

Beta Plan-GS \$Mart® (Tax Exempt) Terms and Conditions, Version 3.2

July 1, 2000

The following terms and conditions are applicable to the Alpha Plan offered in GS \$Mart.

PURPOSE OF AGREEMENT

The purpose of this plan is to prescribe the financing provisions, covenants, and payment schedules for installment purchases to be made by any State of California, State Government Agency for specific "Assets" which may include, but are not limited to, goods and/or services, equipment and software. The State does not have any obligation to pay for any portion of the Assets before acceptance by the State. In addition, the State will not pay for any interest charges on the Assets until those Assets are accepted by the State. The term "Contract" refers to this agreement issued by the State to the Lender for the financing of the Assets, whether incorporated by reference or in full, the Certification Form, the applicable payment schedule, and any other applicable documents. The term "Lender," as used in this financing plan, refers to the provider of the financing. The term "Supplier" refers to the entity providing the Assets for the contract being financed.

PLAN PROVISIONS

I. Appropriation of Funds

This contract was issued by the State under and pursuant to the laws of the State of California to fund the acquisition of the Assets described herein. If, after the first fiscal year (July 1 through June 30) in which Assets are procured, funds are not appropriated or otherwise made available to continue paying for the Assets in a subsequent fiscal year, then the State may terminate this contract as of the last day for which funds were appropriated or otherwise made available, but shall be obligated to pay all charges incurred through the end of that fiscal year. The State incurs no obligation under this contract for any period of time for which funds are not appropriated.

It is reasonably expected that installment payments under this contract will be paid from annual appropriations of the State. The remaining general funds of the State are not reasonably expected to be used to make such payments and no other moneys are pledged to the contract or reasonably expected to be used to pay principal and interest on the contract.

In the event of non-appropriation, within 30 days following the delivery to the State of a written request by the Lender, the State shall provide Lender a written certificate to the effect that no funds have been appropriated or otherwise made available for payments due under this contract or for the acquisition of substantially similar Assets to replace those provided under this contract, to the extent permitted by law. The State will make a reasonable effort as soon as practicable to notify the Lender of a non-appropriation.

II. Best Efforts for Funding and Replacement Upon Termination Due to Nonappropriation

The State will use its best efforts to obtain funding for the Assets purchased hereunder. If the State exercises its right to terminate a purchase of Assets for nonappropriation, the State agrees not to obtain substantially similar Assets to replace those provided for one year from the date of termination, to the extent permitted by law.

III. Opinion of Counsel Contract Validity

The State agrees to provide Lender, at time of funding or assignment, an Opinion of Counsel certifying the following:

A. That this contract is a legal contract under California statutes and is binding upon the State subject to the provisions of Section I (non-appropriation of funds) and the termination provision of this contract.

B. That the individual executing the contract on behalf of the State has the legal authority to commit the State to this contract.

IV. No Prepayment Penalty and No Termination for Convenience

A. The State may elect to prepay any portion of the remaining unpaid balance at any time during the contract. No penalties will be assessed against the State for such prepayments (such as, but not limited to, interest and service charges). Interest on any remaining balances for the remaining term will be at the same interest rate quoted for this contract. If the State elects to prepay the remaining principal balance (in part or in whole) due the Lender, the prepayment amount will be calculated as the amount equal to the current balance plus the amount of accrued interest based on the number of days since the last payment was due. The Lender will be provided a written notice from the State 45 days prior to the prepayment date.

B. Notwithstanding any other provision of this Contract, there shall be no termination for convenience of the payments due pursuant to the payment schedule until such time the full amount due is paid. If acceptance does not occur as indicated in the Certification Form, the State retains the right to terminate the contract in advance of any payments due and without penalty.

V. Title and Public Purpose of Assets

Pursuant to this contract, the State is entitled to receive said Assets in consideration for the obligation of the State under this contract. Said Assets will be used in the furtherance of the public purposes of the State. Notwithstanding any other provision of this contract, except as provided in the contract for proprietary license agreements, title to the Assets shall pass to the State upon acceptance by the State of the Assets. In the event of non-appropriation per Section I, title shall immediately revert to the Lender.

VI. Maintenance

Any Assets financed under this contract shall be eligible for maintenance by the Supplier, or his agent, upon installation and acceptance by the State. The State shall maintain in full force and effect during the term of this contract maintenance provisions, which may include a full maintenance service plan, time and materials plan or other maintenance plans, for the Assets still unpaid. The State shall, at its expense, take all other actions to maintain the Assets in good working order, condition, and repair.

