inc., a private non-profit corporation organized under Chapter 180 of the Massachusetts General Laws with its principal place of business at 31 St. James Avenue, 4<sup>th</sup> floor, Boston, Massachusetts 02116 (“**TERI**”), and RBS Citizens, N.A., a national banking association with its principal place of business at One Citizens Plaza, Providence, Rhode Island 02903, for itself and as successor in interest to Charter One Bank, N.A. and Citizens Bank of Rhode Island (collectively, “**Lender**”).

WHEREAS, TERI is the debtor and debtor-in-possession in a case styled *In re The Education Resources Institute, Inc.* (United States Bankruptcy Court, District of Massachusetts, Eastern Division, Chapter 11 Case No. 08-12540 (HGB) (“**Bankruptcy Case**”) and has submitted a motion seeking an order authorizing the rejection and termination of its Loan Origination Agreements and Guaranty Agreements with Lender and for the approval of this Agreement (the “**Motion**”); and

WHEREAS, TERI and Lender wish to enter into this Agreement to establish in conjunction with the Motion their respective rights and obligations with regard to certain issues arising from termination of the Guarantees and the wind down of Loan programs.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, subject only to approval of the United States Bankruptcy Court for the District of Massachusetts (“**Bankruptcy Court**”) and the terms and conditions set forth in this Agreement, and intending to be legally bound, TERI and Lender hereby agree as follows:

### 1. Definitions.

Capitalized terms used herein and not otherwise defined shall have the meanings provided in the Motion. The following terms shall have the meanings provided:

“**Agreement**” shall mean this Transition Agreement dated as of June \_\_, 2008, by and between Lender and TERI, as amended.

“**Bankruptcy Case**” shall have the meaning provided in the first “Whereas” clause hereof.

“**Borrower**” shall mean the person, or all persons collectively, including all students, co-borrowers, guarantors, endorsers, and accommodation parties, who execute a promissory note individually or, in the case of multiple Borrowers, severally and jointly, for the purpose of obtaining funds from Lender under a Program.

“**Due Diligence**” shall mean the utilization by Lender of policies, practices and procedures in the origination, servicing and collection of Loans that comply with the standards set forth in the Program Guidelines and the requirements of all applicable federal and state laws and regulations.

“**FMC**” shall mean The First Marblehead Corporation, a Delaware corporation.

“**FMER**” shall mean First Marblehead Education Resources, Inc., a Delaware corporation.

“**GLB Act**” shall mean the Gramm-Leach-Bliley Act of 1999 and its implementing regulations, to the extent applicable.

“**Guaranty Claim**” shall mean a claim by Lender to TERI for a guaranty payment under a Guaranty with respect to a Loan.

“**Guaranty**” and “**Guarantees**” shall have the meaning set forth in the Motion.

“**Guaranty Fees**” shall have the meaning provided in the Guaranty pursuant to which a Loan was extended.

“**Loan**” shall mean a Program Loan as defined in the Motion.

“**LOA**” or “**Loan Origination Agreement**” shall have the meaning set forth in the Motion.

“**Loan Origination Fee**” shall have the meaning set forth in the applicable LOA as in effect the day before the Petition Date..

“**Motion**” shall have the meaning set forth in the first “Whereas” clause hereof.

“**Net Pipeline Guaranty Fee**” shall have the meaning set forth in Section 3.a hereof.

“**Order**” means any order entered on the Motion.

“**Pipeline Loans**” shall have the meaning provided in the Motion.

“**Pledged Account**” shall mean the Pledged Account established by TERI under the Security Agreement.

“**Prior Loans**” shall mean Program Loans extended prior to the Petition Date.

“**Program**” shall mean a Program, as defined in the Guarantees as from time to time amended and supplemented, under which Loans guaranteed under a Guaranty are made.

“**Program Guideline(s)**” shall mean Program Guideline(s) established with respect to a Program as amended from time to time and all changes thereto. The Program Guidelines typically consist of the Program Overview, Servicing Guidelines and Program Borrower Documents (consisting of the forms of Promissory Note and Truth in Lending Disclosure). References in this Agreement to Program Guidelines shall refer to the Program Guidelines applicable to a Loan

under a Program as in effect on the Petition Date, whether or not such Program Guidelines continues effective generally.

