

**ALPHA PLAN-GS \$MART (TAX EXEMPT),  
TERMS AND CONDITIONS (VERSION 5.0) DATED NOVEMBER 1, 2015**

The following terms and conditions are applicable to the Alpha Plan (the “*Plan*”) offered in the Golden State Financial Marketplace (“*GS \$Mart*”).

PURPOSE OF AGREEMENT

The purpose of the Plan is to prescribe the financing provisions, covenants and payment schedules for installment purchases to be made by any State Agency for specific Assets that are eligible for financing under Section 14934 of the Government Code and have a useful life longer than one year. The State of California (the “*State*”) does not have any obligation to pay a Supplier for any Asset before the State accepts that Asset. In addition, interest will not begin to accrue, and the State will not be obligated to pay a Lender any interest charges, with respect to any Asset until the State has accepted that Asset, unless escrow funding pursuant to Section VIII.B is implemented. Upon the incorporation of a Lender’s rate quote into a Contract, which the Lender has submitted in response to the related Request for Rate Quote, the Lender shall be deemed to have entered into such Contract and made the Lender’s agreements, representations and warranties as set forth in this Plan.

PLAN PROVISIONS

**I. Definitions**

The following terms shall have the respective meanings for purposes of each Contract:

“*Assets*” means those assets described in such Contract that are eligible for financing pursuant to GS \$Mart under Section 14934(b) of the Government Code.

“*Certification Form*” means the Alpha Plan, Certification Form used by the State from time to time in connection with GS \$Mart.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Commencement Date*” means the date when interest commences to accrue under such Contract, which is the first date on which (a) the State has accepted the Assets under such Contract as evidenced by the related Certification Form and the Lender, at the State’s direction and on its behalf, pays the costs for such Assets to the Supplier in exchange for execution and delivery of such Contract or (b) the Lender has deposited funds into an Escrow Fund as provided in Section VIII.B.

“*Contract*” means, with respect to Assets financed for a State Agency in each separate transaction, the purchase order/agreement formed by the offer and acceptance between the State

and the Lender through GS \$Mart, the related Certification Form, the purchase order/agreement that the State enters into with the Lender that incorporates by reference the Plan, the Lender's rate quote, the payment schedule and scheduled provisions and notes and any Rider incorporated in the purchase order/agreement by reference.

*"Contract Term"* means the Original Term and all Renewal Terms under a Contract.

*"Escrow Agreement"* is defined in Section VIII.B.

*"Escrow Fund"* is defined in Section VIII.B.

*"GS \$Mart"* means the State of California Department of General Services Golden State Financial Marketplace Program, as structured, administered and maintained under Section 14930 *et seq.* of the Government Code.

*"Lender"* means (a) the entity that, at the State's direction and on its behalf, pays the costs for the Assets under a Contract to the Supplier, and any successor to such entity; and (b) the Permitted Assignee with respect to a Contract from and after assignment pursuant to Section X.A., and any successors to such Permitted Assignee.

*"Non-Appropriation Event"* is defined in Section III.

*"Original Term"* means the period from the Commencement Date for a Contract until the end of the State's fiscal year in effect at such Commencement Date.

*"Permitted Assignee"* means (a) an affiliate of a Lender, (b) a bank, insurance company or similar financial institution or its affiliates or (c) any other entity approved by GS \$Mart, *provided* that each such assignee shall be an entity that the transferor Lender reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended.

*"Renewal Term"* means each successive term having a duration that is coextensive with the State's fiscal year.

*"State"* means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.

*"State Agency"* means a State Agency as defined in Section 14938 of the Government Code and for which Assets are acquired and financed under a Contract.

*"Supplier"* means the entity that sells and delivers Assets to the State that are financed under a Contract.

