

Google Transit Agreement

This Google Transit Agreement is entered into by and between Google Inc. and its affiliates ("**Google**"), 1600 Amphitheatre Parkway, Mountain View, California 94043, and the Massachusetts Bay Transportation Authority ("**Licensor**"), a legislatively created entity under Massachusetts General Laws, Chapter 161A, with a principle place of business at the State Transportation Building, 10 Park Plaza, Boston, MA 02116. This agreement will be effective as of the date signed by Google below (the "**Effective Date**").

1 DEFINITIONS.

- 1.1 "**Licensed Content**" means the content provided by Licensor to Google pursuant to the delivery mechanism described in Section 3.1 (Delivery).
- 1.2 "**Licensor Marks**" means the following service marks, trademarks, company names, trade names, and logos of the Licensor: (i) the "T" design mark and "T" word + design mark illustrated on Schedule 1.2; (ii) the "MASSACHUSETTS BAY TRANSPORTATION AUTHORITY" mark; (iii) the "MBTA" mark; and (iv) marks that the Licensor has included in the Licensed Content, or that appear at a URL included by the Licensor in the Licensed Content.
- 1.3 "**Distribution Partner**" means a third party under an agreement with Google to use Google products or services internally or provide or display Google products or services to end users.

2 LICENSED CONTENT.

- 2.1 License. Licensor grants to Google a nonexclusive, worldwide, and royalty-free license to: (a) copy, distribute, create derivative works based on, perform, display, and otherwise use the Licensed Content in connection with Google products or services, which license will be perpetual with respect to Licensed Content used in Google products or services displayed in television broadcasts, print media, CDs, DVDs, or other fixed media; and (b) sublicense the license in subsection (a) to end users and Distribution Partners in connection with Google products or services. Google agrees that it will not distribute the Licensed Content to Distribution Partners or end users outside of the Google products or services. Google may use consultants and other contractors in connection with the performance of obligations and exercise of rights under this agreement, provided that such consultants and contractors will be subject to the same obligations as Google.
- 2.2 Marks License. Licensor hereby grants to Google a worldwide, non-exclusive, non-transferable, royalty-free right and license to use the Licensor Marks in connection with the Licensed Content in Google products or services. This license may not be sublicensed except to its Distribution Partners in connection with their use of Google products or services. For the avoidance of doubt, Google will not provide to any third party the Licensor Marks on a standalone basis and independent from Google products or services.
- 2.3 Reservation of Rights. Except for the license rights granted in this agreement, each party retains all rights it would have independent of this agreement, including rights under the U.S. Copyright Act or analogous laws in other jurisdictions. Google and its licensors retain all rights in any content used or created in connection with the Licensed Content and Licensor Marks. Nothing in this agreement will restrict Google from using content Google obtains from a source other than Licensor under this agreement.

3 DELIVERY; UPDATES.

- 3.1 **Delivery.** Within 14 days after the Effective Date, Licensor will provide the Licensed Content to Google in accordance with the format and specifications set forth in Google's transit feed specifications as updated by Google from time to time, the current version of which is located at http://code.google.com/transit/spec/transit_feed_specification.htm. If the Licensed Content includes URLs, those URLs will link directly to a Licensor webpage relevant to the Licensed Content without spawning any pop-up advertisements or new windows that are not relevant to the Licensed Content.
- 3.2 **Updates.** During the Term, Licensor will provide updates to the Licensed Content on a regular basis in the manner described in Section 3.1 (Delivery). The updated Licensed Content will be updated as frequently and will be as high in quality and broad in scope as corresponding content that Licensor provides to any other party (including without limitation Licensor's end users). In the event that Licensor is an aggregator of licensed content provided by other entities, Licensor will ensure that the updated Licensed Content will be updated as frequently and will be as high in quality and broad in scope as corresponding content that the originating entities provide to any other party.

- 4 **WARRANTIES AND INDEMNITIES.** Each party represents and warrants that it has full power and authority to enter into this agreement. Licensor represents and warrants that it has all necessary rights to grant the licenses set forth in Section 2. In the event that Licensor is an aggregator of licensed content provided by other entities, Licensor also represents and warrants that it has the full power and authority or has entered into agreements to ensure that the originating entities of the Licensed Content comply with the applicable provisions of this agreement, including, without limitation, the confidentiality obligations set forth in Section 6. Google will indemnify and defend Licensor and its directors, officers, employees, and agents from third party claims arising from or related to a breach of Google's representations and warranties. Licensor will, to the extent permitted by applicable law, indemnify and defend Google and its directors, officers, employees, agents, and Distribution Partners from third party claims arising from or related to (a) a breach of Licensor's representations and warranties or (b) Google's or any Distribution Party's authorized use of the Licensed Content or any other materials provided by Licensor to Google under this agreement.

- 5 **DISCLAIMERS, LIMITATION OF LIABILITY.** EXCEPT FOR THE EXPRESS WARRANTIES MADE BY THE PARTIES IN SECTION 4, THE PARTIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. EXCEPT (I) INDEMNITIES UNDER SECTION 4, AND (II) BREACHES OF CONFIDENTIALITY UNDER SECTION 6, (A) NEITHER PARTY WILL BE LIABLE FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, AND (B) NEITHER PARTY'S AGGREGATE LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED \$1,000.

6 CONFIDENTIALITY; PR.

- 6.1 **Definition.** "Confidential Information" is information disclosed by one party to the other party under this agreement that is marked as confidential or would normally under the circumstances be considered confidential information of the disclosing party. Confidential Information does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was rightfully given to the recipient by another party.