“**Refinance Loans**” shall have the meaning provided in the Motion.

“**Security Agreement**” shall mean the Security Agreement of TERI in favor of Lender dated March 14, 2008 and the related Blocked Account Agreement.

“**Subsequent Guaranty Fees**” shall have the meaning provided in the Guaranty pursuant to which a Loan was extended.

“**Termination Date**” shall mean August 2, 2008, or, as to any specific Program under a LOA and Guaranty, the date prior to August 2, 2008 which is three (3) business days after the date on which Lender gives TERI written notice to stop accepting applications under that Program under a LOA and Guaranty as described in Section 4.b hereof.

## **2. Purpose.**

The Motion seeks the rejection and termination of the Loan Origination Agreements and the Guarantees. In order to facilitate an orderly cessation of the Programs that are the subject of the Terminated Contracts, and to minimize adverse consequences to qualified applicants for student loans, the Lender and TERI wish to agree as to matters concerning the Pipeline Loans and to memorialize the understanding of Lender and TERI concerning their relationship after the entry of an Order.

The Loans have been extended pursuant to a series of agreements, including the Guarantees, between TERI and Lender, which are substantially similar but differ as to certain details. In the interest of simplicity and consistency, TERI and Lender agree that upon the approval of the Motion and the entry of the Order, this Agreement shall apply to, and shall be the sole agreement governing, all Pipeline Loans by Lender.

This Agreement establishes the procedures for originating and administering Pipeline Loans. As provided in the Motion, in exchange for the Lender agreeing to release claims against TERI under its Guaranty of Pipeline Loans, upon the Court Order approving the Motion becoming final, Guaranty Fees with regard to Pipeline Loans shall be waived, relinquished, released and paid over to Lender in full satisfaction of TERI’s Guaranty of Pipeline Loans; Lender shall be deemed to have released TERI’s Guaranty of all Pipeline Loans; and Lender shall have no further recourse against TERI on its Guaranty of any Pipeline Loans.

To the extent that any provision in this Agreement conflicts with the Order, the terms of the Order shall govern.

## **3. Agreements Concerning Pipeline Loans.**

a. On and after the Petition Date, TERI has originated, and will continue to originate, and Lender has funded, and will continue to fund, Pipeline Loans. Upon approval of the Motion by the Bankruptcy Court and the entry of the Order, the amount of all Guaranty Fees

with respect to Pipeline Loans paid to TERI by Lender, whether retained by TERI or deposited in the Pledged Account, net of any disbursements of paid default claims, required refunds or permitted cancellations (the "Net Pipeline Guaranty Fee"), shall be released and paid to the Lender pursuant to the Order in satisfaction of any obligations of TERI under its Guaranty of the Pipeline Loans. Lender shall be deemed to have released any claims against TERI on its Guaranty of the Pipeline Loans, and shall have no recourse against TERI therefor, in exchange for TERI causing all such Net Pipeline Guaranty Fee to be paid to Lender. TERI agrees to provide Lender with an accounting of the Pipeline Loan Guaranty Fee within thirty (30) days of the approval of the Motion. For the avoidance of doubt, nothing herein shall apply to any loan origination fee paid under an LOA, and Lender shall continue to pay Loan Origination Fees on Pipeline Loans. The failure of TERI to provide origination or collection services with respect to any Pipeline Loan shall not give rise to any administrative claim in the Bankruptcy Case, provided however that this shall not in any way restrict any claim arising from improperly provided services.

b. Lender agrees to continue to fund Pipeline Loans based on qualified applications made on or prior to the Termination Date. For the purposes of this Agreement: (i) all electronic applications shall be deemed to have been made on the date such application is submitted; (ii) all phone applications shall be deemed to be made on the date on which the Borrower makes such phone application; and (iii) unless otherwise agreed all paper applications for Pipeline Loans other than Refinance Loans shall be deemed to have been made on the date that the paper application is submitted to TERI, and (iv) as to Refinance Loans, a qualified application shall be one made with respect to a Loan as to which on the date of this Agreement at least one payment has been received following a default, which application is received by TERI within 120 days of the date the application is provided to the applicant. TERI agrees to instruct FMER not to provide applicants (other than on Refinance Loans) with paper applications. This Agreement is made to minimize the disruption to Lender's and TERI's operations, to enable TERI to wind down the rejected/terminated Terminated Contracts in an orderly, economical and reasonable fashion, and to minimize adverse consequences to applicants for student loans.