VII. Financing Assignment

A. Assignment of this Contract by the Lender to a subsequent Assignee, Paying Agent or Trustee is subject to the approval of the State. Assignments whereby the Lender remains the Paying Agent do not require approval of the State. However, any such assignment requires that Lender notify the contracting state agency of such assignment, confirming that Lender is to remain the Paying Agent. The State and Lender mutually acknowledge that no prior approval is required for the Lender to enter into a Paying Agent, Trust or similar agreement whereby a Paying Agent or Trustee (such Paying Agent or Trustee is appointed by Lender for the sole purpose of distributing funds as described herein and does not have the capacity or authority to represent the State) may issue interests in the installment payments to be paid by the State, under this contract. The Lender agrees it will inform the State (the Department of General Services and the

contracting state agency) of any additional assignments where the Paying Agent or Trustee has not changed. The State and Lender mutually agree that this assignment is for financing purposes only and shall not relieve the Supplier from performance obligations under this contract.

Lender and its assigns agree that at no time shall the State be required to provide any disclosure information, including, without limitation, any undertaking pursuant to Securities and Exchange Commission Rule 15(c) 2-12 as a result of any assignment hereunder.

The State also acknowledges that Lender may establish an acquisition fund in connection with the Assets purchased in order to ensure the availability of funds for the acquisition.

B. The State does not intend to sell said Assets or said contract or otherwise dispose of said Assets during the term of the contract. It is contemplated that Lender may sell the Contract and that the Lender or its assigns will pay the Supplier for the Assets upon closing. If assignment occurs at closing, all of the proceeds received from such sale will be used immediately to pay the Supplier of the Assets in full or to pay costs related to the Contract or to reimburse the Supplier for such expenditures. The State will not receive any moneys, funds or other "proceeds" as a result of such aforementioned sale, except for any fees paid to reimburse the Department of General Services for services provided in connection with financing this contract.

C. To secure the payment of the amounts shown on the payment schedule, Lender reserves a purchase money security interest in procured Assets and State hereby grants a security interest in any substitutions and replacements of the Assets and additions thereto (provided that the additions cannot be removed in such a manner as to leave the Assets in its original condition) and the proceeds thereof. A copy of the contract may be filed with appropriate authorities at any time after signature by the State as a financing statement in order to perfect Lender's security interest.

The State also shall execute from time to time, alone or with Lender, any reasonable financing statements or other reasonable documents considered by Lender to be necessary or desirable to perfect or protect the security interest hereby created. The Assets shall remain personal property, not become part of the freehold and be kept at the location stipulated in the contract as the installation site. Upon payment of the full amount owed pursuant to the payment schedule, or upon partial payment under Section XI, Destruction of Assets, the Lender shall immediately release the security interest in the Assets, or portion of Assets for which payment was completed, and, if requested by the State prior to five (5) years from the date of filing, file documentation to effect the release, such as a UCC-3, or any other required document.

VIII. Rights of Assignee

The State agrees that the Assignee shall have all rights that the Lender assigns to the Assignee under the financing plan, including but not limited to the right to issue or receive all notices and reports, to give all consents, to receive title to the Assets, to declare a default and to exercise all remedies thereunder and State agrees not to assert against Assignee any defense, claim, counterclaim, or set-off on account of breach of warranty, breach of service agreement, or otherwise and will settle all warranty, mechanical, service or other claims with respect to the Assets directly with the Supplier and Assignee shall not be liable for such service or other claims. If requested by the Lender, the State shall pay Assignee all payments as provided in the Contract Payment Schedule, except as provided hereunder for non-appropriation or claim against the Lender, without deduction or set-off on account of any claim the State may have against the Supplier or relative to the Assets.

IX. Tax Covenants and Securities Issues--N/A

X. Lender's Covenants

A. The Lender agrees to indemnify the State Agency and the State of California and hold the State Agency and the State of California harmless from and against any liability or expense incurred as a result of any violation or alleged violation of federal or state securities laws by the Lender, or any person or entity assisting the Lender that are specifically contracted or hired by the Lender to assist it in issuing or selling any financial obligations.

B. The Lender and it assigns represent, warrant and agree separately and respectively, as follows:

1. It has sufficient knowledge of, and experience with, contracts similar to this contract, and it has had sufficient opportunity to review all documentation necessary to make an informed decision to enter into this contract or accept an assignment of this contract, as the case may be.

