

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

CONTINUANT, INC. DBA CONTINUANT TEXAS, INC.

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Continuant, Inc. dba Continuant Texas, Inc. (hereinafter "Vendor"), with its principal place of business at 5050 20th Street East, Tacoma, Washington 98424.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-195, on October 5, 2012, for Managed Services for Telecommunications. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-195 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Sample Statement of Work, Vendor's Response to RFO DIR-SDD-TMP-195, Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-195, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-195, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Service Offerings

Services available under this Contract are limited to the designated telecommunications managed services as specified below. Vendor may incorporate changes to their services offerings; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. The designated services are offered only as

components of comprehensive suites of telecommunications managed services. One or more of the designated service offerings (i) may require contracting for service components of a comprehensive suite of telecommunications managed services or (ii) may be unavailable as service components, at the discretion of the Vendor.

Management of telecommunications services is the management of customer owned equipment or vendor provided equipment. Services that can be included to provide a total Managed Services Solution are set forth below:

A. Management Services

- a. Hosted Solutions are offered to Customers on a subscription basis and includes the IT infrastructure (hardware and software) and support services necessary to deliver the solution. Hosted services include technologies listed in Section C. below.
- b. Requirements Development
- c. Integration Services
- d. SLA's and Performance Metrics
- e. Reporting
- f. Asset Management
- g. Project management
- h. Operations

B. Support Services

- a. Move, Add, Changes (MACs)
- b. Solution Design
- c. Solution Software and Licenses
- d. Network Readiness Assessment
- e. Transition and Termination Services
- f. Break/Fix and Maintenance
- g. Help/Support Desk Services
- h. Training

C. Technology Services

- a. Management of call processing architecture
- b. Call Center or Contact Center Services
- c. IVR/Auto-Attendant
- d. Phone Systems Management (PBX, key system, etc.) or Integration
- e. Network Optimization
- f. Management of Voice and/or Data Networks

D. **Excluded Telecommunications Service Offerings**

Any service awarded under the TEX-AN Next Generation Procurement, RFO number DIR-TEX-AN-NG-001. The following services were awarded under the TEX-AN Next Generation Procurement:

- a. Long Distance Services

- b. Internet Services (including SOHO)
- c. Voice over Internet Protocol (VoIP)
- d. Local Voice Service
- e. Wireless Service
- f. Fixed Satellite
- g. Access and Transport

4. Pricing

A. Customer Price

Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.

B. DIR Cost Recovery Fee

The cost recovery fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

D. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR Cost Recovery Fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

5. DIR Cost Recovery Fee

A) 1) The Cost Recovery Fee (CRF) to be paid by the Vendor to DIR for telecommunications Products and Services based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all telecommunications sales, net of returns and credits. For example, the CRF fee for sales totaling \$100,000.00 shall be \$2,000.00.

B) All prices quoted to Customers shall include the applicable CRF fee. DIR reserves the right to change this fees upwards or downwards during the term of this Contract, upon written notice to Vendor. Changes in the CRF fees shall be incorporated into the price to the Customers on the date designated by DIR.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Grace Windbigler, CTPM, CTCM
Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-3290
Facsimile: (512) 475-4759

If sent to the Vendor:

Samuel Mosier
Continuant, Inc. dba Continuant Texas, Inc.
5050 20th Street East
Tacoma, Washington 98424
Phone: (206) 859-2339
Facsimile: (800) 652-9960
Email: samuelm@continuat.com

7. Managed Services Requirements

1. TEX-AN Next Generation
DIR rebid TEX-AN 2000 in August of 2010. All Contracts have been awarded from that procurement and have replaced the previous TEX-AN Contracts. Which are now referred to as TEX-AN Next Generation or TEX-AN NG.
2. Vendor shall prepare and provide each Customer with a managed service solution proposal. The proposal shall include all services proposed by Vendor which are included in this contract, as well as all Excluded Service Offerings and associated fees as required for a Customer to contract for a complete solution. Vendor shall use commercially reasonable efforts to ensure that any needed TEX-AN NG and/or Co-op contracted services are identified by Vendor and offered to Customers as a part of the solution project management, and that any Excluded Service Offerings are procured by the Customer through either the DIR TEX-AN NG or DIR Co-op contracts.
3. The centralized telecommunications system for the state of Texas is known as TEX-AN. The current technological platform of TEX-AN is known as TEX-AN NG. The TEX-AN NG architecture provides a solid statewide communications infrastructure that is adaptable to changing requirements and can incorporate new and emerging technologies. The TEX-AN NG platform provides unified, scalable, redundant, flexible, and extremely cost-effective networking solutions. TEX-AN NG provides voice and data services and features:

Voice Services:

- Toll-Free Service

- Long Distance Service
- Directory Assistance
- Dedicated circuit access

Data Services:

- Frame Relay/Asynchronous Transfer Mode (ATM)
- MPLS (Multiprotocol Label Switching)
- Access Services
- Internet Access
- Point-to-Point circuits
- DSL
- SOHO
- Fixed Satellite

Vendors must utilize the TEX-AN Network for any transport services included in their managed service solution. These services and associated fees must be included by the vendor in a managed service solution proposal as required for a Customer. Any transport services required for the managed service solution will be ordered by the customer from DIR. The Customer is required, as the eligible purchasing entity, to utilize the current TEX-AN or Co-op Contracts and procedures to directly purchase the services from DIR.

