**GS $Mart – Alpha Plan (Tax-Exempt)
Terms and Conditions, Version 6.0,
Dated March 2, 2019**

This document prescribes the provisions, representations, covenants, terms and conditions applicable to the tax-exempt installment purchase financing by the State Agency (as defined herein) of the Asset(s) (as defined herein) which are eligible for tax-exempt financing through the Golden State Financial Marketplace (“*GS $Mart*”) Program, as structured, administered and maintained by the Department of General Services (the “*Department*”) of the State of California (the “*State*”) under Section 14930 *et seq.* of the California Government Code, and under the Internal Revenue Code of 1986, as amended (the “*Code*”). The Department is authorized to act on behalf of any State Agency with respect to financing of the Asset(s) through the GS $Mart Program.

For the tax-exempt installment purchase financing of the Asset(s) by the State Agency through the GS $Mart Program, the Department, in conjunction with the State Agency, has prepared and emailed to prequalified lenders participating in the GS $Mart Program a Request for Rate Quote (“*RFRQ*”) soliciting a rate quote for the financing based on the description of the Asset(s) to be financed and proposed financing terms. By submitting a response to the RFRQ for the financing of the Asset(s) and being selected by the State Agency as Lender (as defined herein), the Lender has agreed to enter into the Contract (as defined herein).

1. **Definitions**

In addition to those terms defined elsewhere herein, the following terms have the following assigned meanings for purposes of the Contract:

“*Asset(s)*”means the equipment, software, maintenance, warranty, service and similar items described in the RFRQ and the Order(s) financed by the Lender pursuant to the Contract.

“*Certification Form*” means the GS $Mart – Alpha Plan (Tax-Exempt) Certification Form relating to the Asset(s) executed by the State Agency, the Lender and the Department.

“*Commencement Date*” means the date interest commences to accrue under the Contract, which is the first date on which the Lender, in exchange for execution and delivery of the Contract, at the direction of the State Agency and on its behalf, either (a) pays the Supplier the costs of all the Asset(s) under the Order(s), (b) deposits funds sufficient to pay the Supplier the cost of all the Asset(s) into an Escrow Fund as provided in Section VIII.B, or (c) pays the Supplier the costs of the portion of the Asset(s) and deposits funds sufficient to pay the Supplier the costs of the remaining portion of the Asset(s) into an Escrow Fund as provided in Section VIII.B.

“*Contract*”means the financing order from the State Agency to the Lender, including amendments thereto, relating to the Asset(s), which references the Order(s) and incorporates by reference as if fully set forth therein (a) the bid and payment schedule, schedule provisions and notes provided by the Lender in response to the RFRQ and accepted by the State Agency, (b) these GS $Mart – Alpha Plan (Tax-Exempt) Terms and Conditions, Version 6.0, dated March 2, 2019, (c) the Certification Form and (d) any applicable riders.

“*Contract Term*” means the term of the Contract, including the Original Term and each Renewal Term.

“*Lender*” means (a) the entity selected by the State Agency to provide financing for the Asset(s) pursuant to the Contract, or (b) the Permitted Assignee from and after assignment of the Contract pursuant to Section X.A, and any successors to such Permitted Assignee.

“*Maximum Contract Term*”means the Original Term and all Renewal Terms for which the Contract could be extended as shown in the payment schedule included in the Contract.

“*Order(s)*” means all orders placed for the Asset(s) to be delivered to the State Agency, including amendments thereto, whether ordered by the State Agency under its delegated purchasing authority or by the Department on behalf of the State Agency. Orders may be in the form of a purchase order, a contract or any other form acceptable to the Department.

“*Original Term*” means the period from the Commencement Date until the end of the State’s fiscal year in effect at the Commencement Date.

“*Permitted Assignee*” means (a) an affiliate of the Lender, (b) a bank, insurance company or similar financial institution or its affiliates or (c) any other entity approved by the Department as an assignee of the Lender, *provided* that the assignee is an entity that the assigning 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 period for which the term of the Contract is extended upon annual appropriation by the California Legislature as provided herein, each such period having a duration that is coextensive with the State’s fiscal year unless the Contract is terminated prior to the end of such fiscal year.

“*Return Date*” means the last day of the fiscal year for which appropriations were made for the installment payments due under the Contract.

“*State Agency*” means the State Agency, as defined in Section 14938 of the California Government Code, acquiring and financing the Asset(s).

“*Supplier*” means the entity or entities that sells and delivers the Asset(s) to the State Agency under the Order(s). There may be one or more Suppliers under the Contract.

