

**State of Texas**  
**Department of Information Resources**



**MSI MSA Attachment D**

**Form of Parent Guaranty**

**Multi-Sourcing Services Integrator**

**DIR-ESS-MSI-407**

**FORM OF PARENT GUARANTY**

**GUARANTY OF OBLIGATIONS**

**Attachment D**

**FORM OF PARENT GUARANTY**

**GUARANTY OF OBLIGATIONS**

THIS GUARANTY OF OBLIGATIONS ("**Guaranty**") is made and entered into as of January 25, 2018, and is executed and delivered by **Cap Gemini SE** (the "**Guarantor**"), in favor of the State of Texas, acting by and through the Texas Department of Information Resources ("**DIR**"). The Guarantor and DIR shall be hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**".

WHEREAS, Capgemini America, Inc., a New Jersey corporation (the "**Subsidiary**") and DIR have entered into that certain Master Services Agreement dated as of January 25, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "**Agreement**") with respect to certain services to be provided by the Subsidiary to DIR;

WHEREAS, the Guarantor is the parent, directly or indirectly, of the Subsidiary;

WHEREAS, the Guarantor's execution and delivery of this Guaranty is a condition to DIR entering into the Agreement; and

WHEREAS, the Guarantor acknowledges that it will receive direct and indirect benefits from DIR entering into and performing its obligations under the Agreement and, accordingly, the Guarantor is willing to guarantee all of the obligations of the Subsidiary to DIR under the Agreement on the terms and conditions contained herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Guarantor, the Guarantor agrees as follows:

Section 1. Guaranty. The Guarantor hereby absolutely and irrevocably guaranties the due and punctual performance when due of all obligations of the Subsidiary (including any obligation for the payment of money) under the Agreement (collectively referred to as the "**Guarantied Obligations**"). Notwithstanding anything in this Guaranty to the contrary, the obligations and liability of the Guarantor hereunder shall be subject to the rights, privileges and defenses otherwise available to Subsidiary with respect to the Guarantied Obligations.

- (a) The obligations of the Guarantor under this Guaranty shall not exceed those of the Subsidiary under the Agreement.
- (b) The Guarantor shall be entitled to raise any defenses, rights, abatement, counterclaims and/or privileges that the Subsidiary has or would have under the Agreement and/or by law.
- (c) The Guarantor's liability shall be in the amount which is owed by the Subsidiary in respect of the underlying breach of the Agreement, after deduction of any amounts recovered from the Subsidiary in respect of the underlying breach of the Agreement.
- (d) In no event shall the Guarantor incur a greater liability for loss, damage, costs or expenses in relation to the Guarantied Obligations than the Subsidiary would be liable to incur under the Agreement.

- (e) Guarantor's liability under this Guaranty is subject to an overall aggregate limitation of \$160,000,000 USD in respect of all claims arising under, out of or in connection with this Guaranty.
- (f) The Guarantor shall not be affected, discharged or released from this Guaranty by (i) any amendment to the Agreement that is expressly accepted by the Subsidiary; or (ii) any change of name, change of directorship status or ownership of the Subsidiary or the Guarantor.

Section 2. Exercise of the Guaranty. This Guaranty is a guaranty of performance and payment, and not of collection, and an obligation and debt of the Guarantor for its own account; provided, however, DIR may resort to the undersigned Guarantor for the performance of any of the Guaranteed Obligations only if there is a breach to the Guaranteed Obligations in the conditions set forth in the Agreement and

- (a) DIR provides notice to the Subsidiary and opportunity to cure in accordance with the Agreement; and
- (b) DIR completes the Dispute Resolution Procedure set out in Section 19.1 (a), (b) and (c) of the Agreement. For clarity, DIR shall not be required to first exhaust the requirements of Section 19.1 (d);

Except as provided Section 2 (a) and (b), DIR shall not be obligated or required before enforcing this Guaranty against the Guarantor: (a) to pursue any right or remedy DIR may have against Subsidiary, or any other Person or commence any suit or other proceeding against Subsidiary or any other Person in any court or other tribunal; or (b) to make any claim in a liquidation or bankruptcy of Subsidiary or any other Person. As used herein, "Person" means an individual, corporation, limited liability company, partnership, trust, association, joint venture, unincorporated organization or entity of any kind or nature, or a governmental authority.

Section 3. Guaranty Absolute. The Guarantor guarantees that the Guaranteed Obligations will be performed or paid, as applicable, strictly in accordance with the terms of the Agreement.

Section 4. Action with Respect to Guaranteed Obligations. DIR, at any time and from time to time, without the consent of, or notice to, the Guarantor, and without discharging the Guarantor from its obligations hereunder, may upon mutual and express agreement with the Subsidiary: (a) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations; (b) amend, modify, alter or supplement the Agreement; (c) release any other person liable in any manner for the payment or collection of the Guaranteed Obligations.

Section 5. Representations and Warranties. The Guarantor hereby represents and warrants to DIR as follows:

- (a) Organization; Power; Qualification. The Guarantor is a [French] corporation, duly incorporated and validly existing under the jurisdiction of its incorporation, and has the power and authority to carry on its business.
- (b) Authorization. The Guarantor has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform this Guaranty in accordance with its terms. This Guaranty has been duly executed and delivered by the duly authorized officers of the Guarantor and is a legal, valid

and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations.

