

**CALIFORNIA STATE UNIVERSITY
GENERAL TERMS AND CONDITIONS
FOR PURCHASE OR LEASE/PURCHASE OF EQUIPMENT AND PRODUCTS WITH
TAX-EXEMPT FINANCING**

1. PURPOSE OF GENERAL TERMS AND CONDITIONS

The purpose of these General Terms and Conditions is to provide a means whereby the Contractor may provide tax-exempt financing services to the CSU for the purchase and/or lease purchase of the equipment and products described on the equipment schedule of this contract. Included herein are the standard CSU financing provisions, tax covenants, and a sample payment schedule. In consideration of these, the CSU and Contractor hereby agree as follows:

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CSU

The CSU is an agency of the State of California, duly organized and existing under the laws of the State, and is authorized under those laws to enter into this contract to be bound by the terms and conditions set forth herein.

3. TERM AND INSTALLMENT PAYMENTS

This contract shall commence on the date specified on the face page(s) of the CSU Standard Agreement. The CSU agrees to make periodic installment payments to the Contractor during the term of the contract. Each payment has two separate components, which are designated as, and constitute payment of, principal and interest, respectively. In no case shall interest begin to accrue prior to the date the CSU has executed and delivered an Acceptance Certificate to the seller of the equipment and products. The Payment Schedule (a sample Exhibit is included in Section 21) shall specify the annual interest rate, the number and date of each payment due, the amount of principal and interest components on each payment, and the unpaid principal balance at the end of each periodic payment.

4. TITLE

Upon acceptance of the equipment by the CSU, title to the equipment will vest in the CSU: provided, however, that in the event of a non-appropriation, upon the event of a default herein, or in the event that a purchase option has not been exercised prior to the expiration date, title will immediately vest in the Contractor or its Assignee.

5. APPROPRIATION OF FUNDS

The CSU reasonably believes that appropriations or other funding will be available to make all payments against the contract. If, however, after the first fiscal year (July 1 through June 30) in which the contract is executed, funds are not appropriated or

otherwise made available by the State of California to continue paying against the contract in any subsequent fiscal year, then the CSU may terminate the contract as of the last day for which funds were appropriated or otherwise made available, but shall be obligated to pay for all charges incurred through the end of the last fiscal year for which funds were appropriated or otherwise made available. The CSU incurs no obligation under this contract for any period of time for which funds are not appropriated.

6. BEST EFFORTS FOR FUNDING

The CSU will use its best efforts to obtain funding for the equipment and products acquired hereunder.

7. CERTIFICATE ON FUNDING OUT

Within 30 days following the delivery of written notice by the State to the CSU of nonappropriation of funds, the CSU shall provide Contractor with a certificate to the effect that no funds have been appropriated or otherwise made available for payments due under the contract.

8. PURCHASE OPTION WITH NO PREPAYMENT PENALTY

The CSU may elect to prepay all or any portion of the remaining unpaid balance for the equipment and products prior to the beginning of any payment period shown on the payment schedule. Exercising such option shall not subject the CSU to prepayment penalties (such as payments against scheduled but unpaid interest, balloon payments, or service charges). If a prepayment option is exercised, the CSU shall pay any other applicable charges that may be due under the terms and conditions of this contract.

9. MAINTENANCE

Maintenance provisions for the equipment and products financed under this contract shall remain in full force and effect during the term of this contract. The party holding title to the equipment and products shall assume this obligation and at its own expense, take all necessary action to maintain the products or services in good working order, condition, and repair.

10. ESSENTIAL USE

The CSU hereby represents and warrants that the equipment and products financed under this contract are necessary and essential to the educational mission and operations of the CSU, and if the equipment and products are not made available for use, the mission and operations will be difficult or impossible to achieve.