1. **Contract Term; Installment Payments; Nature of Obligation**
	1. The State Agency and the Lender enter into the Contract on its Commencement Date to finance the acquisition and installment purchase of the Asset(s). Neither the State Agency nor the Lender has any obligation to pay a Supplier for any Asset(s) before the State Agency accepts the Asset(s). The State Agency is not obligated to pay the Lender any interest charges until the Commencement Date and interest may not begin to accrue with respect to the Contract until the Commencement Date. The Contract Term may be extended, subject to annual appropriation by the California Legislature or earlier termination pursuant to Section III, Section VI.A or Section XV, at the end of the Original Term and each succeeding Renewal Term, for the next succeeding Renewal Term, up to the Maximum Contract Term. The extension of the Contract Term for a successive Renewal Term will be evidenced by, and the Contract Term will be automatically extended for such Renewal Term upon appropriation by the California Legislature of amounts sufficient to pay installment payments and other amounts payable under the Contract during the State’s next succeeding fiscal year. The terms and conditions of the Contract during each Renewal Term will be the same as the terms and conditions during the Original Term, except that the installment payments during each Renewal Term shall be as provided in the payment schedule included in the Contract. Neither the State, the State Agency nor the Department has any obligation under the Contract after the first to occur of the following: (a) the date on which the Contract is terminated pursuant to Section III for non-appropriation, (b) the date on which the Contract is terminated pursuant to Section II.B after all installment payments and any other amounts due under the Contract have been paid in full in accordance with the payment schedule included in the Contract, or (c) the date on which the Contract is terminated pursuant to Section VI.A or Section XV upon prepayment in full of installment payments and any other amounts due under the Contract.
	2. The State Agency shall promptly pay installment payments as described in the payment schedule included in the Contract, in lawful money of the United States of America, to the Lender, on the dates and in the amounts as provided in the payment schedule included in the Contract. Installment payments consist of principal and interest portions as detailed in the payment schedule included in the Contract. Except as provided in Section III, the State Agency’s obligations to make installment payments under the Contract and to perform and observe the other covenants and agreements contained in the Contract are absolute and unconditional in all events without abatement, diminution, deduction, set‑off or defense. The Contract shall terminate upon payment in full of all scheduled installment payments and any other amounts due under the Contract.
	3. The Lender and the State Agency understand and agree that (a) the State Agency’s obligation to pay installment payments under the Contract constitutes a current expense payable solely from lawfully available, appropriated funds, (b) the obligation of the State Agency under the Contract is not to be construed in any way as a debt of the State, the State Agency, or the Department in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the State, the State Agency, or the Department, and (c) nothing in the Contract constitutes 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.
2. **Non‑Appropriation**

The State Agency is obligated only to pay the installment payments and other amounts under the Contract as may lawfully be made during the Contract Term from funds appropriated by the California Legislature. The State Agency incurs no obligation under the Contract for any period of time for which funds are not 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 the Contract during the next succeeding Renewal Term (a “*Non‑Appropriation Event*”), then (a) the State Agency shall use reasonable efforts to deliver written notice of such Non‑Appropriation Event to the Lender, the State Treasurer’s Office and the State Department of Finance at least 15 days prior to the end of the then current Original Term or Renewal Term, but failure to deliver such notice will not extend the Contract Term; (b) on or before the Return Date, the State Agency shall cease use of the Asset(s) and peaceably remove and deliver all (but not less than all) of the Asset(s) to the Lender in the condition required by Section IX.A, at a reasonable location in the State to be specified by the Lender at the expense of the State Agency (from legally available funds); and (c) on the Return Date, the Contract will terminate without penalty or expense to the State or State Agency, *provided* that the State Agency shall pay all installment payments and other amounts payable under the Contract for which funds have been appropriated. If an Escrow Fund has been established for the Contract, upon occurrence of a Non-Appropriation Event, the Lender may terminate the related Escrow Agreement and apply any moneys and investments then held in the Escrow Fund to the installment payments scheduled under the Contract. A Non-Appropriation Event is not an Event of Default.

1. **Best Efforts for Funding**

The State Agency currently intends, subject to the rights of the State and the California Legislature under Section III, to extend the Contract Term for the Maximum Contract Term and to pay all scheduled installment payments and other amounts due under the Contract. The State Agency shall use its best efforts to obtain funding for the Asset(s) and its payment obligations under the Contract, *however,* the decision whether or not to appropriate funds to extend the Contract Term for any Renewal Term is within the sole discretion of the California Legislature.