2. It is fully capable of bearing the financial risk of entering into this contract or accepting an assignment of this contract, as the case may be.

XI. State's Covenants

The State agrees that:

A. It will not create, assume, or voluntarily suffer to exist, any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any Assets procured using the financing options of this contract. (Note: the State may give notice in the event it wishes to refinance a contract.)

B. It will keep any Assets in good repair and operating condition.

C. It will pay the amounts due as listed in the payment schedule subject to the provisions of this agreement. It will pay promptly all applicable taxes and other charges when levied or assessed upon any Assets, or Asset operation or use, or upon Lender, in connection with this contract (exclusive of taxes based on net income). It will not modify or relocate Assets outside of the State without Lender's prior written consent.

D. The State further agrees to procure and maintain fire insurance with extended coverage against loss, theft, damage to or destruction of any Asset for the full insurable value thereof for the duration of the contract, the policy of such insurance being endorsed to show loss payable to Lender, as respective interests may appear, or have an equivalent self-insurance program. Upon request, a certificate of such insurance or self-insurance will be furnished to the Lender. Any proceeds received directly by the Lender under such insurance shall be credited to the payment required from the State pursuant to the section titled "Destruction of Assets" below.

XII. Destruction of Assets

In the event that **any** Asset shall be lost, stolen, irreparably damaged or destroyed or otherwise rendered permanently unfit for use from any cause whatsoever prior to the payment in full of all the Payments for the affected Asset, the State Agency shall, subject to the foregoing Section I and upon demand by the Lender, within 60 days of such demand, pay to the Lender a sum equal to the principal amount, plus accrued interest, included in the aggregate unpaid payments for such Asset, which shall constitute a partial or total prepayment of Payments pursuant to Section IV hereof.

XIII. Defaults

Any one or more of the following are events of default:

- A.** The State shall fail to pay, in full, any sum payable by the State when due hereunder following Lender's written notice of such failure, to the State agency and the Department of General Services, except as provided in Section I, Appropriation of Funds.
- B.** The State shall fail to maintain insurance or self-insurance as required in this contract.
- C.** The State shall, for more than 30 days after the Lender has notified the State in writing, fail to comply either in performance or observance thereof, with any other term of this contract.
- D.** Any insolvency proceedings of any character, voluntary or involuntary, shall be instituted by or against the State.
- E.** The State shall make an assignment for the benefit of creditors without prepaying the balance of the amount due hereunder.

XIV. Remedies of Lender

If an event of default shall have occurred, the Lender may to the extent permitted by law:

- A.** Recover the balance of amount owed hereunder, subject to Section I, Appropriation of Funds.
- B.** In the event of default or nonappropriation, to the extent Assets are equipment, the State at its expense and at the Lender's direction shall ship the Assets to a location within the contiguous United States specified by the Lender.
- C.** Enter any premises where procured Assets may be housed, subject to the State's reasonable security requirements at the site, and take possession and title of it or render it unusable, and retain all prior payment as partial compensation for its use and depreciation. Upon repossession or return of the Assets, the Lender will dispose of the Assets in a commercially responsible manner. Any proceeds of the disposal shall be applied to amounts owed by the State for the Assets.
- D.** If the State has failed to keep procured Assets in good repair or operating condition, restore the Assets to good repair or operating condition at State's expense for actual time and materials expended by Lender at Lender's then current charges.
- E.** Pursue any other remedy permitted by law or in equity. The prevailing party in a dispute concerning this financing plan will be entitled to reasonable attorney fees and legal expenses in exercising any of its rights and remedies which a court may require to be paid. Waiver of any default shall not be a waiver of any other default. All of the Lender's rights hereunder are cumulative and not alternative.

XV. Closing Documents

The State and the Lender will cooperate in reviewing and executing ministerial documentation reasonably required by the Lender to implement such assignment including the purchase contract and any resultant purchase order as well as all of the following closing documents.

- A.** A signed Certification Form acknowledging the State's review and approval of the description of the contract, the Assets, the contract terms and conditions, acceptance, essential use, and a statement of self-insurance or insurance will be provided by the

State. If in the opinion of the State, any items contained in this document are inaccurate, the State may modify the inaccurate items to a factual representation by mutual consent with the Lender.

D. Opinion of Counsel concerning Contract Validity (if requested by the Lender)

E. UCC Form 1 (if requested by the Lender)