

Document No. _____

Fed. Id. No. _____

511 SERVICE AGREEMENT

THIS 511 SERVICE AGREEMENT, made this ____ day of _____, 2009, by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation, hereinafter called PennDOT,

and

_____, with a mailing address at _____, hereinafter called CARRIER.

PennDOT and CARRIER are referred to collectively as “the Parties.”

WITNESSETH:

WHEREAS, as the result of a Request for Proposals (RFP), PennDOT selected Telvent Farradyne, Inc. (Telvent) to establish the 511 Pennsylvania Traveler Information System (511 PA); and,

WHEREAS, in order to set forth their respective duties and obligations in ensuring the full operation and functionality of 511 PA, PennDOT and Telvent entered into Agreement Number 357R03 (511 PA Agreement) November 7, 2008; and,

WHEREAS, under the terms of the 511 PA Agreement, Telvent is responsible for coordinating and facilitating the execution of this 511 Service Agreement (Agreement) and for collecting and paying monthly telephony invoices on behalf of PennDOT, throughout the duration of the 511 PA Agreement; and

WHEREAS, this Agreement serves as the instrument for coordination between PennDOT and CARRIER; and,

WHEREAS, by entering into this Agreement, the Parties wish to outline their respective rights and responsibilities regarding the provision of 511 service.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the Parties agree, with the intention of being legally bound, as follows:

1. INCORPORATION BY REFERENCE

The recitals set forth above are incorporated by reference as a material part of this Agreement.

2. GENERAL

a. **511 Service Description.** "511 Service" is a three digit abbreviated dialing code for accessing traffic and transportation information within the Commonwealth of Pennsylvania (Commonwealth). PennDOT has received authorization to serve as the sole administrator of the 511 dialing code in the Commonwealth under the Order of the Pennsylvania Public Utility Commission (PUC), adopted on October 23, 2008 and entered at Docket Number M-2008-2061434 on October 30, 2008. Landline telecommunications carriers are subject to the PUC Order which prescribes requirements in addition to those enumerated in this Agreement.

b. **Certification of PennDOT.** PennDOT certifies that it is capable of providing access to traffic and transportation information for the Commonwealth, that it has received the requisite state approval to be a designated provider, and therefore is qualified to request the provision of 511 Service from CARRIER.

3. PennDOT's OBLIGATIONS

a. **Provision of Termination Number.** PennDOT shall provide CARRIER with a 10-digit toll free number (or numbers) to which all 511 calls are to be translated (Termination Number(s)). PennDOT intends to utilize several regional toll free numbers to aid in translation and routing. PennDOT certifies that the Termination Number(s) will allow callers from anywhere within the Commonwealth's jurisdiction to complete calls on a toll-free basis and PennDOT will indicate, when applicable, in any notice, that air time and other charges may apply.

- b. Change of Termination Number.** PennDOT reserves the right, in its discretion, to change the Termination Number(s); provided, however, that it gives CARRIER at least thirty days' notice of the change of such number(s) so that CARRIER can make the necessary changes in its network or infrastructure to ensure proper routing. A change in the Termination Number(s) may result in the imposition of reasonable charges. PennDOT must also give CARRIER 30 days' notice of a change in the carrier providing the toll free Termination Number(s), since this will affect routing. Upon notice from PennDOT (or Telvent, acting on behalf of PennDOT) of its need to change the Termination Number(s) and payment of the associated charges, CARRIER shall have 30 days to make the necessary change in the call routing.
- c. Testing.** PennDOT reserves the right, in its discretion, to test the CARRIER's implementation of the 511 Service upon providing 30 days' notice to CARRIER. In such event, CARRIER shall provide PennDOT with a point of contact to address its questions, concerns, or communications.
- d. Payment.** PennDOT or vendor, Telvent, shall pay CARRIER an amount no greater than \$_____ for the telephony services described herein prior to the CARRIER's provision of service.

CARRIER shall send all invoices for payment to:

Telvent Farradyne, Inc.
3206 Tower Oaks Boulevard
Rockville, MD 20852
Attn: _____

PennDOT or its agent shall send all payments to CARRIER at:

Attn: _____

- e. Indemnification.** PennDOT and the Commonwealth of Pennsylvania (Commonwealth), shall defend, indemnify, protect and hold CARRIER, its officers and officials, harmless against suits, actions, claims, demands, judgments, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or in connection (directly or indirectly) with any breach or default in the performance of any obligations on PennDOT's or its agents' part to be performed under this Agreement.

PennDOT agrees to pay for any loss, liability, or expense, which arises out of or relates to PennDOT's acts or omissions with respect to its obligations under this Agreement, where a final determination of liability on the part of PennDOT or the Commonwealth of Pennsylvania is established by a court of law or where settlement has been agreed to by PennDOT. This provision shall not be construed to limit PennDOT's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of PennDOT or the Commonwealth.