1. **Opinion of Counsel Concerning Contract Validity**

The Lender, on or before the Commencement Date, shall receive a signed copy of a written opinion of counsel to the State Agency or the Department, as determined by the Department, addressed to the Director or appropriate Deputy Director of the Department and the Director of the State Agency to the effect that:

* 1. the Contract and the Order(s) have been duly authorized, executed and delivered by the State Agency acting through its duly qualified elected or appointed officers or agents in accordance with State law; and
	2. the Contract and the Order(s) are legal, valid and binding obligations of the State Agency.
1. **Prepayment Option; Prepayment Price; No Termination for Convenience**
	1. Except as provided in Section VI.B, the State Agency may elect to prepay all or any portion of the unpaid balance of the Contract at any time from lawfully available, appropriated funds, 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 the Contract (such premium to be clearly identified in the payment schedule included in the Contract) if the State Agency, or the Department on behalf of the State Agency, so agrees. The Lender shall apply any partial prepayment to reduce the principal portion of installment payments under the Contract in inverse order of the scheduled installment payments. Within 30 days after any such partial prepayment, the Lender shall prepare and deliver to the Department a revised payment schedule that shows the remaining installment payments after giving effect to such prepayment. The Contract shall terminate upon prepayment in full of installment payments and any other amounts due under the Contract. The Contract is also subject to prepayment in the event of destruction of the Asset(s) in accordance with Section XV.C.
	2. If in the RFRQ the Department identifies the Asset(s) as including computer‑related services, the Lender and State Agency agree that the principal portion of the installment payments under the Contract relating to Asset(s) comprising computer-related services is not subject to prepayment until such time as the computer-related services have been provided. The principal portion of the installment payments under the Contract relating to Asset(s) other than computer-related services may be prepaid in whole or in part as provided in Section VI.A. At the direction of the Department, the Lender shall, in its bid and payment schedule provided in response to the RFRQ, clearly identify any principal portion of the installment payments not subject to prepayment.
	3. Notwithstanding any other provision of the Contract, the State Agency may not terminate the Contract or the installment payments due under the Contract for convenience. Termination of the Contract upon the occurrence of a Non‑Appropriation Event will not be deemed a termination for convenience.
2. **Title and Security Interest; Public Purpose of the Asset(s)**
	1. During the Contract Term, and so long as the State Agency is not in default under Section XVI, all right, title and interest in and to the Asset(s) will be vested in the State Agency immediately upon its acceptance of the Asset(s) in the manner set forth in Section VIII, subject to the terms and conditions of the Contract. Upon the occurrence of an Event of Default as provided in Section XVI or upon termination of the Contract pursuant to Section III, legal title to the Asset(s) will, at the option of the Lender, pass to the Lender, and the State Agency shall have no further interest therein except for any excess disposition proceeds as provided in Section XVII.B. In addition, upon the occurrence of an Event of Default or upon termination of the Contract pursuant to Section III (a) the State Agency shall execute and deliver to the Lender such documents as the Lender may reasonably request to evidence the passage of such legal title to the Lender and the termination of the State Agency’s interests therein, and (b) upon request by the Lender, the State Agency shall deliver possession of the Asset(s) to the Lender in accordance with Section III or Section XVII, as applicable. Upon payment of all amounts due and owing under the Contract in accordance with Section II.B or prepayment in whole or in part of affected Asset(s) under Section VI.A or Section XV, the security or other interest of the Lender in the Asset(s) or such affected Asset(s) will terminate, and the Lender shall execute and deliver to the Department and State Agency such documents as the Department and State Agency may reasonably request to evidence the termination of the security or other interest of the Lender in the Asset(s) or such affected Asset(s).
	2. To secure the payment and performance of all of the State Agency’s obligations under the Contract, upon entering into the Contract on its Commencement Date, the State Agency grants to the Lender a security interest constituting a first and exclusive lien on (a) the Asset(s) (other than proprietary software licenses), (b) moneys and investments held from time to time any Escrow Fund established for the Contract, and (c) any and all proceeds of any of the foregoing. The State Agency agrees to execute (to the extent required) and deliver such additional documents as may be required or advisable under applicable State law, in form reasonably satisfactory to the Lender, which the Lender deems necessary or appropriate to establish and maintain its security interest in the Asset(s), the moneys and investments held from time to time in any Escrow Fund and the proceeds of any of the foregoing, including, without limitation, such financing statements with respect to personal property under Division 9 of the California Commercial Code (commencing at section 9101) and treating such Division 9 as applicable to the State Agency. The State Agency and the Lender agree that all the Asset(s) are and will at all times be and remain personal property notwithstanding that the Asset(s) or any part thereof may be or may hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plater, nails, bolts, screws or otherwise. Nothing in this Contract shall constitute or be construed as creating a mortgage, charge, assignment, transfer, pledge, lien or encumbrance upon any real property in or on which the Asset(s) are constructed, installed or otherwise situated, and no financing statement or any similar security filing made or filed by Lender to establish or maintain a security interest in the Asset(s) shall include a metes and bounds or other legal description of any real property.
	3. Pursuant to the Contract, the State Agency is entitled to acquire the Asset(s) on an installment purchase basis in consideration for the obligations of the State Agency under the Contract. During the Contract Term, the State Agency shall use the Asset(s) only for the purpose of performing essential governmental or proprietary functions of the State.
3. **Delivery and Acceptance by the State; Escrow Funding Alternative; Costs of Issuance**