- 6.2 **Confidentiality Obligations.** The recipient will not disclose the Confidential Information, except to affiliates, employees, and agents who need to know it and who have agreed in writing to keep it confidential. The recipient, its affiliates, employees, and agents may use Confidential Information only to exercise rights and fulfill obligations under this agreement, while using reasonable care to protect it. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to discloser.
- 6.3 **Publicity.** Neither party may make any public statement regarding the relationship contemplated by this agreement without the other's prior written approval.
- 6.4 **Public Records.** Notwithstanding the provisions of Section 6.2, Google understands that, unless exempt under applicable law, this agreement and any documents that it submits under this agreement may be subject to public inspection or copying under Massachusetts General Laws Chapter 66A (Fair Information Practices Act) and other applicable laws and regulations ("**PRA**"). For avoidance of doubt, Licensor, solely in compliance with the PRA, may disclose that information to which Licensor has a reasonable good faith belief that no applicable exemption under the PRA applies. If any requests for disclosure are made pursuant to the PRA or comparable applicable laws requiring disclosure of information by public entities, Licensor shall (i) notify Google within 3 days of receiving such request and (ii) provide Google with reasonable information, and assistance to file for or request any applicable exemptions, extensions, responses or petitions and the like to protect Google's trade secrets, Confidential Information or the confidentiality of all or part of this agreement and documents submitted under this agreement.

7 **TERM AND TERMINATION.**

- 7.1 **Term.** Unless terminated earlier in accordance with this agreement, this agreement will: (a) begin on the Effective Date; (b) continue for 24 months; and (c) automatically renew for additional one year terms unless either party notifies the other party of its intent to not renew at least 90 days prior to the end of the then-current term. The "**Term**" means the initial term and all renewal terms.
- 7.2 **Termination.** Either party may terminate this agreement if the other party materially breaches any material provision of this agreement and fails to cure the breach within 30 days after receiving written notice of the breach from the non-breaching party. Google may terminate this agreement immediately upon written notice to Licensor if Licensor breaches its representations and warranties in Section 4 of this agreement (Warranties and Indemnities). Google may terminate this agreement upon seven days' prior written notice to Licensor if Google determines that the Licensed Content fails to meet Google's quality standards or technical specifications.
- 7.3 **Effects of Termination.** When the agreement terminates:
- (a) Licensor will cease providing Google with Licensed Content and, if applicable, provide an empty feed to Google using the delivery mechanism described in Section 3.1 (Delivery) to replace the Licensed Content.
 - (b) Google will use commercially reasonable efforts to cease display of the Licensed Content and the Licensor Marks to end users within 120 days after termination (and, if applicable, provision of the empty feed), but any sublicenses that Google grants during the Term will continue for the remaining term of the applicable sublicense.

7.4 Survival. Sections 2.1, 2.3 and 4 through 8 will survive any termination or expiration of this agreement.

8 MISCELLANEOUS.

REMAINING PORTION OF THIS PAGE IS BLANK

- 8.1 Notices. All notices must be in writing and addressed to the attention of the other party's Legal Department and primary point of contact. Notice will be deemed given (a) when verified by written receipt if sent by personal courier, overnight courier, or mail; or (b) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 8.2 Assignment. Neither party may assign or transfer any part of this agreement without the written consent of the other party, except to an affiliate but only if (a) the assignee agrees in writing to be bound by the terms of this agreement and (b) the assigning party remains liable for obligations under the agreement. Any other attempt to transfer or assign is void.
- 8.3 Change of Control. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (a) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (b) the other party may immediately terminate this agreement any time between the change of control and 30 days after it receives the written notice in subsection (a).
- 8.4 Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 8.5 No Waiver. Failure to enforce any provision will not constitute a waiver.
- 8.6 Severability. If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 8.7 No Agency. The parties are independent contractors, and this agreement does not create an agency, partnership or joint venture.
- 8.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this agreement.
- 8.9 Equitable Relief. Nothing in this agreement will limit either party's ability to seek equitable relief.
- 8.10 Governing Law. This agreement is governed by California law, excluding California's choice of law rules. FOR ANY DISPUTE RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.
- 8.11 Amendments. Any amendment must be in writing and expressly state that it is amending this agreement.
- 8.12 Counterparts. The parties may execute this agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.
- 8.13 Entire Agreement. This agreement is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

IN WITNESS WHEREOF, the parties have executed this agreement by persons duly authorized as of the Effective Date.

Google: GOOGLE INC.

Licensor: Massachusetts Bay Transportation Authority

By: _____

By:  _____

Print Name: _____

Print Name: Daniel A. Grabauskas _____

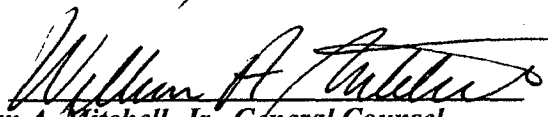
Title: _____

Title: General Manager _____

Date: _____

Date: 6/26/09 _____

Approved as to Form:

By: 
William A. Mitchell, Jr., General Counsel
Massachusetts Bay Transportation Authority
10 Park Plaza, Boston MA 02116

Addresses for notices:

Attention: Google Legal Department

MBTA Legal Department
Attention: William A. Mitchell, Esq.
Massachusetts Bay Transportation Authority
State Transportation Building
10 Park Plaza , Room 7760
Boston, MA 02116
Fax: 617-222-3160
Email: wmittchell@mbta.com

1600 Amphitheatre Parkway

Mountain View, CA 94043

Fax: (650) 618-1806

Email: legal-notices@google.com

Schedule 1.2
Licensed Design Mark and Licensed Word + Design Mark



**Massachusetts Bay
Transportation Authority**

6379282_v2

sd