## **II. Contract Term; Installment Payments**

A. The State enters into each Contract on its Commencement Date under and pursuant to the laws of the State of California to finance its acquisition and installment purchase of the Assets described in such Contract. The Contract Term for each Contract may be continued, solely at the option of the State, at the end of its Original Term for the first Renewal Term and at the end of the first Renewal Term and each succeeding Renewal Term for the next succeeding Renewal Term up to the maximum Contract Term set forth in such Contract. The exercise by the State of its option to continue each Contract for a Renewal Term shall be evidenced by, and the Contract Term shall be automatically extended, upon the successive appropriation by the California Legislature of amounts sufficient to pay installment payments and other amounts payable under such Contract during the State's next succeeding fiscal year until all installment payments under such Contract have been paid in full, unless the State terminates such Contract pursuant to Section III or Section VI.A. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the installment payments shall be as provided in the applicable Contract. The State shall have no obligation under a Contract after the first to occur of the date on which (a) such Contract terminates pursuant to Section III, (b) all installment payments and any other amounts due under such Contract have been paid in full pursuant to Section II.B or (c) such Contract terminates pursuant to Section VI.A or Section XV upon prepayment in full of installment payments and any other amounts due under such Contract.

B. The State shall promptly pay installment payments as described in the payment schedule portion of each Contract, in lawful money of the United States of America, to the Lender under such Contract on the dates and in the amounts as provided in such Contract. Installment payments consist of principal and interest portions as detailed on the payment schedule incorporated into each Contract. Except as provided in Section III (regarding Non-Appropriation), the State obligations to make installment payments under each Contract and to perform and observe the other covenants and agreements contained in each Contract shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense. It is reasonably expected that installment payments under each Contract will be paid by prompt means as due from annual appropriations of the State. The remaining general funds of the State will not be used to make such payments and no other moneys are pledged to any Contract or reasonably expected to be used to pay principal and interest portions of installment payments under any Contract.

C. Each Lender and the State understand and intend that the State obligation to pay installment payments under each Contract shall constitute a current expense of the State payable solely from funds budgeted and appropriated for that purpose and shall not in any way be construed to be a debt of the State in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the State, nor shall anything in the Plan or in a Contract constitute a pledge of the full faith and credit or taxing power of the State or a pledge of the general tax revenues, funds or monies of the State.

### **III. Non-Appropriation**

The State is obligated only to pay such installment payments and other amounts under each Contract as may lawfully be made from funds budgeted and appropriated for that purpose. The State incurs no obligation under any Contract for any period of time for which funds are not budgeted and appropriated. If the California Legislature fails to appropriate sufficient funds in any State fiscal year to pay installment payments and other amounts when due under a Contract during the next succeeding fiscal year (a “*Non-Appropriation Event*”), then (a) the State shall use reasonable efforts to deliver written notice of such Non-Appropriation Event to the Lender under the affected Contract, the State Treasurer’s Office and the State Department of Finance at least 30 days prior to the end of the then current fiscal year, but failure to deliver such notice shall not extend the Contract Term under the affected Contract; (b) on or before the Return Date, the State shall cease use of the Assets covered by the affected Contract and peaceably remove and deliver all (but not less than all) of such Assets to the Lender under the affected Contract, at the State expense (from legally available funds), at the location in the State of California to be specified by such Lender and in the condition required by Section IX.A; and (c) the affected Contract shall terminate on the Return Date without penalty or expense to the State, *provided* that the State shall pay all installment payments and other amounts payable under the affected Contract for which funds shall have been appropriated. “Return Date” means the last day of the fiscal year for which appropriations were made for the installment payments due under the affected Contract. If an Escrow Fund has been established for a Contract that is terminated as the result of a Non-Appropriation Event, the Lender under the affected Contract may terminate the related Escrow Agreement and apply any moneys and investments then held in the Escrow Fund thereunder to the installment payments scheduled under the affected Contract.

### **IV. Best Efforts for Funding**

The State currently intends, subject to Section III, to continue the Contract Term for each Contract through its Original Term and its scheduled Renewal Terms and to pay the installment payments and other amounts thereunder. The State will use its best efforts to obtain funding for the Assets purchased under each Contract, *provided* that the decision whether or not to budget and appropriate funds or to extend a Contract for any Renewal Term is within the sole discretion of the California Legislature.