	1. When the Asset(s) have been delivered to the State Agency and inspected and found to be in conformance with the Order(s), the State Agency shall immediately accept such Asset(s) and evidence such acceptance by executing and delivering to the Lender a Certification Form to the effect that the Asset(s) have been delivered to the State Agency, inspected, found to be in conformance with the Order(s) and are in good working order and are, therefore, fully and finally accepted by the State Agency. Upon delivery of such executed Certification Form, the Asset(s) will be deemed to have been unconditionally accepted by the State Agency for all purposes of the Contract. The Lender shall then pay to the Supplier, at the direction of the State Agency and on its behalf, the purchase price for the Asset(s) as set forth in the Order(s) in an amount equal to the aggregate principal portion of installment payments under the Contract, unless the Lender and the State Agency otherwise agree in the payment schedule included in the Contract. The date of such payment is the Commencement Date.
	2. As an alternative to acceptance of the Asset(s) and payment by the Lender of the purchase price therefor on behalf of the State Agency as provided in Section VIII.A, the Lender and the Department, acting on behalf of the State Agency, and an escrow agent, if any, may enter into an escrow agreement (an “*Escrow Agreement*”) relating to the creation and administration of an escrow fund (an “*Escrow Fund*”) to be used to pay the purchase price for the Asset(s) to the Supplier, as set forth in the Order(s), on one or more future dates the first of which is not later than 18 months after the date such Escrow Fund is established. If this escrow funding alternative is implemented, the State Agency shall execute and deliver to the Lender a Certification Form acknowledging the creation of the Escrow Agreement and funding of the Escrow Fund. The Lender shall then deposit funds into the Escrow Fund in accordance with the Escrow Agreement. The date such deposit is made is the Commencement Date. All escrowed funds (including investment earnings thereon) will be disbursed in accordance with the Escrow Agreement. Investment earnings on amounts in an Escrow Fund will accrue to the benefit of the State Agency. Acceptance of any Asset(s), the costs of which will be paid for from an Escrow Fund, will be determined in accordance with the provisions of the Escrow Agreement, *provided* that any request for a distribution or payment from an Escrow Fund by the State Agency will be conclusive evidence of acceptance of the Asset(s) for which such distribution or payment is made. As set forth in Section XII, the Department, on behalf of the State Agency, agrees to rebate an amount equal to excess earnings on any Escrow Fund created with respect to the 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. Any Escrow Agreement must provide for the maintenance of records relevant to any such rebate determinations or delivery of such records to the Department.
	3. The Certification Form may reflect partial acceptance of the Asset(s) and partial funding of an Escrow Fund.
	4. To the extent permitted by law, the State Agency may finance, pursuant to the Contract, any costs incurred by the State Agency in connection with the acquisition of the Asset(s) and the execution and delivery of the Contract *provided* such costs qualify as “issuance costs” within the meaning of Section 147(g) of the Code. Issuance costs may include but are not limited to fees for the services of counsel relating to the delivery of the federal tax-exemption opinion with respect to the interest component of installment payments under the Contract and fees for the services of any escrow agent. The Lender shall pay any issuance costs financed pursuant to the Contract or otherwise agreed to be paid by the Lender, at the direction and on behalf of the State Agency, as set forth in the Contract.
4. **Use; Maintenance; Location**
	1. The State Agency may not install, use, operate or maintain the Asset(s) improperly, in violation of any applicable law or in a manner contrary to that contemplated by the Contract. The State Agency shall obtain all permits and licenses, if any, necessary for the installation and operation of the Asset(s). The State Agency shall comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body. The State Agency shall, at its own cost and expense, maintain, preserve and keep the Asset(s) in good working order, condition and repair, ordinary wear and tear excepted. Lender does not have any responsibility to maintain, repair or make improvements or additions to the Asset(s).
	2. The State Agency may not alter Asset(s) or install any accessory, equipment or device on the Asset(s) if such alteration or installation would impair any applicable warranty, the originally intended function or the value of the Asset(s). All repairs, accessories, equipment and devices furnished, affixed to or installed on any Asset(s), excluding temporary replacements, will thereupon become subject to the security interest of the Lender under the Contract.
	3. Once installed, no Asset(s) (other than motor vehicle Asset(s)) may be moved by the State Agency from the location specified for it in the Contract without the Lender’s prior written consent, which consent may not be unreasonably withheld. Motor vehicle Asset(s) may be moved from base locations and used by the State Agency in the conduct of its operations as the State Agency determines necessary or desirable, without notice to or consent of the Lender at any time.
5. **Assignment**
	1. The Lender’s right, title and interest in and to the Contract (or interests therein), the Asset(s) and any related Escrow Fund may be assigned and reassigned by the Lender at any time and from time to time to one or more Permitted Assignees upon written notice to the Department and the State Agency disclosing the name and address of the Permitted Assignee and, if the assignor Lender does not retain servicing, only with the prior written approval of the Department and the State Agency, which approval may not be unreasonably withheld. Notwithstanding anything in this Section X.A to the contrary, the Lender’s right, title and interest in and to the Contract (or interests therein), the Asset(s), and any related Escrow Fund may 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 shall provide to the Department certification of the Lender’s compliance with any or all such sections of the Public Contract Code promptly after the Department’s request for such certification. The Department and/or State Agency 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 Department and State Agency hereby appoint the initial Lender under the Contract to act as registration agent, which appointment the Lender hereby accepts by entering into the Contract and the Lender shall, on behalf of the Department, and State Agency, maintain such record of all assignments of the Contract; *provided* that such appointment may be assigned to a Permitted Assignee with the prior written approval of the Department and the State Agency, which approval may not be unreasonably withheld. The Department and State Agency and the Lender agree that any assignment of the Contract as herein provided does not relieve the Supplier from its performance obligations with respect to the Asset(s) under the Order(s).
	2. None of the State Agency’s right, title and interest in and to the Contract, the Asset(s) and any related Escrow Fund may be assigned, subleased, or encumbered by the State Agency 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.
6. **No Representations or Warranties by Lender Regarding the Asset(s)**

