

511 TRAFFIC DATA DISSEMINATOR REGISTRATION AGREEMENT

A “Registered Data Disseminator” is a company or agency that is providing 511 information to end users or is conducting product testing in anticipation of launching a product or service that will do so. A Registered Data Disseminator wishing to obtain access to traffic data from the Metropolitan Transportation Commission (“MTC”) through a data feed from MTC’s 511 service is required as a condition of its receipt to agree to the following terms and conditions. **A Registered Data Disseminator’s signature on this Agreement and return of the fully executed Agreement, including Attachment A, to MTC constitutes a binding agreement between the Registered Data Disseminator and MTC.**

Background and Purpose

511 is the San Francisco Bay Area’s free traveler information service available on the phone by calling 511 and on the web at 511.org. The 511 service provides travelers with easy access to current and accurate traffic, transit, rideshare, and bicycling information. MTC operates the 511 service in partnership with the California Department of Transportation (Caltrans) District 4, the California Highway Patrol Golden Gate Division (CHP), and Bay Area transit agencies (“Data Suppliers”). MTC contracts with a third-party contractor (“511 Contractor”) to provide the 511 service.

MTC makes available several different data feeds free-of-charge to the general public, media, public agencies, and commercial vendors to the extent feasible within the available funding, as follows:

- **511 Traffic Data Feed:** The 511 Contractor gathers and integrates information from a variety of sources, including (1) real-time data on traffic conditions (travel time and speed data) on the region’s freeway system as collected by sensors operated by Caltrans and the 511 Contractor; (2) CHP incident reports; and (3) other available sources of information
- **511 Transit Static Data Feed:** The 511 Contractor gathers and integrates transit information, including without limitation maps, schedules, fares, tables, numbers, graphics, and text, for the San Francisco Bay Area from a variety of sources, including Bay Area transit agencies and service providers.
- **511 Driving TimesSM Application Programming Interface (API):** The 511 Contractor gathers and integrates information from a variety of sources, including (1) real-time data on traffic conditions (travel time data) on the region’s freeway system as collected by sensors operated by Caltrans and MTC; (2) CHP incident reports; and (3) other available sources of information.
- **511 Real-Time Transit Departures API:** The 511 Contractor gathers and integrates real-time transit departure predictions collected by Bay Area transit agencies. (*coming early 2011*)

This agreement is for the **511 Traffic Data Feed**. Registered Data Disseminators shall receive 511 Traffic XML-formatted data (referred to in this Agreement as “Provided Data”) via the Java Message Service (JMS) over the Internet.

Terms and Conditions

1. Use of Provided Data

Registered Data Disseminator is entitled to redistribute, enhance, repackage, or otherwise add value to the Provided Data. Registered Data Disseminator must provide to MTC requested company or agency information and a detailed description of its intended service or product and a market or business plan in Attachment A of this Agreement, Registered Data Disseminator Contact and Product Information, attached hereto and incorporated herein by this reference. This Agreement and Attachment A are subject to disclosure under the California Public Records Act (“PRA”) (California Government Code Sections 6250 *et seq.*).

2. Limitations of Use

- a. Registered Data Disseminator agrees to use commercially reasonable efforts to maintain the most current available data in its services, sites or applications that are available to the public. Nothing in this Agreement obligates Registered Data Disseminator to make available any or all of the Provided Data, in any of Registered Data Disseminator’s services, sites, or applications.
- b. MTC, Caltrans, and CHP reserve the right to publicize Registered Data Disseminator’s use of the Provided Data.
- c. Registered Data Disseminator understands that MTC incurs costs in order to furnish the Provided Data. In order to justify continued investment in a free 511 data source for data disseminators, MTC must demonstrate usage of the Provided Data. Therefore, the Registered Data Disseminator agrees to provide MTC with documentation of a product, website, application, or other service using the Provided Data within thirty (30) days of launch. Documentation may include, but is not limited to, screen-shots, press releases, or live URL’s. Registered Data Disseminator also agrees to document compliance with acknowledgement of the source of the data per Section 5.b below.

In addition, the Registered Data Disseminator agrees to provide the 511 Contractor with a list of any intermediate and/or other third-party data disseminators to whom Registered Data Disseminator is providing the Provided Data within thirty (30) days of signing the Agreement or within thirty (30) days of acquiring a new disseminator.

- d. MTC reserves the right, at some future date, to charge for access to and usage of the MTC 511 data. MTC shall provide Registered Data Disseminator at least ninety (90) days advance written notice of such intent.

3. Disclaimers, Limitations of Liability and Indemnification

- a. MTC furnishes the Provided Data to Registered Data Disseminator on an “AS IS,” “AS AVAILABLE” and “WITH ALL FAULTS” basis. MTC makes no warranty of any kind for the Provided Data, express or implied, including but not limited to any warranties of merchantability or fitness for a particular purpose, nor shall the distribution of the Provided Data constitute any warranty.
- b. The Provided Data is collected from various sources and will change over time without notice. MTC assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of the Provided Data. Furthermore, although MTC reasonably believes that making the Provided Data available for Registered Data Disseminator inspection is not an infringement or other violation of any third party’s intellectual property rights, MTC makes no warranty or guarantee as to the ownership of any intellectual property or other property interest contained in the Provided Data. Provided Data availability, data definition and data accuracy are all subject to change.
- c. Registered Data Disseminator agrees to defend, indemnify, and hold MTC, Caltrans, and CHP, the 511 Contractor, and their commissioners, directors, officers, and employees (“the Indemnitees”) harmless from and against any and all liability and expense, including reasonable defense costs and legal fees, caused by any negligent or wrongful act or omission of Registered Data Disseminator, its agents, officers, and employees, in its use, possession, or dissemination of the Provided Data, to the extent that such liability may be imposed upon the Indemnitees, including, but not limited to personal property damage, or injury to privacy or reputation.
- d. In no event shall the Indemnitees be liable for any damages, claim, or loss incurred by Registered Data Disseminator, (including, without limitation, compensatory, incidental, indirect, special, consequential, or exemplary damages, lost profits, lost sales or business, expenditures, investments, or commitments in connection with any business, or loss of any goodwill) resulting from loss of Provided Data or inability to use Provided Data irrespective of Indemnitees have been informed of, knew of, or should have known of the likelihood of such damages, claim, or loss. This limitation applies to all causes of action in the aggregate, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation, and other torts.