11. FINANCING ASSIGNMENTS

Any assignment of this contract by the Contractor is subject to the approval of the CSU. The CSU and Contractor mutually acknowledge that Contractor or its assigns may, following written notice to CSU, enter into a Paying Agent or Trust Agreement whereby a Paying Agent or Trustee (such Paying Agent or Trustee is appointed by Contractor for the sole purpose of distributing funds as described herein and does not have the capacity or authority to represent the CSU) may issue for the public distribution certificates of participation in the installment payments to be paid by the CSU or Contractor under this contract. CSU shall have no obligation to provide any disclosure information or to file an annual report or statement of material event within the meaning of Securities and Exchange Commission Rule 15c2-12. The CSU and Contractor mutually agree that this assignment is for financing purposes only and shall not relieve the Contractor from any performance obligations required under this contract.

The CSU and the Contractor will cooperate in reviewing and executing ministerial documentation reasonably required by the Contractor to implement such assignment including:

- (a) A certification, to be signed by an appropriate officer of the CSU upon request of the Contractor, and dated as of the date of issuance of this contract, stating in effect that the proceeds of such obligations will be used to provide the equipment, and will not be used to acquire securities having a higher yield than such obligations or to otherwise exploit the difference in yield between tax exempt and taxable securities. Such certification shall be based upon the reasonable expectations of the CSU as of the date of issuance of this contract, and shall be in such form and have such content as may be necessary to comply with U.S. Department of Treasury Regulations.
- (b) Internal Revenue Service Form 8038-G/GC, Tax Covenants and Tax Indemnification in accordance with the requirements expressed hereunder. This shall be prepared and delivered by the Contractor to the CSU for signature by an appropriate officer within 15 days of the date of issue.
- (c) A revised payment schedule reflecting the actual rates at which certificates are ultimately issued and the "Interim Interest" accrued and paid to the certificate owners or its assigns from the acquisition fund during the period prior to equipment acceptance, provided that the payment and prepayment amounts shall not be increased.
- (d) A certificate acknowledging a CSU review and approval of the description of the equipment or products, the contract terms, and the financial status of the CSU. If in the opinion of the CSU, any items contained in the description are inaccurate, the CSU may modify those items prior to signing the certification provided Contractor is first notified of the intended change.
- (e) A certification of insurance or of a self-insurance program under which the equipment or products will be covered by the CSU.

12. OTHER ASSIGNMENT DOCUMENTS

If an assignment is approved by CSU, then CSU shall, at the request of the Contractor, execute such documents as may be reasonably necessary to effect such assignment or grant and to provide a security interest of such assignee or secured party. Such documents may include a description of the products or services acquired, certificate of acceptance, assignment acknowledgment, assignment approval, UCC form 1, essential use letter, opinion of counsel, proof of the existence of insurance or a statement of self-insurance.

13. MUTUAL TAX COVENANTS

Neither the CSU nor the Contractor will make or direct any use of the proceeds of the obligation provided herein or any other funds of the CSU to acquire any securities or obligation, and neither the CSU nor the Contractor shall take or permit to be taken any other action or actions, which will cause the obligation provided herein to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") or to be "federally guaranteed" within the meaning of Section 149(b) of the Code, and neither the CSU nor the Contractor will use or permit the use of such proceeds or funds, or any of the units of the products or services by any person, which will cause the obligations provided herein to be a "private activity bond" within the meaning of Section 141 of the Code. To that end, so long as any installment payments are unpaid, the CSU and Contractor, with respect to such proceeds or funds, will comply with all requirements of such Code sections and all regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time, applicable and in effect. If at any time the CSU is of the opinion that for purposes of this paragraph it is necessary to restrict or to limit the yield on the investment of any monies held in connection with this contract, the CSU shall so instruct the Contractor in writing, and the Contractor shall take such action as may be necessary in accordance with such instructions. Notwithstanding any provisions of this paragraph, if the CSU shall provide to the Contractor an opinion of nationally-recognized bond counsel that any specified action required under this paragraph is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest with respect to the installment payments, the CSU and the Contractor shall conclusively rely on such opinion in complying with the requirements of this paragraph, and, notwithstanding any other provisions of this Contract, the covenants hereunder shall be deemed to be modified to that extent.

The Contractor agrees to comply, and to assist the CSU to comply, with all reporting requirements of the Code, including preparation for the CSU's signature and the filing of IRS Form 8038-G/GC, or such other actions as may be reasonably requested by the CSU.

