

# TRANSIT CONTENT LICENSE AGREEMENT

This Transit Content License Agreement ("**Agreement**") is entered into by and between Google Inc. ("**Google**") with an address at 1600 Amphitheatre Parkway, Mountain View, CA, 94043 and with an address at ("**Licensor**"). This Agreement will be effective as of the date signed by Google (the "**Effective Date**").

[http://code.google.com/transit/spec/transit\\_feed\\_specification.htm](http://code.google.com/transit/spec/transit_feed_specification.htm) or some other mutually agreeable format and specifications. Without limiting the foregoing, any such electronic format will enable Google to securely and efficiently access and download all such Licensed Materials in a format and manner mutually agreed upon by the parties.

## 1. LICENSED CONTENT.

**1.1 License.** Licensor hereby grants to Google a perpetual, worldwide and royalty-free right and license to (i) use, copy, distribute, store (electronically or otherwise), create derivative works based on, publicly perform (including but not limited to by digital audio transmission) and publicly display the data, materials and content provided to Google by Licensor during the Term of this Agreement, including, without limitation, all text, data, images, materials and other content related to schedules, fares, location and general availability of public transportation, and any updates, refreshes, corrections and other modifications ("**Updates**") thereto provided to Google by Licensor ("**Licensed Materials**"), and (ii) allow end users who access or use Google Services ("**End Users**") to access and use the Licensed Materials through the Google Services. Licensor hereby grants to Google worldwide, non-exclusive, non-transferable, royalty-free right and license to use the various service marks, trademarks, company names, trade names, and logos ("**Licensor Marks**") in connection with the Licensed Materials in the Google Services during the Term of this Agreement. "**Google Services**" shall mean Google's products and services, including, without limitation, any products and services accessible through any Web site located at a Google-owned domain, including all sub-domains and directories thereof, and all successor sites thereto (the "**Google Sites**") and any Google syndication sites and 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. The license granted hereunder may not be sublicensed by Google, except to its affiliates and its syndication partners in connection with their use of the Google Services.

**1.2 Reservation of Licensor Rights.** Except for the rights and licenses granted hereunder, as between the parties, Licensor retains any right, title and interest in and to the Licensed Materials and Licensor Marks in accordance with and subject to applicable law.

**1.3 Reservation of Google Rights.** Notwithstanding anything to the contrary, Licensor understands and agrees that nothing in this Agreement will prevent or restrict Google from using materials and content Google obtains from a source other than Licensor.

## 2. DELIVERY AND FORMAT OF LICENSED CONTENT

**2.1 Delivery; Access.** Within fourteen (14) days after the Effective Date (or upon such other date mutually agreed upon by the parties), Licensor will make the Licensed Materials available to Google in accordance to 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

**2.2 Updates; Refreshes.** Licensor shall provide Updates to the Licensed Materials (the Updates together with the Licensed Materials, the "**Updated Licensed Materials**") on a regular basis, and make the Updated Licensed Materials available to Google in the manner pursuant to Section 2.1 hereof. Licensor shall ensure that the Updates and the Updated Licensed Materials made available to Google hereunder will be the same as and are as current as the corresponding data, materials and content that Licensor (or the entities originating the Updates and the Updated Licensed Materials in the event that Licensor is an aggregator of licensed materials provided by other entities) makes available to its users and for its operations and procedures.

**2.3 Display.** The rights granted to Google herein include the right to display the Licensed Materials on Google Services, Google Sites and Google syndication partner sites, as determined by Google in its sole discretion; provided that, notwithstanding anything to the contrary, nothing in this Agreement obligates Google to make available to End Users any or all of the Licensed Materials. Google will have the sole right to determine the placement and location of the selected Licensed Materials through the Google Services. For the sake of clarity, Google retains sole discretion with respect to the look and feel, display and operation of the Google Services. In consideration of the rights granted hereunder, Google may elect to display branding and attribution of Licensor (or the entities originating the Licensed Materials in the event that Licensor is an aggregator of licensed materials provided by other entities) on its Google Services. This Agreement does not affect any right that either party would have had, or shall have, independent of the Agreement including but not limited to rights under the U.S. Copyright Act or analogous laws in other jurisdictions.

**3. WARRANTIES AND DISCLAIMER.** Each party represents and warrants that it has full power and authority to enter into the Agreement. Licensor represents and warrants that: (a) the Licensed Materials and Licensor Marks do not infringe any third party patent, trademark or copyright or misappropriate any trade secret or violate any right of privacy or right of publicity or other legal right of any person; (b) Licensor has obtained and will maintain throughout the Term all rights, authorizations and licenses, if any, that are required in order for it to grant the rights and licenses granted hereunder and for Google to use the Licensed Materials and Licensor Marks as permitted herein; and (c) the Licensed Materials provided to Google will not contain any viruses, worms, Trojan horses or other similar harmful components. In the event that Licensor is an aggregator of licensed materials 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 Materials comply with the applicable provisions of this Agreement, including, without limitation, the confidentiality obligations set forth in Section 6. Except as expressly provided

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for herein, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT.

**4. INDEMNIFICATION.** To the extent permitted by law, Licensors will indemnify, defend and hold harmless Google, its affiliates, contractors, licensees, and syndication partners, and any of their respective officers, directors, employees and agents, from and against any third party claim based upon or otherwise arising out of: (a) a claim alleging facts that would constitute a breach of Licensors' representations, warranties or obligations hereunder, or (b) Google's authorized use of any Licensed Materials. Google will: (i) promptly notify Licensors of such claim, (ii) provide Licensors with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (iii) give Licensors full control and sole authority over the defense and settlement of such claim, subject to Google's approval of any such settlement, which approval will not be unreasonably withheld or delayed.