4. 511 Traffic Data Feed Operations

- a. MTC, through the 511 Contractor, shall provide Registered Data Disseminator with access to the Provided Data. MTC is committed to maintaining a cooperative working relationship with the Registered Data Disseminators to maximize the benefits to the public. Subject to the Disclaimers in Section 3 herein, MTC intends, through the 511 Contractor, to compile the Provided Data from the best available sources and to provide a best efforts approach to the dissemination of such Provided Data.

- b. The Registered Data Disseminator is cautioned that Provided Data availability and accuracy are all subject to change. Reasonable efforts shall be made by MTC or the 511 Contractor to advise Registered Data Disseminator of both expected and unexpected changes in the operational status of the 511 Traffic Data Feed, to the extent feasible. Registered Data Disseminators are encouraged to contact MTC (TOMSdata@511.org) to report suspected system operational or maintenance problems.

5. License to use MTC's 511 Brand and Trademark

- a. Subject to Section 5.b-d below, MTC hereby grants to Registered Data Disseminator a worldwide, non-exclusive, royalty-free right and license to use the MTC 511 services marks, as described below, in connection with its permitted use of the Provided Data, in accordance with MTC's "511 Brand Toolbox" at 511.org:

"511" with Design: U. S. registration No. 2,873,587 and California registration no. 057379;

- b. During the Term, Registered Data Disseminator:

- MUST acknowledge the source of the Provided Data with the tag line "powered by 511.org," or "data provided by 511.org," or a variant approved in writing by MTC, and a link to <http://www.511.org>. The acknowledgement must be in visual proximity to the user's access to the Provided Data. If space allows, Registered Data Disseminators are encouraged to provide the MTC 511 + Design logo with the link to 511.org.
- May also download an approved 511 web banner and link to <http://www.511.org>.

Information on linking to 511, including the downloadable registered MTC 511 + Design logo and other approved banners, is available here:
<http://511.org/511brandtoolbox/main.asp>.

- c. Registered Data Disseminator is prohibited under this Agreement from using the MTC 511 + Design logo, "511," "511.org," any combination of "511" with other words or symbols (e.g., "MY 511"), and any other registered 511 service-mark, in its marketing, naming, or branding of its data dissemination product(s) or services, except as noted in item b. Failure to comply with this provision shall be a material breach of this Agreement and grounds for its termination.
- d. Registered Data Disseminator shall not use, display, or authorize third parties to use Caltrans', CHP's, or transit service providers' trademarks, service-marks, or logos on applications that utilize the Provided Data in part or in whole without separately obtaining the express permission of the agency or organization that controls the rights to these features.

6. Notices

Any notices or other communications to MTC under this agreement shall be directed to MTC at TOMSdata@511.org. The contact for the Registered Data Disseminator is included in Attachment A. The Registered Data Disseminator shall notify MTC if its contact information changes.

7. Term and Termination

This Agreement shall become effective when signed by Registered Data Disseminator and returned to MTC (“Effective Date”) and shall remain in force unless or until terminated by either party with or without cause by 30-day prior written notice delivered to the other party to this Agreement (“the Term”). Section 3 survives the termination of this Agreement.

8. Governing Law

The laws of California, excluding its choice of law rules, and applicable federal U.S. laws will govern the Agreement. The exclusive jurisdiction and venue for any dispute, action, or suit of any nature involving this Agreement and the Provided Data and its content, including, but not limited to, actions for injury to a person or property or infringement of intellectual property rights, shall reside in either the Federal District Court, Northern District of California or the Superior Court of California situated in Alameda, California, as applicable.

9. General

- a. If any provision of this Data Disseminator Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect.
- b. The failure of either party to enforce at any time any of the provisions of the Data Disseminator Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Data Disseminator Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way effect the validity of either party to enforce each and every such provision thereafter.
- c. MTC reserves the right to change the terms of this Agreement and any associated policies at any time by providing written notice to Registered Data Disseminator. Following receipt of notice of such change from MTC or the 511 Contractor, Registered Data Disseminator shall have thirty (30) days in which to accept such change in writing or terminate the Agreement as provided herein.
- d. Any waiver by MTC of a requirement of this Agreement must be explicit and in writing. Failure by MTC to enforce any provision of this Agreement shall not be deemed a waiver of such provision by MTC.

10. Signature

The Registered Data Disseminator is to mail the signed agreement, including Attachment A, to:

511 Program Manager
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607

By its signature, Registered Data Disseminator accepts and agrees to abide by all of the terms and conditions of this Data Disseminator Agreement.

Name of Registered Data Disseminator: _____

Name and Title of Authorized Signator: _____

Signature: _____ Date: _____

Attachment A
Registered Data Disseminator Contact and Product Information

<i>Name and Address of Registered Data Disseminator:</i>	
<i>Contact Name and Title: Email: Fax: Phone:</i>	
<i>Name of Product/Service:</i>	
<i>Description of Product/Service (for example, iPhone application):</i>	
<i>Description of Market/Business Plan (for example, placement in iTunes store and mobile banner ads):</i>	