14. CSU'S COVENANTS

The CSU agrees that:

- (a) It will not create, assume, or voluntarily suffer to exist, without giving Contractor at least fifteen (15) calendar days prior written notice, any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon the equipment.

- (b) It will, upon receiving title to the equipment, keep the equipment in good repair and operating condition.
- (c) It will pay promptly all applicable taxes and other charges when levied or assessed upon the equipment, or its operation or use, or in connection with this contract.
- (d) It will procure and maintain fire insurance with extended coverage against loss, theft, damage to or destruction of the products or services for the full insurable value thereof for the duration of the contract, the policy of such insurance being endorsed to show loss payable to Contractor or its assigns as their respective interests may appear or have an equivalent self-insurance program. Upon request, a certificate of such insurance or self-insurance will be furnished to the Contractor or its assigns. Any proceeds received directly by the Contractor under such insurance shall be credited to the payment required from the CSU pursuant to the section titled "Destruction of Products" below.

15. DESTRUCTION OF PRODUCTS

In the event that any of the equipment or products shall be lost, stolen, irreparably damaged or destroyed or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment in full of the payments shown on the payment schedule, to the extent permitted by law the CSU shall promptly pay to Contractor a sum equal to aggregate Casualty Value (as defined below) of such equipment or products. Any money so paid shall be applied on the installment date next following receipt by Contractor of such payment, to reduce installments thereafter falling due so the remaining unpaid installments represent only the payments due on the remaining undamaged equipment or products. The Casualty Value of the equipment or products suffering a Casualty Occurrence shall be the unpaid principal balance attributed in the reasonable discretion of CSU to such equipment or products.

16. DEFAULTS

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

- (a) The CSU shall fail to pay, in full any sum payable by the CSU when due hereunder following Contractor's written notice of such failure, except under conditions of non-appropriation of funds by the State.
- (b) The CSU shall fail to obtain insurance or have a program of self-insurance, as required in this contract.
- (c) The CSU shall, for more than 90 days after Contractor shall have demanded in writing performance or observance thereof, fail to comply with any other term of this contract.

- (d) Any insolvency proceedings of any character, voluntary or involuntary, shall be instituted by or against the CSU.
- (e) The CSU shall make an assignment for the benefit of creditors.

17. DEFAULT REMEDIES OF CONTRACTOR OR ITS AGENTS

If an event of default shall have occurred, Contractor or its assigns may to the extent permitted by law:

- (a) Recover the balance of amounts due hereunder, subject to Section 5, Appropriation of Funds.
- (b) Enter any premises where the equipment or products may be located and take possession of them or render them unusable, and retain all prior payments as partial compensation for their use and depreciation.
- (c) Restore the equipment or products to good repair or operating condition at the expense of the CSU for actual time and materials expended by Contractor at current charge rates then in effect for the Contractor, in the event the CSU has failed to keep the equipment or products in good repair or operating condition.
- (d) Sell the equipment or products after Contractor has given at least 15 days notice to the CSU prior to the date of any intended public sale, or the date after which any private sale or other disposition of the equipment or products by the Contractor is to be made, with or without having physical possession of the equipment.
- (e) Incur reasonable attorney's fees and legal expense in exercising any of its rights and remedies upon default which the CSU may be required by a court to pay; and, or
- (f) Pursue any other remedy permitted by law or in equity.

Waiver of any default shall not be a waiver of any other default; all of Contractor's rights hereunder are cumulative and not alternative.

18. SECURITY INTEREST AND LOCATION OF PRODUCTS AND SERVICES

To secure the payment of the amounts shown on the payment schedule, Contractor reserves a purchase money security interest in the equipment or products and the CSU hereby grants a security interest in any substitutions and replacements under this contract and additions thereto (but only to the extent that the additions cannot be removed in such a manner as to leave the equipment or products in their original condition) and the proceeds thereof. A copy of the contract may be filed with appropriate authorities at any time after signature by the CSU as a financing statement in order to protect Contractor's security interest. The CSU also shall execute from time to time, alone or with Contractor, any reasonable financing statements or other reasonable documents considered by

Contractor to be necessary or desirable to protect the security interest hereby created. The equipment or products shall remain personal property, not to become part of the freehold, and be kept on the premises of the CSU.