The State Agency has selected both the Asset(s) and the Supplier of the Asset(s) under the Order(s) prior to working with the Department to prepare the RFRQ. The State Agency agrees that the Lender, not being the Supplier, manufacturer or dealer of the Asset(s), 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 Asset(s). As between the State Agency and the Lender, the State Agency acquires the Asset(s) by installment purchase under the Contract “as is,” “where is” and “with all faults.” The Lender, by entering into the Contract, specifically disclaims any and all representations and warranties of any kind not expressly included in the Contract. No defect in, or unfitness of, the Asset(s) will relieve the State Agency of its obligation to make installment payments or to pay any other amount or to perform any other obligation of the State Agency under or arising from the Contract. **The State Agency shall look solely to the Supplier and/or manufacturer of the Asset(s) for any claim based upon the quality or condition of the Asset(s), their performance, specifications, merchantability or fitness for use, and the State Agency’s obligations to the Lender under the Contract will not in any manner be affected thereby, including (without limitation) the State Agency’s obligations to pay the Lender the installment payments and other amounts payable under the Contract. The Lender is not liable to the State, the Department, the State Agency or any third‑party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any Asset(s) 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 has no obligation to maintain, install, erect, let, adjust or service the Asset(s). The Lender is not liable for any indirect, special or consequential damages howsoever arising.**

1. **Tax Covenants and Representations**
	1. The State Agency agrees that it will not take any action that would cause the interest portion of installment payments under the 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 the 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 Department, on behalf of the State Agency, agrees to (a) complete and file in a timely manner an information reporting return with respect to the Contract as required by Section 149(e) of the Code; (b) rebate an amount equal to excess earnings on any Escrow Fund created with respect to the 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 (or cause the escrow agent to maintain such records); and (c) so long as any installment payments under the Contract remain unpaid, not use moneys on deposit in any Escrow Fund in a manner that will cause the Contract to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code. The Department and the State Agency shall execute a Tax Certificate (the “Tax Certificate”) in connection with funding of the Contract certifying the State Agency’s expectations as of the issue date and stating the facts and estimates that form the basis for the State Agency’s expectations. The State Agency and the Department agree to comply with their respective covenants contained in the Tax Certificate.
	2. The Lender and the State Agency intend that the Contract constitute a “conditional sale” for federal income tax purposes and, therefore, the Lender and the State Agency intend that the State Agency be considered the owner of the Asset(s) for federal income tax purposes.
2. **Lender’s Representations**