c. Pursuant to the Loan Origination Agreements, Lender has retained TERI as its agent to perform certain loan origination functions. TERI and Lender agree that the loan origination procedures set forth in Sections 1, 2, 3 and 4(a) of the Loan Origination Agreement between TERI and Lender dated April 30, 2004, or comparable provisions of other Loan Origination Agreements between TERI and Lender, as applicable, shall continue to govern the origination of the Pipeline Loans.

d. Lender and TERI acknowledge and agree that all Loans funded post-petition, including Loans based on applications hereafter received by TERI on or before the Termination Date, will be deemed a Pipeline Loan and may be funded to the extent that all applicable Program Guidelines are fully satisfied.

e. No Guaranty Fees shall be due with respect to the Pipeline Loans, and TERI shall pay to Lender the Net Pipeline Guaranty Fee as provided in Section 3.a. hereof, in full satisfaction of TERI's Guaranty obligations.

f. TERI and Lender also agree that Sections 5(a), (b) and (c) of the Loan Origination Agreements, dealing with Reports and Access to Records, shall apply to the Pipeline Loans.

g. Except as otherwise agreed by TERI and Lender, or otherwise ordered by the Bankruptcy Court, Lender will continue to make available to TERI, whether directly or through its servicer, and TERI may retain and use, information concerning the Loans as presently provided, including without limitation information of the type described in the Servicing Guidelines attached as exhibits to certain of the Guarantees. Without limiting the foregoing, TERI may retain as its own property and use for any lawful purposes any or all aggregated or de-identified data concerning Loan applicants and Borrowers which does not include the name, address or Social Security number of the Loan applicants or Borrowers. TERI may sell, assign, transfer or disclose such information to third parties including, without limitation, FMC, who may also use such information for any lawful purpose.

#### **4. Websites.**

a. TERI will use commercially reasonable efforts to require FMER to modify TERI's website (www.TERI.org), or to acknowledge that such modification has occurred, within three (3) business days of the entry of the Order to reflect that applications for Program Loans will no longer be accepted after the Termination Date. Lender shall be responsible for making comparable changes within three (3) business days of the entry of the Order, if any are required, to its website, and, to the extent that Lender has contractual authority to do so, for making commercially reasonable efforts to direct that third party referral marketers that market loans make similar changes, if required, to their websites.

b. TERI will cease taking any further applications for Loans on August 2, 2008 or such earlier date (which in no event shall be a date on or prior to the effective date of the Order) of which Lender in good faith notifies TERI to cease taking any further applications for Loans under a specific Program resulting in a Termination Date for the Loans subject to such notice(s) earlier than August 2, 2008, as provided in the definition of "Termination Date." TERI will use commercially reasonable efforts not to accept applications as to Loans subject to an earlier Termination Date after such earlier Termination Date. In connection therewith, TERI, shall eliminate any applications for Loan programs as to which a Termination Date has occurred from any websites that TERI controls, and shall substitute, for such application, a notice that the Loan program in question is no longer offered. TERI shall request in writing that FMER and FMC eliminate any applications for such Loan programs from any websites under their control, and to substitute, for such application, a notice that the Loan program in question is no longer offered.

#### **5. Agreements concerning Servicing of Loans.**

##### **a. Servicers.**

Lender has entered into agreements with servicers as to the servicing of Program Loans, and Lender shall be responsible for such agreements. TERI shall have no obligation with respect to the servicing of any Loan except as expressly provided herein.

b. Servicing of Prior Loans and Pipeline Loans.

TERI and Lender contemplate negotiating an agreement within 30 days of this Agreement relating to TERI providing various services for Prior Loans and Pipeline Loans that will be effective as of June 1, 2008. In the period from and including June 1, 2008 through and including July 15, 2008, TERI may, upon Lender's request, provide "default prevention activities" services to Lender in the same manner as it did prior to the Petition Date. If the parties are unable to reach agreement on the scope and cost of post-rejection services, Lender shall pay TERI fees for any default prevention activities services provided during such interim period pursuant to Lender's request, which fees shall be based on the historic cost to TERI of providing such services.