4. CARRIER OBLIGATIONS

- a. Implementation.** CARRIER will translate 511 to the Termination Number(s) and will use its best efforts to route all 511 calls it receives from its subscribers, customers, and others using the CARRIER's services in the Commonwealth to that number. CARRIER shall not be required to monitor the traffic.
- b. Timing of Implementation.** Where applicable, CARRIER shall comply with the PUC Order. Additionally, CARRIER will fulfill PennDOT's implementation directive (order) within a reasonable time to be mutually agreed upon by the Parties, and, in any event, no later than two months' after receiving a request, receipt of the Termination Number(s) and payment.
- c. Availability.** CARRIER will use its best commercial efforts to make the 511 dialing code (as translated to the Termination Number(s)) available to its subscribers and others using the CARRIER network or services in the Commonwealth where CARRIER owns facilities and provides its telecommunication services. In those cases where CARRIER's service area extends beyond the boundaries of the Commonwealth, CARRIER will use its best commercial efforts to correlate the 511 translations with traffic and transportation information boundaries in the Commonwealth.

In the event that the exchange area served by CARRIER's offices are bisected by a 511 Regional boundary, CARRIER will not be required to forward 511 originating from that exchange calls to two different regional 511 centers. In such event, PennDOT will choose one 511 center and instruct CARRIER as to which 511 Center should receive calls from that exchange.

Access to the 511 dialing code may be available in locations in the Commonwealth outside CARRIER's service area. CARRIER shall have no obligation to make the 511 dialing code available to any person or entity within the Commonwealth but outside CARRIER's service area or to non-CARRIER subscribers.

- d. **Indemnification.** CARRIER shall defend, indemnify, protect and hold PennDOT, the Commonwealth of Pennsylvania (Commonwealth), its officers and officials, harmless against suits, actions, claims, demands, judgments, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or in connection (directly or indirectly) with any breach or default in the performance of any obligations on CARRIER's part to be performed under this Agreement.

In the event that CARRIER, or its assets, including related entities and this Agreement, are bought, sold, or acquired by sale, merger, acquisition or other means, CARRIER, its successors and assigns, to the extent necessary, shall coordinate their efforts to ensure the continuity of service provided under this Agreement, as well as their compliance with the terms and conditions of this Agreement. It is PennDOT's intent that this Agreement shall not only bind CARRIER, but also its successors and assigns, however their interest may be derived.

5. General Provisions

- a. **Term.** Subject to Section 5 (b), the term of this Agreement shall commence on the date of execution of this Agreement by the Parties, and shall continue for an initial term of 36 months. After the conclusion of the initial term, the Agreement will renew automatically on a yearly basis unless terminated by PennDOT with 60 days' advance written notice.
- b. **Termination.** If CARRIER fails to provide abbreviated dialing codes that are linked with the Termination Number(s) within 60 days from the date of execution of this Agreement and payment by PennDOT, PennDOT's offer to provide 511 service to the CARRIER's subscribers or customers shall be deemed withdrawn and the terms and conditions of this Agreement shall be void.

In the event of an occurrence outside the reasonable control of the Party that impairs or impedes the Party from performing its obligations under this Agreement, either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged defect and that the defaulting Party does not cure the alleged defect within 60 days' of receipt of written notice. Default is defined to include (i) a Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the party; or (ii) a Party's refusal or failure in any material respect to properly perform its material obligations under the Agreement, or for the violation of any of the material terms or conditions of this Agreement.

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- c. Transfer.** PennDOT may not sell or otherwise transfer the 511 number (or the provision of the traffic and transportation information centers) to any person or entity not affiliated with PennDOT without the consent of CARRIER, which consent shall not be unreasonably withheld or delayed. Any need for modification or changes to this provision will be addressed in a supplement to this Agreement. In no event shall this provision hinder or otherwise prevent PennDOT from selecting a third party contractor to administer the payment arrangements discussed above.
- d. Third Party Beneficiaries.** It is expressly agreed that no third party beneficiaries are intended to be created by this Agreement, nor do the Parties authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- e. Warranty.** CARRIER warrants that all services performed under this Agreement shall be performed consistent with the Pennsylvania Public Utility Code. PennDOT shall report any deficiencies in CARRIER's services to CARRIER.

In the event of a breach of the above warranty, PennDOT shall be entitled to a cure of any defect(s) in the CARRIER's services. If CARRIER is unable to cure such defect(s), PennDOT shall be entitled to recover the fees paid to CARRIER for the defective or deficient services for the period during which such services were defective or deficient.

- f. Advertising/Press Release.** CARRIER shall not publicly disseminate any information concerning this Agreement without prior written approval from the Commonwealth or its agent. For the purpose of this Agreement, the agent is PennDOT's Purchasing Agency Contract Administrator.
- g. Governing Laws.** This Agreement is made under and shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania and all applicable federal laws and regulations.
- h. Notices.** Notices under this Agreement shall be sent certified or registered U.S. mail, postage prepaid, return receipt requested, as follows:

PennDOT:

Attn: _____

CARRIER:

Attn:_____

- i. **Disputes.** Disputes under this Agreement shall be subject to the jurisdiction of and heard by the Pennsylvania Public Utility Commission.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

ATTEST:

CARRIER

Title:

Date:

By: _____
Title:

Date:

ATTEST:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

Title:

Date:

By: _____
Title:

Date:

APPROVED AS TO LEGALITY
AND FORM

By: _____
For Chief Counsel Date

CERTIFIED FUNDS AVAILABLE UNDER
FUNDS COMMITMENT NO. _____
FUND _____
COST CENTER _____
G/L. ACCOUNT _____
AMOUNT _____