

Document No. _____
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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. Cellular telecommunications carriers (providers) are subject to the jurisdiction of the Federal Communications Commission (FCC).

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 intends to 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 as described in provision 3(e). 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), 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.** Following receipt of payment from PennDOT, PennDOT's vendor, Telvent, shall pay CARRIER an amount no greater than \$_____ for the telephony services described herein. Payment shall be made to CARRIER no later than 45 days after CARRIER's provision of service.

CARRIER shall send all invoices for payment to:

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

Telvent (acting on behalf of PennDOT) shall send all payments to CARRIER at:

Attn: _____

PennDOT reserves the right, in its discretion, to change payment options under this Agreement, provided that it gives CARRIER at least 60 days' written notice and said payment change does not unreasonably interrupt timely payment. Such payment change may include, but is not limited to PennDOT's ability to directly accept invoices and pay CARRIER. In the event that PennDOT assumes payment responsibilities and directly pays CARRIER, CARRIER shall be required to: 1) register as a Commonwealth business partner under the Commonwealth's then current purchasing system; and, 2) comply fully with the Commonwealth's Contractor Responsibility Provision.

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. Normal airtime and service charges as permitted by law will apply to CARRIER and its subscribers or customers dialing 511 and other charges may apply. 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 and within 60 days from receipt of the Termination Number(s).

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 is bisected by a 511 Regional boundary, CARRIER will not be required to forward 511 calls originating from that exchange 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.

[The following provisions shall apply only to cellular carriers:]

Due to the nature of the service provided by cellular carriers, PennDOT understands and acknowledges that neither exact correlation nor exact coverage predictions are always possible. Cellular coverage may be affected by such things as terrain, weather, foliage, buildings, construction, signal strength, customer equipment and other factors.

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.

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.

- e. Related Entities and Mergers and Acquisitions.** CARRIER shall contact and coordinate its efforts with all related companies, partially- or wholly-owned subsidiaries and divisions (related entities), which provide landline and cellular telecommunications services within the Commonwealth, to ensure that the related entities are apprised of this Agreement and its contents. Such coordination shall occur in a timely fashion so as to facilitate the negotiation and execution of this Agreement with all landline and cellular telecommunications companies providing service within the Commonwealth, as required by PennDOT.

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, 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, 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.

- c. Transfer.** PennDOT acknowledges that it 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 generally prevailing telecommunications industry standards. PennDOT must report any deficiencies in CARRIER's services to CARRIER within 90 days of nonperformance or inadequate performance to receive warranty remedies.

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.

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:

1. PennDOT:

Telecommunications Unit
Pennsylvania Department of Transportation
Bureau of Infrastructure and Operations
400 North Street, 5th Floor
Harrisburg, PA 17120 _____

2. CARRIER:

Attn: _____

i. Commonwealth Provisions. CARRIER agrees to abide by the Commonwealth's "Contractor Integrity Provisions," the Commonwealth's "Nondiscrimination/Sexual Harassment Clause" and the "Provisions Concerning the Americans with Disabilities Act," attached to and made part of this Agreement as Exhibits "A," "B," and "C," respectively.

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

ATTEST:

CARRIER*

Title: DATE

BY: _____
Title: DATE

**If a Corporation, a Senior Officer (President, Vice President, CEO, COO or Chairperson) must execute this Agreement. If a Limited Liability Company (LLC), a Member or Manager must execute this Agreement. Pennsylvania Statutory signature rules apply.*

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary of DATE
Transportation or designee

APPROVED AS TO LEGALITY
AND FORM

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

BY _____
for Chief Counsel Date

BY _____
for Comptroller Date

Preapproved Form:
OGC Form No. 18-K-_____
Appv'd OAG --/--/--

CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.
 - a. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 - b. **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
 - c. **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - d. **Financial interest** means:
 - 1) Ownership of more than a five percent interest in any business; or
 - 2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - e. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
4. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
7. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

EXHIBIT “A”

10. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

EXHIBIT "A"

COMMONWEALTH NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

Each contract entered into by a governmental agency shall contain the following provisions by which the Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provision will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

EXHIBIT "B"

January 16, 2001

PROVISIONS CONCERNING *THE AMERICANS WITH DISABILITIES ACT*

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq.*, The Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "*General Prohibitions Against Discrimination,*" *28 C.F.R. § 35.130*, and all other regulations promulgated under *Title II of The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1.

EXHIBIT "C"