19. OPINION OF COUNSEL ON CONTRACT VALIDITY

The CSU agrees to provide Contractor, prior to funding, an opinion of counsel certifying the following:

- a. That this contract is a legal contract under California Statutes and is binding upon the CSU subject to Section 4 (Appropriation of Funds) of these General Terms and Conditions, and the termination provision of this contract.
- b. That the individual executing the contract on behalf of the CSU has the legal authority to commit the CSU to this contract.

20. IRS FORM 8038-G/GC, TAX COVENANTS, AND TAX INDEMNIFICATION

Tax Code General Requirements: In signing this contract, the Contractor attests that the information required under Section 149(e) of the Internal Revenue Code of 1986 (the "Code") and set forth in I.R.S. Form 8038-G/GC, has been provided to the CSU by the Contractor and, except as to any items completed by the CSU, is true and correct in all material respects and contains no material omission.

Expenditure of Gross Proceeds: I.R.S. Form 8038-G/GC shall indicate the date of issue of the obligation. By signing this contract, Contractor attests that all gross proceeds for the purpose for which the contract was issued were either already expended or were reasonably expected to be expended within six (6) months of that date. Accordingly, pursuant to Section 148(f)(4)(B)(i), Contractor attests that the requirements of Section 148(f)(2) have been fully satisfied and that no rebates to the I.R.S. in connection with this contract are anticipated. If the expectation for expending the gross proceeds is not met, however, the Contractor agrees to take all steps necessary to comply with Section 148(f) of the Code, including but not limited to all actions specified in a rebate certificate or other written instructions from the CSU to the Contractor.

Liquidated Damages to the CSU for Contractor Acts or Omissions on Taxable Interest Income: If at any time the CSU is advised that any portion of the interest income earned by a purchaser of this contract must be declared as a part of the purchaser's gross income for federal income tax purposes as the result of acts or omissions by the Contractor, the CSU may request the Contractor to supply an Opinion of Counsel (meaning a written opinion of counsel acceptable to the CSU and to the Contractor) to the effect that such interest income is not includable in the gross income of the purchaser. If the Contractor acknowledges that such interest income is taxable, or if there is no Opinion of Counsel rendered to the CSU within thirty (30) days after the receipt of such request, the Contractor shall remit to the CSU upon written demand an amount equal to the total interest actually paid-to-date by the CSU to the Contractor on the date the written demand is transmitted. This amount shall be remitted to the CSU within 30 days of the demand.

The actual fact of the occurrence of damages and the actual amount of the damages which the CSU would suffer if the interest component of the installment payments under the contract were not excludable from the gross income of the recipient thereof are dependent upon many circumstances and conditions which could prevail in various combinations, and from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Accordingly, the Contractor agrees that it shall pay to the CSU the foregoing amount as liquidated damages, and not as a penalty or forfeiture, in the event that there is a substantial likelihood that as a result of acts or omissions by the Contractor a recipient of the interest component of the installment payments paid under the contract or any portion thereof might be required to be included in the federal gross income of the recipient and the Opinion of Counsel described in the immediately preceding paragraph is not rendered.

Options of the CSU as the Result of Contractor Acts or Omissions:

(a) Payoff of Principal and Termination of Contract: Within 60 days of receipt by the CSU of the total liquidated damages due from the Contractor, the CSU may remit, or have its agent remit, to the Contractor the remaining principal balance due as full payment on the contract, devoid of any interest, penalties, or other charges against the CSU. In this manner the contract may be immediately terminated.

(b) Continuation of Contract With No Change in Payment Schedule: Within 60 days of receipt by the CSU of the total liquidated damages due from the Contractor, and if Contractor's acts or omissions have also been rectified to the satisfaction of the CSU, the contract may be continued without changes to the interest rate and scheduled payments, if the CSU so elects. However, the contract shall be amended to reflect all changes necessary resulting from the Contractor's previous acts or omissions.