By submitting a response to the RFRQ for the financing of the Asset(s) and being selected by the State Agency as Lender, the Lender has agreed to enter into the Contract for the installment purchase financing of the Asset(s) and be bound by its terms. In addition to the other covenants and representations of the Lender in the Contract, the Lender represents and warrants to the State Agency as follows:

* 1. The Lender acknowledges that the State Agency is the owner of the Asset(s) and, as such, the Lender will not take any tax benefits as the owner of the Asset(s), including but not limited to, depreciation.
	2. 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 the 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.
	3. The Lender has conducted its own investigation of the financial condition of the State and the State Agency, 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 the State Agency and their operations and financial condition as the Lender deems necessary to make an informed investment decision with respect to entering into the Contract.
	4. 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 Department and State Agency on or prior to the Commencement Date, *provided* that the Lender retains the right at any time to assign the Contract or any interest therein or portion thereof to a Permitted Assignee, subject to compliance with the requirements of Section X.A.
	5. In accordance with Section II.C, the Lender understands and intends that the State Agency’s obligation to pay installment payments under the Contract with the Lender constitutes a current expense payable solely from funds lawfully available, appropriated funds, and that the Contract is subject to termination upon the occurrence of a Non‑Appropriation Event pursuant to Section III, not in any way to be construed as a debt of the State, the Department or the State Agency in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the State, and nothing in the Contract constitutes 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.
	6. The Lender understands and agrees that neither the State, the Department, nor the State Agency has continuing disclosure obligations under Rule 15c2-12 of the Securities and Exchange Commission with respect to the Contract.
1. **Liens; Taxes; Other Governmental Charges and Utility Charges**
	1. The State Agency shall at all times protect and defend, at its own cost and expense, its title in and to the Asset(s) 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 Asset(s), except those created by the Contract.
	2. The State Agency shall pay promptly all applicable taxes and other governmental charges when levied or assessed upon any Asset(s), or Asset(s) operation or use, or upon the Lender, in connection with the Contract (exclusive of taxes based on the Lender’s net income).
	3. The State Agency shall pay all utility and other charges incurred in the use and maintenance of the Asset(s) as the same may become due.
2. **Destruction of the Asset(s); Insurance and Risk-Management**
	1. The State Agency bears the risk of loss, theft, destruction of or damage to any Asset(s) constituting tangible personal property from any cause whatsoever during the Contract Term. However, the State Agency is not funded by appropriations to establish or maintain any reserves to immediately cover these risks. In the event of loss, theft, destruction of or damage to the Asset(s), if lawfully available funds of the State Agency are insufficient to accomplish the purpose of Section XV.B or Section XV.C, the State Agency shall act promptly using reasonable best efforts to secure an appropriation, in accordance with State laws and procedures, in an amount sufficient to accomplish the purpose of the applicable section.
	2. In the event that any Asset(s) constituting tangible personal property are lost, stolen, damaged, destroyed or otherwise rendered unfit for use from any cause whatsoever prior to the payment in full of all the installment payments and other amounts due under the Contract, the State Agency shall have the option to continue to pay all scheduled installment payments and other amounts due under the Contract and (i) restore the affected Asset(s) to good working order, condition and repair, ordinary wear and tear excepted, or (ii) replace the Asset(s), *provided* that any replacement Asset(s) shall, at the time of replacement, be of a value not less than the value of the affected Asset(s) immediately prior to such replacement. Any repairs or replacements will be substituted into the Contract automatically without need for a Contract amendment or consent of the Lender; however, the State Agency or Department shall advise the Lender promptly in writing of any decision to exercise its option to restore or replace the affected Asset(s) and continue to pay all scheduled installment payments and other amounts due under the Contract pursuant to this Section XV.B.
	3. If the State Agency elects not to exercise its option under Section XV.B in the event any Asset(s) constituting tangible personal property are lost, stolen, damaged, destroyed or otherwise rendered unfit for use from any cause whatsoever prior to the payment in full of all the installment payments and other amounts due under the Contract, the State Agency shall, subject to the limitations and procedures in Section XV.A and upon request of the Lender, prepay to the Lender a sum equal to the principal amount attributable to the principal portion of installment payments relating to the affected Asset(s) plus accrued interest to the prepayment date, which prepayment will constitute a full or partial prepayment of installment payments under the Contract. The Lender shall apply any partial prepayment to reduce the principal portion of installment payments under the Contract in inverse order of the scheduled installment payments. Within 30 days after any such partial prepayment, the Lender shall prepare and deliver to the Department a revised payment schedule that shows the remaining installment payments after giving effect to such prepayment. The Contract shall terminate upon prepayment in full of installment payments and any other amounts due under the Contract.
	4. Motor vehicle Asset(s) will be self-insured against liability arising from their use pursuant to the motor vehicle self-insurance program administered by the Department’s Office of Risk and Insurance Management (“*ORIM*”). The ORIM program provides liability-only coverage for the State Agency and its salaried employees who operate covered self-propelled land vehicles on State business, but does not provide coverage for replacement of damaged, lost or destroyed motor vehicle Asset(s) or coverage for liability arising from use of non-motor vehicle Asset(s). The ORIM program is funded, in part, by appropriations to establish or maintain reserves therefor.
	5. The Lender hereby accepts the form of insurance and risk-management described in this Section XV as sufficient for the Lender’s purposes by entering into the Contract.
	6. If the State Agency, in its sole discretion, elects to maintain with respect to all or a portion of the Asset(s), insurance coverage supplementary to the form of insurance and risk-management described above, the State Agency shall provide a certificate of such supplementary insurance coverage to the Lender. Nothing in this Section XV.F requires the State Agency to maintain insurance coverage supplementary to the form of insurance and risk-management described elsewhere in this Section XV.
3. **Defaults**