In addition to its primary services, DIR offers Co-op and Telecom contracts for communications services. These contracts are awarded on behalf of the state according to state competitive bidding requirements, and are designed to satisfy user requirements for easy-to-use communications services contracts. The comprehensive suite of products and services offered by these contracts includes:

- Interpreter Services
- Local Telephone Services
- Wireless/Cellular Services
- Pagers and Paging Services
- Payphone Long Distance Service
- Calling Cards
- Technology Based Conferencing

These services and associated fees must be included by the vendor in a managed service solution proposal as required for a Customer. The Customer is required, as the eligible purchasing entity, to utilizing the current TEX-AN NG, Co-op Contracts and Telecom procedures to directly purchase the services from DIR.

4. Vendor shall make every effort to provide value to DIR Customers through well defined requirements and project scheduling that meet the stated objectives and business goals for managed service Customers. Vendors must create Statements of Work (SOW) under this Contract to document Customer expectations; requirements; milestones for deliverables and activities; and payment schedules.

5. Vendor shall provide a copy of Customers proposed SOW and solution design documents to a designated contact at DIR no less than fifteen (15) days prior to presenting the final managed services solution proposal to the Customer. The plan for the TEX-AN NG network connectivity in the solution design must be approved by DIR. The approval shall occur as soon as practicable based on the date of submission.
6. Vendor will be assigned a specific DIR liaison to facilitate the communication and management of the contract provisions outlined in this document for reviews, reporting, purchasing and approvals.
7. Vendor shall employ performance-based managed services for highly reliable customer solutions that meet or exceed customer expectations and performance metrics. Performance metrics and SLA's will meet, as a baseline, or exceed industry standards.
8. Vendor shall provide an effective and efficient management information system that provides comprehensive, accurate, and timely information on managed service solutions, program status, performance, and billing.
9. Vendor shall adhere to the DIR Security Policies included in 1 TAC Chapter 202, Information Security Standards and be consistent with the best practices as outlined in the State Enterprise Security Plan. Vendor must convey the established security standards to the Customer, as well as any additional vendor provided security services. The State Enterprise Security Plan and other guiding security policies are located on the DIR web site.
10. Vendor will execute a direct contract with the Customer that accurately reflects the resources required for the total project and contains the resources and prices for services the Customer is required to purchase directly from DIR for the successful implementation of the proposed solution ("Supplemental Agreements"). DIR will bill the Customer directly for the services purchased from TEX-AN NG. Vendor is responsible for preparing and properly billing the Customer for its services according to milestones or other scheduled triggering events.
11. In addition to all other reporting requirements listed in Appendix A, for the Managed Services Supplemental Agreements entered into with customers under this Contract, Vendor shall submit to the designated DIR contacts the following additional contract reports, in a format to be determined by DIR:

A. Monthly Reports – High Probability Prospects

- A report will be provided by the tenth calendar day of each month detailing Vendor's prior month's interaction with prospective Customers that have been qualified by the Vendor to be a viable prospect for services delivered under this Contract. A viable prospect is one having the intent and financial capability to purchase the solution and has at least a 75% probability of doing so within 120 days. These reports will include, but not be limited to the Customer name, Customer contact name and contact information, the initial date of engagement with the Customer, the scope of the solution including Customer requirements, the current status of the project, the next steps anticipated in the project, and the anticipated close date and confidence level.

B. SLAs / Performance Metrics

- A report will be provided by the tenth calendar day of each month detailing SLA and Performance Metrics for each Managed Service SOW entered into with customers under this contract. SLA and Performance Metrics reporting requirements will be determined jointly by DIR and Vendor within 60 days of execution of a managed services contract between the Vendor and the individual Customer. It is anticipated that these metrics will include, but not be limited to service performance (on-time, uptime/accessibility), quality performance (accuracy), and customer satisfaction.

C. Sales Activity Reports

- A report will be provided by the tenth calendar day of each month detailing any contracts which Vendor has executed in the prior month with Customers to provide services under this contract. This report will include, but not be limited to the date of contract execution, amount of revenue commitment under the contract, and anticipated start date of project. Also to be included in these reports are copies of all Customer executed documents.

Vendor shall submit the reports in a format to be determined by DIR. The reporting formats will be provided to the vendor within sixty days after contract signing.

8. Statement of Work

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with this Contract.

9. Intellectual Property Matters

A. Definitions

1. "Work Product" means any and all deliverables produced by Vendors specifically for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or elements that have been or will be prepared, created, developed, invented or conceived specifically for the Customer at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer

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under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or elements were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all

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ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday thru Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer,

and subject to the license granted by Customer to Vendor under sub-paragraph H. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and elements pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts:

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.

No exceptions have been agreed to by DIR and Vendor.

This Contract is executed to be effective as of the date of last signature.

CONTINUANT, INC. DBA CONTINUANT TEXAS, INC.

Authorized By: _____ signature on file _____

Name: Doug Graham _____

Title: President _____

Date: 6/5/13 _____

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

Authorized By: signature on file John Hoffman for Carl Marsh _____

Name: Carl Marsh _____

Title: Chief Operating Officer _____

Date: 6/20/13 _____

Office of General Counsel: 6/18/13 _____