**5. LIMITATION OF LIABILITY.** EXCEPT FOR (A) LICENSOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4, AND (B) BREACHES OF CONFIDENTIALITY UNDER SECTION 6, (I) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOST REVENUE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN, AND (II) IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED ONE THOUSAND DOLLARS (\$1,000). The parties agree that (i) the mutual agreements made in this Section reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability.

**6. CONFIDENTIALITY; PR.** In connection with performance of its obligations hereunder, a party (the "**Discloser**") may disclose to the other party certain information it considers confidential and/or proprietary ("**Confidential Information**") to the other party (the "**Recipient**") including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business information, including operations, planning, marketing interests, and products; and (e) the terms of this Agreement and the discussions, negotiations and proposals

related thereto. The Recipient will only have a duty to protect Confidential Information disclosed to it by the Discloser: (1) if it is clearly and conspicuously marked as "confidential" or with a similar designation; (2) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or (3) if it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Recipient shall not disclose or cause to be disclosed any Confidential Information of Discloser, except to those employees, agents, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement ("**Authorized Personnel**") and who are bound by written agreement not to disclose third-party confidential or proprietary information disclosed to Recipient, or as such disclosure may be required by law or governmental regulation. Furthermore, Recipient agrees to be responsible for any act and/or omission of any Authorized Personnel in breach of this Section. Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; or (iv) is independently developed by the Recipient without violation of this Agreement. Recipient may disclose Confidential Information solely as needed to comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. A Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure. Neither party will issue any public announcement regarding this Agreement without the other party's prior written approval. Notwithstanding the foregoing, Google may include the Licensors' marks, names and logos in presentations, marketing materials, and customer lists (which includes, without limitation, customer lists posted on Google's Sites and screen shots of Licensors' implementation of the Services). Upon Licensors' request, Google will furnish Licensors with a sample of such usage.

## 7. TERM AND TERMINATION.

**7.1 Term.** Unless terminated earlier in accordance with this Agreement, this Agreement will begin on the Effective Date and expire twenty-four (24) months thereafter (the "**Initial Term**") and

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will automatically renew for additional one (1) year terms unless Google notifies Licensor of its intent to not renew at least sixty (60) days prior to the end of the then current term (the Initial Term and all such renewal terms, collectively, the "Term").

**7.2 Termination.** Either party may terminate this Agreement: (a) immediately upon written notice to the other party if (1) the other party files a petition for bankruptcy, becomes insolvent, or makes an assignment for the benefit of its creditors, or a receiver is appointed for the other party or its business, or (2) the other party breaches Section 6 of this Agreement (Confidentiality); or (b) if the other party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof. Google may terminate this Agreement immediately upon written notice to Licensor if Licensor breaches its representations and warranties in Section 3 of this Agreement (Warranties and Disclaimer). Google may terminate this Agreement upon seven (7) days' prior written notice to Licensor if Google determines that the quality and/or integrity of the Licensed Materials is inaccurate, outdated or otherwise not consistent with Google's standards of quality and integrity.

**7.3 Effect of Termination, Expiration.** Sections 1.2, 1.3, and 3 through 8 will survive any termination or expiration of this Agreement. For the sake of clarity, beyond any termination or expiration of this Agreement, nothing in this Agreement prohibits Google from using any data, information or other facts contained in the Licensed Content that has been independently verified.

**8. MISCELLANEOUS.** Each party will comply with all laws, rules and regulations, if any, applicable to it in connection with the performance of its obligations under the Agreement. All notices will be in English and in writing and (a) if sent to Licensor to the address identified above and (b) if sent to Google to: Google Inc., Attn: Legal Department, 1600 Amphitheatre Parkway, Mountain View, CA 94043. Notice will be deemed given (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent

simultaneously via first class mail. Licensor will not assign or otherwise transfer its rights or delegate its obligations under the Agreement, in whole or in part, without the prior written consent of Google; and any attempt to do so will be null and void. The laws of California, excluding its choice of law rules, and applicable federal U.S. laws will govern the Agreement. Each party agrees to submit to the personal and exclusive jurisdiction of the courts located in Santa Clara County, California. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The Agreement supersedes any other prior or collateral agreements, whether oral or written, with respect to the subject matter hereof. Any modifications to this Agreement must be made in a writing executed by authorized representatives of both parties, or by Licensor's online acceptance of updated terms, and must reference this Agreement. The failure to require performance of any provision will not affect a party's right to require performance at any time thereafter; nor will waiver of a breach of any provision constitute a waiver of the provision itself. If any provision is adjudged by a court of competent jurisdiction to be unenforceable, invalid or otherwise contrary to law, such provision will be interpreted so as to best accomplish its intended objectives and the remaining provisions will remain in full force and effect. The parties hereto are and will remain independent contractors and nothing herein will be deemed to create any agency, partnership, or joint venture relationship between the parties. Neither party will be deemed to be an employee or legal representative of the other nor will either party have any right or authority to create any obligation on behalf of the other party. Neither party will be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. The Agreement is not intended to benefit, nor will it be deemed to give rise to, any rights in any third party. The Agreement will be binding on and inure to the benefit of each of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Licensor: \_\_\_\_\_

Google Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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Printed Name

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