Any of the following events will constitute an “Event of Default” under the Contract following the Lender’s delivery to the State Agency and the Department of written notice of the occurrence and the State Agency’s failure to cure within 30 days of receipt of said notice or a longer period as agreed to by the Lender:

* 1. If the State Agency fails to pay, in full, any sum payable by the State Agency when due under the Contract. A Non-Appropriation Event is not an Event of Default.
	2. If the State Agency fails to observe and perform any covenant, condition or agreement contained in the Contract on its part to be observed or performed, other than as referred to in A above.
	3. If any bankruptcy, insolvency, moratorium or similar proceeding of any character is instituted by the State.
	4. If any statement, representation or warranty by the State Agency in or pursuant to the Contract proves to have been false, incorrect, misleading or breached in any material respect as of the date such statement, representation or warranty was made.
1. **Remedies on Default**

If an Event of Default has occurred and continues beyond any applicable cure period, the Lender may to the extent permitted by law:

* 1. Recover the balance of the amount owed under the Contract to the end of the then current Original Term or Renewal Term.
	2. Enter any premises where the Asset(s) may be housed or otherwise located, subject to the State Agency’s reasonable security requirements at the site, and take possession of (and title to) such Asset(s) or render them unusable or require the State Agency at its expense (from legally available funds) to promptly return any or all of such Asset(s) to the possession of the Lender at a reasonable location in the State to be specified by the Lender. Upon such repossession or return of the Asset(s), the Lender will dispose of the Asset(s) in a commercially reasonable manner. The Lender shall apply any proceeds of a disposition of the Asset(s) in the following order: (i) to the reasonable costs and expenses incurred by the Lender in repossessing and disposing of the Asset(s), (ii) to installment payments then due under the Contract but not previously paid, (iii) to installment payments coming due during the then current Original Term or Renewal Term, and (iv) to the sum of the principal portion of installment payments then outstanding under the Contract; and any excess shall be paid by the Lender to the State Agency.
	3. The Lender may terminate any Escrow Agreement then in effect with respect to the Contract and shall apply any moneys and investments then held in the Escrow Fund in the following order: (i) to the reasonable costs and expenses incurred by the Lender to affect such termination, (ii) to installment payments then due under the Contract but not previously paid, (iii) to installment payments coming due during the then current Original Term or Renewal Term, and (iv) to the sum of the principal portion of the installment payments then outstanding under the Contract; and any excess shall be paid by the Lender to the State Agency.
	4. Take whatever action at law or in equity may appear necessary or desirable to enforce its rights under the Contract or as a secured party in any or all of the Asset(s) and any related Escrow Fund.
	5. 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 will be cumulative and will be in addition to every other remedy given under the Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default will 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.