### **V. Opinion of Counsel Concerning Contract Validity**

The State agrees to deliver to the Lender under a Contract on the Commencement Date a signed copy of a written Opinion of Counsel to the State addressed to the Director or appropriate Deputy Director to the effect that:

- A. This purchase order/agreement has been duly authorized, executed and delivered by the State acting through its duly qualified elected or appointed officers or agents, and

B. This purchase order/agreement is a legal, valid and binding obligation of the State of California and is enforceable against the State of California in accordance with its terms and conditions.

**VI. Prepayment Option; No Prepayment Penalty; No Termination for Convenience**

A. Except for certain Contracts for computer-related services, which are not subject to prepayment, the State may elect to prepay all or any portion of the unpaid balance of any Contract at any time, upon at least 45 days prior written notice to the Lender, at a prepayment price equal to the principal amount to be prepaid plus accrued interest thereon to the prepayment date, but without premium or any other charge. Notwithstanding the foregoing, a prepayment premium may be specified in a Contract if the State so agrees. Partial prepayment shall be applied to reduce the principal portion of installment payments under the affected Contract in inverse order of the scheduled installment payments. Within 30 days after such prepayment, the Lender under the affected Contract shall prepare and deliver to the State a revised payment schedule that shows the remaining installment payments after giving effect to such prepayment as provided in this Section VI.A.

B. Notwithstanding any other provision of any Contract, there shall be no termination for convenience by the State of installment payments due under any Contract until such time as the full amount due is paid.

**VII. Title and Security Interest; Public Purpose of Assets**

A. During the Contract Term under each Contract, and so long as the State is not in default under Section XVI, all right, title and interest in and to each of the Assets under such Contract shall be vested in the State immediately upon its acceptance of the Assets as evidenced by delivery of the related Certification Form, subject to the terms and conditions of the applicable Contract. Upon the occurrence of an Event of Default under a Contract as provided in Section XVI or upon termination of a Contract pursuant to Section III, full and unencumbered legal title to the Assets under such Contract shall, at the option of the affected Lender, pass to such Lender, and the State shall have no further interest therein except for any excess disposition proceeds as provided in Section XVII.B. In addition, upon the occurrence of such an Event of Default under a Contract or such termination of a Contract, (i) the State shall execute and deliver to the Lender under such Contract such documents as such Lender may reasonably request to evidence the passage of such legal title to such Lender and the termination of the State interest therein and (ii) upon request by the Lender, the State shall deliver possession of the Assets under such Contract to such Lender in accordance with Section III or Section XVII, as applicable. Upon payment of all amounts due and owing under a Contract in accordance with Section II.B or prepayment in whole or in part of affected Assets under Section VI.A or Section XV, the security or other interest of the Lender under the affected Contract in the Assets or such affected Assets thereunder shall terminate, and such Lender shall execute and deliver to the State such

documents as the State may request to evidence the termination of the security or other interest in the Assets or such affected Assets subject to the applicable Contract.

B. To secure the payment and performance of all of the State obligations under each Contract, upon entering into such Contract on its Commencement Date, the State grants to the Lender under such Contract a security interest constituting a first and exclusive lien on (i) the Assets subject to such Contract (other than proprietary software licenses), (ii) moneys and investments held from time to time in the Escrow Fund if an Escrow Fund is established for such Contract and (iii) any and all proceeds of any of the foregoing. The State agrees to execute (to the extent required) and deliver such additional documents as may be required or advisable under applicable State law, in form satisfactory to the Lender, which the Lender deems necessary or appropriate to establish and maintain its security interest in the Assets under the affected Contract, the Escrow Fund (if any) and the proceeds of any of the foregoing, including, without limitation, such financing statements with respect to personal property under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as the State. The Assets under each Contract are and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which they may be situated.