**6. Funding of Future Loan Increments.**

Program Loans under certain Programs provide for disbursements after the initial disbursement in increments provided for in the Loan documentation. Lender shall fund any subsequent disbursements required under the Loan documents for any Prior Loans, and shall also fund any such subsequent disbursements required under the loan documents for any Pipeline Loans for which an application is received prior to the Termination Date. For the purpose of the Motion and this Agreement, any such subsequent disbursements shall be treated as follows: for Prior Loans, TERI shall remit all Guaranty Fees received from Lender on account of a subsequent disbursement, including Subsequent Guaranty Fees, into the Pledged Account and for Pipeline Loans, all Guaranty Fees for the subsequent disbursements shall be retained by Lender in satisfaction of TERI's Guaranty obligation to Lender.

**7. Confidentiality.**

The confidentiality provisions of Terminated Contracts, meaning Section 8 of the Guaranty Agreement and Section 9 of the Loan Origination Agreements dated April 30, 2004, and comparable terms of other Terminated Contracts, as supplemented by that certain Mutual Confidentiality Agreement dated March 17, 2008, as affirmed, shall continue in effect, subject to the terms of this Agreement and the Order.

**8. Agreement as to Original Documents.**

The Guaranty Agreements and Loan Origination Agreements contain terms requiring the return of original documents and other matters upon termination of such agreements. Notwithstanding the reference to "termination" of the Terminated Contracts under the Motion, TERI and Lender agree that such provisions shall not apply and, in particular, that no change in the custody of original documents is required by the Motion, and that TERI is not obligated to deliver Borrower "nonpublic personal information" (as defined in the GLB Act) to Lender. In the event Lender requires an original document relating to a Loan that is in TERI's sole possession, TERI agrees to provide it to Lender on Lender's request, and upon Lender's payment of TERI's reasonable expense of providing such document. Failure by TERI or any successor in interest, including any trustee, to comply with this Section 8 shall not give rise to an administrative claim in the Bankruptcy Case, provided, however, Lender may seek specific performance by filing a motion in the Bankruptcy Case.

**9. Notice.**

Notice for any purpose hereunder shall be given by email confirmed by overnight delivery requiring receipt signature. In the case of TERI, notices should be sent to its President and General Counsel, at the address provided on page 1 hereof, email addresses hulings@teri.org and bizar@teri.org, respectively, with copies to Daniel M. Glosband, Esq., Goodwin Procter LLP, Exchange Place, Boston, MA 02109, dglosband@goodwinprocter.com and Christopher J. Panos, Esq., Craig and Macauley Professional Corporation, 600 Atlantic Avenue, Boston, MA 02210, panos@craigmacauley.com. In the case of the Lender, notices should be sent to its Education Finance Department, 725 Canton Street, Norwood, MA 02062, \_\_\_\_\_, with a copy to Steven T. Greene, Esq., Riemer & Braunstein LLP, 3 Center Plaza, Boston, MA 02108, sgreene@riemerlaw.com, Patrick C. Joyce, SVP RBS Citizens, N.A., 53 State Street, 9<sup>th</sup> Floor, Boston, MA 02109, Patrick.joyce@citizensbank.com, and Christine McManus, Esq., SVP and Counsel, RBS Citizens, N.A., 53 State Street, 9<sup>th</sup> Floor, Boston, MA 02109, Christine.mcmanus@citizensbank.com.

Either party may from time to time change the person, address or email address for notice purposes by written notice to the other party.

**10. Further Obligations.**

TERI shall have no obligations under any Loan Origination Agreement, Guaranty or Program Agreement that is rejected pursuant to the Order, except as expressly provided in the Order,.

**11. Jurisdiction.**

The Bankruptcy Court shall retain jurisdiction over the performance of this Agreement, and any disputes of the parties concerning this Agreement.

**12. General.**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof.

THE EDUCATION RESOURCES  
INSTITUTE, INC.

By: \_\_\_\_\_  
Its

RBS CITIZENS, N.A.

By: \_\_\_\_\_