1. **Closing Documents**

The Department, State Agency and the Lender agree to cooperate in reviewing and executing documentation reasonably required by the Department, the State Agency or the Lender to consummate the transaction contemplated by the Contract, including the following closing documents:

* 1. To satisfy the requirements of Section 14936(a)(3) of the California Government Code with respect to the Contract, the Department 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 to the effect that the interest portion of installment payments under the Contract is excludable from gross income of the owner of the Contract for federal income tax purposes, subject to compliance by the State Agency and the Department with their covenants regarding maintenance of federal tax‑exemption.
	2. A signed Certification Form in form and substance customarily used by the Department for the GS $Mart Program.
	3. Opinion of counsel concerning validity of the Contract and the Order(s).
	4. Copy of completed and executed Internal Revenue Service Form 8038‑G or Form 8038‑GC, as applicable, and evidence of filing (when available).
	5. Such other documents as the Department, State Agency or the Lender may reasonably request, including, but not limited to, the Tax Certificate, a closing certificate of the Lender establishing the issue price of the Contract for federal tax purposes, a closing certificate of the Supplier regarding prepayments, if any, and any other certifications relating to the Lender’s compliance with the Public Contract Code as provided in Section X.A.
1. **Compliance with Laws**

For purposes of complying with the State Public Contract Code, the Lender agrees that on or prior to the Commencement Date it shall execute and deliver to the Department all compliance certificates from time to time required by the Office of the State Treasurer in order for the Lender to conduct business with the State Agency in the State. The forms of compliance certificates required as of the date hereof are attached hereto as Exhibits A (Expatriate Act Certificate), B (Darfur Contracting Act Certificate) and C (Iran Contracting Act Certificate); *provided, however*, that Exhibit C is not required for Contracts with installment payments totaling less than $1,000,000.

1. **Governing Law; Entire Agreement; Amendment; Notices and Payments**
	1. The parties intend that the laws of the State will govern the Contract.
	2. The Contract represents the entire agreement between the State Agency and the Lender and supersedes all prior understandings, representations, arrangements and/or written or oral agreements with respect to the financing of the Asset(s).
	3. The Contract may not be amended or any of its terms modified (other than as provided herein) except by written document duly authorized, executed and delivered by the State Agency and the Lender; *provided, however*, that any amendment or modification to these GS $Mart – Alpha Plan (Tax-Exempt) Terms and Conditions, Version 6.0, dated March 2, 2019, shall also require the written consent of the Department.
	4. All payments and notices to be sent to the Lender in connection with the Contract will be sent to the addresses set forth in the Contract unless the Department is otherwise notified in writing.

[END OF DOCUMENT]

**EXHIBIT A**

**California Taxpayer and Shareholder Protection Act of 2003**

**(Expatriate Act)**

California Public Contract Code section 10286.1 generally provides that the State of California [     ] (the “State Agency”) may not enter into any contract with an expatriate corporation or its subsidiaries unless the State Agency waives, in writing, the prohibition against contracting with such an entity upon a finding that the contract is necessary to meet a compelling public interest.

Pursuant to section 10286.1, the State Agency will not contract or otherwise do business – absent a compelling public interest – with publicly held U.S. expatriate corporations. This policy is designed to ensure that companies with which the State Agency does business meet threshold standards of corporate accountability.

Please check **one** of the following two paragraphs and sign below:

1. [ ]  We are not an expatriate corporation or subsidiary of an expatriate corporation within the meaning Public Contract Code Section 10286 and 10286.1, and are eligible to contract with the State of California.

**OR**

2. [ ]  We are an expatriate corporation but we have received written permission from the State Agency.

**CERTIFICATION:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer to the clause listed above. This certification is made under the laws of the State of California.

*Firm Name:*

*DATE:*

*Signature:*

**EXHIBIT B**

**DARFUR CONTRACTING ACT CERTIFICATE**

Pursuant to Public Contract Code section 10478, if a proposer currently or within the previous three years has had business activities, or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Please check **one** of the following three paragraphs and sign below:

1. [ ]  We do not currently have, or we have not had within the previous three years, business activities, or other operations outside of the United States.

**OR**

2. [ ]  We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

**OR**

3. [ ]  We currently have, or we have had within the previous three years, business activities, or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3.  This certification is made under the laws of the State of California.

*By (Authorized Signature):*

*Printed Name and Title of Person Signing:*

*Date Executed:*

*Executed in the County and State of:*

**EXHIBIT C**

IRAN CONTRACTING ACT

**(Public Contract Code sections 2202-2208)**

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of $1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 – CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

*Vendor Name/Financial Institution (Printed):*

*Federal ID Number (or n/a):*

*By (Authorized Signature):*

*Printed Name and Title of Person Signing:*

*Date Executed:*

*Executed in:*

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

*Vendor Name/Financial Institution (Printed):*

*Federal ID Number (or n/a):*

*By (Authorized Signature):*

*Printed Name and Title of Person Signing:*

*Date Executed:*