C. Pursuant to each Contract, the State is entitled to acquire on an installment purchase basis the Assets under such Contract in consideration for the obligations of the State under such Contract. During the Contract Term under each Contract, the Assets thereunder shall be used only for the purpose of performing essential governmental or proprietary functions of the State.

### **VIII. Delivery and Acceptance by the State; Escrow Funding Alternative**

A. When the Assets listed in a Contract have been delivered to the State and inspected and found to be in conformance with such Contract, the State shall immediately accept such Assets and evidence such acceptance by executing and delivering to the Lender a Certification Form to the effect that the Assets described in such Contract have been delivered to the State, have been inspected, have been found to be in conformance with such Contract and in good working order and are, therefore, fully and finally accepted by the State. Upon delivery of such executed Certification Form with respect to the affected Contract to the Lender, as between the Lender and the State, the Assets shall be deemed to have been unconditionally accepted by the State for all purposes of the applicable Contract. The Lender under the applicable Contract shall pay to the Supplier as directed by the State on the Commencement Date for such Contract the purchase price for the Assets thereunder in an amount equal to the aggregate principal portion of installment payments under the applicable Contract, unless the Lender and the State otherwise agree in the related payment schedule.

B. As an alternative to acceptance of the Assets and payment by the Lender of the purchase price therefor on behalf of the State under a Contract as provided in Section VIII.A, the Lender and the State may agree with respect to a Contract and the Assets to be acquired and financed thereunder to enter into an escrow agreement (an "*Escrow Agreement*"), dated the Commencement Date, among the Lender, the State and the escrow agent therein identified,

relating to the creation and administration of an escrow fund (an “*Escrow Fund*”). On the Commencement Date of a Contract for which the escrow funding alternative is implemented, the Lender shall deposit funds into the related Escrow Fund on such Commencement Date for payment of the costs to purchase and acquire the Assets under such Contract, and such funds (including investment earnings thereon) shall be disbursed in accordance with the applicable Escrow Agreement. Investment earnings on amounts in the Escrow Fund shall accrue to the benefit of the State.

## **IX. Use; Maintenance; Location**

A. The State shall not install, use, operate or maintain the Assets under any Contract improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the Contract. The State shall obtain all permits and licenses, if any, necessary for the installation and operation of the Assets under each Contract. In addition, the State agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body. The State agrees that it will, at the State’s own cost and expense, maintain, preserve and keep the Assets under each Contract in good working order, condition and repair. Any Assets financed under a Contract shall be eligible for maintenance by the Supplier, or its agent, upon installation and acceptance by the State. No Lender shall have any responsibility to maintain, repair or make improvements or additions to the Assets under a Contract.

B. The State shall not alter Assets under the applicable Contract or install any accessory, equipment or device on an Asset if that would impair any applicable warranty, the originally intended function or the value of the Assets. All repairs, accessories, equipment and devices furnished, affixed to or installed on any Asset, excluding temporary replacements, shall thereupon become subject to the security interest of the Lender under the related Contract.

C. Once installed, no item of the Assets (other than motor vehicles) will be moved from the location specified for it in the related Contract without the Lender’s prior written consent, which consent shall not be unreasonably withheld. Assets that consist of motor vehicles may be moved from base locations and used by the State in the conduct of its operations as the State determines necessary or desirable, without notice to or consent of the Lender at any time.

## **X. Assignment**

A. The Lender’s right, title and interest in and to a Contract (or interests therein) and any related Escrow Agreement may be assigned and reassigned by the Lender at any time and from time to time to one or more Permitted Assignees with written notice to the State that discloses the name and address of the assignee and, if the assignor Lender does not retain servicing, with the prior written approval of GS \$Mart, which approval may be withheld, conditioned or delayed in the sole discretion of GS \$Mart. Notwithstanding anything in this Section X.A to the contrary, the Lender’s right, title and interest in and to a Contract (or interests