(c) Compliance with Laws, etc. The execution, delivery and performance of this Guaranty in accordance with its terms and the guaranties hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any governmental approval or violate any applicable law relating to the Guarantor; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Guarantor, or any indenture, agreement or other instrument to which the Guarantor is a party or by which it or any of its properties may be bound; or (iii) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the Guarantor.

Section 6. Waiver. Except as otherwise provided herein, the Guarantor, to the fullest extent permitted by applicable law, hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind, and any other act or thing, or omission or delay to do any other act or thing, which in any manner or to any extent might vary the risk of the Guarantor or which otherwise might operate to discharge the Guarantor from its obligations hereunder. The Guarantor undertakes that if at any time DIR sues the Guarantor in respect of this Guaranty and the Subsidiary is not sued also, the Guarantor shall not claim that the Subsidiary must be made a party to the proceedings. The Guarantor agrees to be bound by this Guarantee whether or not it is made a party to legal proceedings for the recovery of any amount due or owing to DIR by the Subsidiary.

Section 7. Payments Free and Clear. Except as otherwise provided herein (notably in Section 1 above) or by law, all sums payable by the Guarantor hereunder shall be paid in full, without set-off or counterclaim or any deduction or withholding whatsoever.

Section 8. Information. The Guarantor assumes all responsibility for being and keeping itself informed of the financial condition of the Subsidiary, and of all other circumstances bearing upon the risk of non-performance or nonpayment of any of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that DIR shall not have any duty whatsoever to advise the Guarantor of information regarding such circumstances or risks, except as provided in Section 1 (f) above.

Section 9. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS. Nothing in this Guaranty shall be construed to waive the State's sovereign immunity.

Section 10. Waiver of Remedies. No delay or failure on the part of DIR in the exercise of any right or remedy it may have against the Guarantor hereunder or otherwise shall operate as a waiver thereof, and no single or partial exercise by DIR of any such right or remedy shall preclude other or further exercise thereof or the exercise of any other such right or remedy, within the limits of the term of this Guaranty. THE PARTIES CONSENT TO VENUE IN THE STATE OF TEXAS AND TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AND OF ANY COURT SITUATED IN AUSTIN, TEXAS, FOR ALL LITIGATION WHICH MAY BE BROUGHT WITH RESPECT TO THIS GUARANTY. THE PARTIES FURTHER CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN A DISTRICT THAT ENCOMPASSES ASSETS OF A PARTY AGAINST WHICH A JUDGMENT HAS BEEN RENDERED FOR THE ENFORCEMENT OF SUCH JUDGMENT OR AWARD AGAINST THE ASSETS OF SUCH PARTY.

Section 11. Term. This Guaranty shall remain in full force and effect until three (3) years following the termination or cancellation of the Agreement.

Section 12. Successors and Assigns. Each reference herein to DIR shall be deemed to include DIR's respective successors and assigns (including any holder of Guaranteed Obligations designated by operation of law) (and Guarantor acknowledges and agrees the DIR may assign the Agreement in whole or in part to the extent permitted by the Agreement, and in the case of one or more partial assignments, any reference to DIR shall include both DIR and such assignees with respect to the part of the Agreement so assigned) in whose favor the provisions of this Guaranty also shall inure, and each reference herein to the Guarantor shall be deemed to include the Guarantors successors and assigns on whom this Guaranty also shall be binding. The Guarantor may not assign or transfer its obligations hereunder to any Person.

Section 13. Amendments. This Guaranty may not be amended except in writing signed by DIR and the Guarantor.

Section 14. Payments. All payments to be made by the Guarantor pursuant to this Guaranty shall be made in U.S. Dollars, in immediately available funds to DIR.

Section 15. Notices. All notices under this Guaranty will be in writing, in the English language and will be deemed to have been duly given if delivered personally against an acknowledgment of receipt or by commercial overnight delivery, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the Parties at the addresses set forth below:

If to DIR:

Texas Department of Information Resources  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
Attention: Aiko Neill, Interim Director, Enterprise Contracts Division  
Telephone: 512.475.0515  
E-mail Address: [aiko.neill@dir.texas.gov](mailto:aiko.neill@dir.texas.gov)

With a copy to:

Texas Department of Information Resources  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
Attention: Martin Zelinsky, General Counsel  
Telephone: 512. 475.4759  
E-mail Address: [martin.zelinsky@dir.texas.gov](mailto:martin.zelinsky@dir.texas.gov)

If to Guarantor:

CAP GEMINI SE  
11 rue de Tilsitt  
75017 Paris  
FRANCE  
Facsimile number +33 (01) 42 27 32 11  
For the attention of : Paul Hermelin, Chief Executive Officer

With a copy to:

Capgemini America, Inc.  
623 Fifth Avenue, 33rd Floor

New York, NY 10022  
Attn: General Counsel

All notices under this Guaranty that are addressed as provided in this **Section 14** will be deemed given upon delivery. Either Party from time to time may change its address or designee for notification purposes by giving the other Party notice of the new address or designee and the date upon which such change will become effective.

Section 16. Severability. In case any provision of this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 17. Headings. Section headings used in this Guaranty are for convenience only and shall not affect the construction of this Guaranty.

IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guaranty as of the date and year first written above.

**Cap Gemini SE**

By: Signature on file  
Name: Paul Hermelin  
Title: Chief Executive Officer

Accepted, Acknowledged and Agreed:

**State of Texas, acting by and through the Texas Department of Information Resources**

By: Signature on file  
Name: Stacey Napier  
Title: Executive Director 1/31/18

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Martin Zelinsky 1/30/18