(c) Interest Rate Adjustment: Within sixty (60) days of receipt by the CSU of the total liquidated damages due from the Contractor, the CSU may elect to request that the Contractor agree to and develop a revised installment payment schedule to be effective for the remainder of the contract, and amend the contract accordingly. Such revised schedule shall incorporate into its new payment provisions an interest rate no greater than the existing U.S. prime interest rate in effect at the time, as published in the Western Edition of the Wall Street Journal. Contractor may exercise the right of rejection in writing within thirty (30) days subsequent to the request. If the request is rejected, the CSU may, within an additional sixty (60) day period beyond the date of receipt of such written rejection, remit, or have its agent to remit, the remaining principal balance of the contract without interest, penalties, or other charges and thus terminate the contract.

21. PAYMENT SCHEDULE

The Contractor must provide a payment schedule as an integral part of these General Terms and Conditions.

The Contractor's payment schedule shall indicate the following:

- a. For each installment---the amount of the payment, the amount to be applied to principal and interest (respectively), and the unpaid balance;
- b. The number of periodic installment payments; the period of the installment payments (monthly, annual, etc.); and the amount of each installment payment;
- c. The total amount of the principal, the total amount of the installment payments under this contract; and the total interest to be paid;

Late charges shall accrue for any payment not made to the contractor, or its assigns, within sixty (60) days following the receipt of a valid/correct invoice.

The CSU may elect to prepay any portion of the remaining balances prior to the beginning of any periodic payment period. No prepayment penalties (such as, but not limited to, interest and service charges) shall be assessed against the CSU for such prepayment. Interest on any remaining balances shall be at the same interest rate quoted below.

THE CSU REQUIRES THAT ANY CAPITALIZED FINANCE CHARGE BE SHOWN SEPARATELY ON THE PAYMENT SCHEDULE, AND BE INCLUDED IN THE TOTAL ANNUAL INTEREST RATE. Unless otherwise specified, the interest portion for any payment will be calculated by using the following formula:

$$\begin{aligned} \text{Interest} = & \quad (\text{Annual Net Interest Rate} / 100) \\ & \quad \times (\text{number of Days from Last Payment} / 365) \\ & \quad \times (\text{Previous Unpaid Principal Balance}) \end{aligned}$$

The following is an example of the kind of Payment Schedule that is required by the CSU:

*** EXAMPLE ***

ANNUAL PAYMENT SCHEDULE
(Not Including Maintenance, Service Costs and Down Payment)

Effective Date of Financing: June 9, 1996	Number of Payments: 10
Purchase Price: \$1,500,000	Amount Financed: \$1,000,000
Down Payment: \$ 500,000	Interest Rate: 8.00%

No.	Date	Payment	Principal	Interest	Unpaid Principal Balance
					\$1,000,000
1	08/15/87	\$ 139,986	\$ 125,520	\$ 14.466*	\$ 874,480
2	08/15/88	\$ 139,986	\$ 70,028	\$ 69,958	\$ 804,452
3	08/15/89	\$ 139,986	\$ 75,630	\$ 64,356	\$ 728,822
4	08/15/90	\$ 139,986	\$ 81,680	\$ 58,306	\$ 647,142
5	08/15/91	\$ 139,986	\$ 88,215	\$ 51,771	\$ 558,927
6	08/15/92	\$ 139,986	\$ 95,272	\$ 44,714	\$ 463,655
7	08/15/93	\$ 139,986	\$ 102,894	\$ 37,092	\$ 360,761
8	08/15/94	\$ 139,986	\$ 111,125	\$ 28,861	\$ 249,636
9	08/15/95	\$ 139,986	\$ 120,015	\$ 19,971	\$ 129,621
10	08/15/96	\$ 139,991	\$ 129,621	\$ 10,370	\$ -0-
TOTALS		\$1,399,865	\$1,000,000	\$399,865	

*Initial 66 days interest = $(.08 \times 66) \div 365 \times \$1,000,000 = \$14,466$