therein) and any related Escrow Agreement shall not be assigned or reassigned by the Lender at any time in violation of the Darfur Contracting Act of 2008 (Public Contract Code Section 10475 *et seq.*), the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*), Section 10490 of the Public Contract Code as applied to the Republic of the Congo or Section 10286.1 of the Public Contract Code that generally prohibits contracts with an “expatriate corporation” or its subsidiaries. The Lender under a Contract shall provide to the State certification of the Lender’s compliance with any or all such Section of the Public Contract Code promptly after the State’s request for such certification. The State shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. For this purpose, the State appoints the initial Lender under a Contract to act as its registration agent, which appointment the Lender accepts by entering into each Contract and agrees on the State behalf to maintain such record of all assignments of the related Contract. The State and the Lender agree that any assignment of a Contract as herein provided shall not relieve the Supplier from its performance obligations with respect to the Assets under a Contract.

B. None of the State right, title and interest in, to and under any Contract or any portion of the Assets listed in any Contract or in any Escrow Fund may be assigned, subleased, or encumbered by the State for any reason without obtaining prior written consent of the Lender, which consent may be withheld, conditioned or delayed in the sole discretion of the Lender. Any purported assignment, sublease or encumbrance without the Lender’s prior written consent shall be null and void.

## **XI. No Representation or Warranties by Lender**

The State has selected both the Assets and the Supplier of the Assets under the Contract prior to soliciting rate quotes from qualified Lenders under GS \$Mart. The State agrees that the Lender, not being the Supplier, manufacturer or dealer of the Assets, has not made any, and makes no, representation or warranty, directly or indirectly, express or implied, of any kind as to any matter whatsoever, including, without limitation, as to title, fitness, quality, design, condition, capacity, suitability, durability, operation, merchantability, performance, fitness for any particular purpose or as to the material or workmanship of any item of the Assets. As between the State and the Lender, the State acquires the Assets by installment purchase under each Contract “as is,” “where is” and “with all faults.” The Lender, by entering into a Contract, specifically disclaims any and all representations and warranties of any kind. No defect in, or unfitness of, the Assets shall relieve the State of the obligation to pay installment payments or to pay any other amount or to perform any other obligation of the State under or arising from any Contract. **THE STATE SHALL LOOK SOLELY TO THE SUPPLIER AND/OR MANUFACTURER OF THE ASSETS FOR ANY CLAIM BASED UPON THE QUALITY OR CONDITION OF THE ASSETS, THEIR PERFORMANCE, SPECIFICATIONS, MERCHANTABILITY OR FITNESS FOR USE, AND THE STATE OBLIGATIONS TO THE LENDER UNDER ANY CONTRACT SHALL NOT IN ANY MANNER BE AFFECTED THEREBY, INCLUDING (WITHOUT LIMITATION) THE STATE OBLIGATIONS TO PAY THE LENDER THE INSTALLMENT PAYMENTS AND OTHER AMOUNTS PAYABLE UNDER EACH CONTRACT. THE LENDER SHALL NOT BE LIABLE TO THE STATE OR ANY THIRD-PARTY FOR**

**ANY LOSS, DAMAGE, INJURY OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY ASSETS OR BY ANY DEFECT OR DEFECTS THEREIN OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIR, SERVICING OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED. THE LENDER SHALL HAVE NO OBLIGATION TO MAINTAIN, INSTALL, ERECT, LET, ADJUST OR SERVICE THE ASSETS UNDER ANY CONTRACT. THE LENDER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING.**

## **XII. Tax Covenants and Representations**

A. The State agrees that it will not take any action that would cause the interest portion of installment payments under any Contract to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest portion of installment payments under a Contract to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. The State agrees to (i) complete and file in a timely manner an information reporting return with respect to each Contract as required by Section 149(e) of the Code; (ii) rebate an amount equal to excess earnings on any Escrow Fund created with respect to a Contract to the federal government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code; and (iii) so long as any installment payments under a Contract remain unpaid, moneys on deposit in any Escrow Fund will not be used in a manner that will cause such Contract to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code.

