

State of Texas
Department of Information Resources



MSA Attachment 4

Form of Parent Guaranty

Version 2.0

**Data Center Services (DCS)
Public Cloud Manager RFO
DIR-CPO-TMP-436**

FORM OF PARENT GUARANTY

GUARANTY OF OBLIGATIONS

THIS GUARANTY OF OBLIGATIONS ("**Guaranty**") is made and entered into as of [____], and is executed and delivered by [____], a [____] corporation (the "**Guarantor**"), in favor of the State of Texas, acting by and through the Texas Department of Information Resources ("**DIR**").

WHEREAS, [**Service Provider**] (the "**Subsidiary**") and DIR have entered into that certain Master Services Agreement dated as of [____], (as amended, restated, supplemented, or otherwise modified from time to time, the "**Agreement**") with respect to certain services to be provided by Subsidiary to DIR;

WHEREAS, the Guarantor is the parent, directly or indirectly, of 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 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, irrevocably, and unconditionally guaranties the due and punctual performance when due of all obligations of Subsidiary (including any obligation for the payment of money) under the Agreement (collectively referred to as the "**Guaranteed Obligations**"). Notwithstanding anything in this Guaranty to the contrary, the obligations of Guarantor hereunder shall be subject to the rights, privileges and defenses otherwise available to Subsidiary with respect to the Guaranteed Obligations.

Section 2. Guaranty of Payment and Not of Collection. 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 in DIR's reasonable judgment efforts to obtain performance of the Guaranteed Obligations against Subsidiary are not likely to result in the full and timely performance of such Guaranteed Obligations. Accordingly, except as provided in the preceding sentence, 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 and any other documents evidencing the same. The Guarantor waives any right that it might have to challenge the amount

or validity of any amounts (i) acknowledged by the Subsidiary to be due under the Agreement or (ii) determined to be due under the Agreement pursuant to the dispute resolution procedures, mediation procedures, and arbitration proceedings or otherwise pursuant to or in connection with the Agreement. Subject to Section 1 hereof, the liability of the Guarantor under this Guaranty shall be absolute and unconditional in accordance with its terms and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever (other than full and timely performance or indefeasible payment in full, as applicable).

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, with any required consent of 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; (d) exercise, or refrain from exercising, any rights against Subsidiary, or any other Person, subject to Section 2 hereof.

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

(a) Organization; Power; Qualification. The Guarantor is a [_____] 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 and hereby waives all rights the Guarantor may now or in the future have under any statute relating to sureties or otherwise related to the foregoing waiver. Except as otherwise provided herein, any right which at any time the Guarantor has under the existing or future laws to require that recourse be had to the assets of any other person before any claim is enforced against such Guarantor in respect of the obligations hereby assumed by the Guarantor is hereby abandoned

and waived. 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 and whether the formalities required by any law whether existing now or in the future in regard to the rights or obligations of sureties shall or shall not have been observed.

Section 7. Reinstatement of Guaranteed Obligations. If claim is ever made on DIR for repayment or recovery of any validly owing amount or amounts received in payment or on account of any of the Guaranteed Obligations, and DIR repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (b) any settlement or compromise of any such claim effected by DIR with any such claimant, then and in such event, the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of the Agreement, and the Guarantor shall be and remain liable to DIR for the validly owing amounts so repaid or recovered to the same extent as if such amount had never originally been paid by DIR.

Section 8. Payments Free and Clear. Except as otherwise provided herein 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 9. Information. The Guarantor assumes all responsibility for being and keeping itself informed of the financial condition of 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.

Section 10. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

Section 11. JURISDICTION. 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 12. 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.

Section 13. Termination. This Guaranty shall remain in full force and effect until three (3) years following the termination or cancellation of the Agreement.

Section 14. Successors and Assigns. Each reference herein to DIR shall be deemed to include DIR's respective successors and assigns (including, but not limited to, any holder of the Guaranteed

Obligations) (and Guarantor acknowledges and agrees that 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 Guarantor's successors and assigns, upon whom this Guaranty also shall be binding. The Guarantor may not assign or transfer its obligations hereunder to any Person.

Section 15. Amendments. This Guaranty may not be amended except in writing signed by DIR and the Guarantor.

Section 16. 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, not later than 2:00 p.m. within ten (10) days of the date of demand therefor.

Section 17. Notices. All notices under this Guaranty will be in writing and will be deemed to have been duly given if delivered personally 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
[_____]
Austin, Texas [_____]
Attention: [_____]

With a copy to:

[_____]
Attention: [_____]

If to Guarantor:

[Address]
Attention: [_____]

With a copy to:

[Subsidiary Address]
Attention: [_____]

All notices under this Guaranty that are addressed as provided in this Section 17, (i) if delivered personally or by commercial overnight delivery, will be deemed given upon delivery, or (ii) if delivered by mail in the manner described above, will be deemed given on the fifth (5th) business day after the day it is deposited in a regular depository of the United States mail. 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 18. 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 19. 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.

[Guarantor]

By: _____
Name: _____
Title: _____

Accepted, Acknowledged and Agreed:

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

By: _____
Name: _____
Title: _____