B. The State represents to the Lender on the Commencement Date of each Contract that (i) neither the State nor any agency or unit of the State has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Assets under the related Contract; (ii) the State has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly installment payments under a Contract; (iii) the State does not intend to sell or otherwise dispose of the Assets or any interest therein prior to the conclusion of the Contract Term of a Contract; (iv) the payment of the installment payments or any portion thereof under each Contract is not directly or indirectly (a) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property or (b) on a present value basis, derived from payments (whether or not to the State) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit; (v) the Assets will not be used, directly or indirectly, in any activity carried on by any person other than a state or local government unit; (vi) no portion of the purchase price for the Assets will be used, directly or indirectly, to make or finance loans to any person other than the State; (vii) the State has not entered into any management or other service contract with respect to the use and operation of

the Assets; (viii) the State has entered into, or will enter into, each Contract for the purpose of purchasing and acquiring the Assets and not for the purpose of refinancing any outstanding obligation of the State more than 90 days in advance of its payment or prepayment date; and (ix) the purchase price for the Assets has been or will be paid directly by the Lender to the Supplier thereof, and no portion of the purchase price for the Assets has been or will be paid to the State as reimbursement for any expenditures paid by the State more than 60 days prior to the Commencement Date of the applicable Contract or, if earlier, more than 60 days prior to any official action taken to evidence an intent to finance the Assets on a federally tax-exempt basis.

C. The Lender and the State intend that each Contract constitute a “conditional sale” for federal income tax purposes and, therefore, the Lender and the State intend that the State be considered the owner of the Assets under each Contract for federal income tax purposes.

### **XIII. Lender’s Representations**

In connection with entering into a Contract, the Lender hereby represents and warrants to the State that:

A. The Lender is a lender that regularly extends credit by making or purchasing loans in the form of state and local government obligations (such as a Contract); has knowledge and experience in financial and business matters that make it capable of evaluating the risks associated with entering into the Contract; and has the ability to bear the economic risk of extending the credit evidenced by the Contract.

B. The Lender has conducted its own investigation of the financial condition of the State, the purpose for which the Contract is being entered into and the source of payment under the Contract, and has obtained such information regarding the Contract and the State and its operations and financial condition as the Lender deems necessary to make an informed investment decision with respect to entering into the Contract.

C. The Lender is entering into the Contract for the purpose of making a loan for its own account and without any present intention of distributing or selling any interest therein or portion thereof unless otherwise disclosed in writing to the State on or prior to the Commencement Date under the Contract, *provided* that the Lender retains the right at any time to assign the Contract or any interest therein or portion thereof, subject to compliance with the requirements of Section X.A.

D. In accordance with Section II.C, the Lender understands and intends that the State’s obligation to pay installment payments under a Contract with the Lender constitutes a current expense of the State payable solely from funds budgeted and appropriated for that purpose, shall be subject to termination upon the occurrence of a Non-Appropriation Event pursuant to Section III and shall not in any way be construed to be a debt of the State in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the State, nor shall

anything in such Contract constitute a pledge of the full faith and credit or taxing power of the State or a pledge of the general tax revenues, funds or monies of the State.

#### **XIV. Liens, Taxes, Other Governmental Charges and Utility Charges; Insurance**

A. The State shall at all times protect and defend, at its own cost and expense, its title in and to the Assets from and against all claims, liens and legal processes of its creditors and shall not create, assume, or voluntarily suffer to exist, any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any Assets, except those created by a Contract.

B. The State shall pay promptly all applicable taxes and other governmental charges when levied or assessed upon any Assets, or Asset operation or use, or upon the Lender, in connection with a Contract (exclusive of taxes based on the Lender's net income).

C. The State shall pay all utility and other charges incurred in the use and maintenance of the Assets as the same may become due.

D. The State self-insures against loss or damage to, or liability arising from, the use of the Assets under a Contract under which the State bears the entire risk of loss, theft, destruction of or damage to the Assets or any part thereof from any cause whatsoever during the Contract Term, which the Lender accepts as sufficient for the Lender's purposes by entering into the Contract.

#### **XV. 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 installment payments and other amounts under the Contract for the affected Assets, the State Agency shall, subject to Section III and upon demand by the Lender, within 60 days of such demand, pay to the Lender a sum equal to the principal amount attributable to the principal portion of installment payments relating to the affected Assets *plus* accrued interest to the prepayment date, which shall constitute a partial or total prepayment of installment payments under the affected Contract. If the damage to or destruction of the affected Assets is such that the Assets may be replaced or restored to the condition described in Section IX and in lieu of any prepayment under the next preceding sentence, the State shall repair and replace such Assets, but only from funds budgeted and appropriated for that purpose. The State shall advise the Lender promptly in writing whether the State intends to repair and replace the affected Assets in lieu of any such prepayment and shall advise the Lender promptly after such repair and replacement is completed.

## **XVI. Defaults**

Any of the following events shall constitute an “Event of Default” under a Contract:

A. The State shall fail to pay, in full, any sum payable by the State when due under such Contract following the Lender’s written notice of such failure that is delivered to the using State Agency and GS \$Mart.

B. The State shall fail to maintain self-insurance as required in Section XIV.D.

C. The State shall, for more than 30 days after the Lender has notified the State in writing, fail to observe and perform any covenant, condition or agreement contained in such Contract on its part to be observed or performed, other than as referred to in A. and B. above.

D. Any bankruptcy, insolvency, moratorium or similar proceeding of any character shall be instituted by the State.

E. Any statement, representation or warranty by the State in or pursuant to any Contract shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made.

## **XVII. Remedies on Default**

If an Event of Default shall have occurred and continues under a Contract, the Lender may to the extent permitted by law:

A. Recover the balance of the amount owed under such Contract to the end of the then current Original Term or Renewal Term.

B. Enter any premises where the Assets under the affected Contract may be housed or otherwise located, subject to the State’s reasonable security requirements at the site, and take possession of (and title to) such Assets or render them unusable or require the State at the State expense to promptly return any or all of such Assets to the possession of the Lender at such place within the State of California as the Lender shall specify. Upon repossession or return of the Assets, the Lender will dispose of the Assets in a commercially reasonable manner. Any proceeds of the disposition shall be applied to amounts owed by the State for the Assets and any excess shall be paid to the State.

C. The Lender may terminate any Escrow Agreement then in effect with respect to the affected Contract and apply any moneys and investments then held in the Escrow Fund thereunder to the installment payments scheduled under the affected Contract.

D. Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under such Contract or as a secured party in any or all of the Assets and any related Escrow Fund.

E. Pursue any other remedy permitted at law or in equity.

No remedy herein conferred upon or reserved to the Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under a Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

### **XVIII. Closing Documents**

The State and the Lender will cooperate in reviewing and executing ministerial documentation reasonably required by the Lender in entering into each Contract, including the purchase contract and any resultant purchase order, as well as each of the following closing documents.

A. To satisfy the requirements of Section 14936(a)(3) of the Government Code with respect to a Contract, the State and the Lender shall agree on a bond counsel firm of nationally recognized standing to deliver its written opinion to the State on the Commencement Date for such Contract to the effect that the interest portion of installment payments is excludable from gross income of the owner of such Contract for federal income tax purposes, subject to the State compliance with its covenants regarding maintenance of federal tax-exemption.

B. A signed Certification Form in form and substance customarily used by GS \$Mart.

C. Opinion of Counsel concerning Contract Validity.

D. Copy of completed and executed Internal Revenue Service Form 8038-G or Form 8038-GC, as applicable, and evidence of filing (when available).

E. Such other documents as the State or the Lender may reasonably request, including any certifications that the State may request the Lender to provide relating to the Lender's compliance with Section of the Public Contract Code as provided in Section X.A.