



Metropolitan Transportation Authority

State of New York
July 29, 2009

Mr. Michael Perkins
[REDACTED]

Re: Freedom of Information ("FOIL") Request

Dear Mr. Perkins:

In response to your July 21, 2009 FOIL request, enclosed please find the Transit Content License Agreement between the MTA and Google ("the Agreement").

Pursuant to FOIL and MTA's contractual obligations, MTA notified Google of your request. Google has requested that the MTA except certain portions of the Agreement in accordance with N.Y. Public Officers Law §87(2)(d), which permits an agency to withhold records that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the commercial enterprise".

The MTA has reviewed Google's request for an exception from disclosure and has found that certain portions of the Agreement, if disclosed, would cause substantial injury to Google's competitive position. Accordingly, those portions of the Agreement have been redacted. I am enclosing the requested Agreement, with redactions.

Under N.Y. Public Officers Law §89(5)(c)(1), you may appeal this determination in writing, within seven (7) business days of receipt of this letter, to Chairman Hemmerdinger, Metropolitan Transportation Authority, 347 Madison Avenue, New York, New York 10017.

This completes the MTA's response to your FOIL appeal.

Very truly yours,

Ann Cutler
Paralegal

Tel.: (212) 878-7315

Enclosure

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

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 the Metropolitan Transportation Authority (a New York public authority and public benefit corporation that includes as subsidiaries and affiliates MTA New York City Transit, MTA Long Island Bus, MTA Bus, MTA Long Island Rail Road, MTA Metro-North Railroad)(collectively, the "MTA") with an address for MTA at 347 Madison Avenue, New York, NY 10017-3739. This Agreement will be effective as of August 1, 2008 (the "Effective Date").

1. LICENSED CONTENT.

1.1 License. MTA hereby grants to Google a non-exclusive, non-transferable, 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 mutually agreed to and provided to Google by MTA during the Term of this Agreement, including, text, data, images, materials and other content related to schedules, pricing, location and general availability of public transportation, and any updates, refreshes, corrections and other modifications ("Updates") thereto provided to Google by MTA ("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. MTA hereby grants to Google worldwide, non-exclusive, non-transferable, royalty-free right and license to use in their authentic form the MTA-authorized service marks, trademarks, company names, trade names, and logos as set forth in Exhibit A ("MTA 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 ("Syndication Sites"). Google may use Syndication Sites, consultants and other contractors in connection with the performance of obligations and exercise of rights under this Agreement, provided that such Syndication Sites, consultants and contractors will be subject to the same obligations as Google. The license granted hereunder may not be sublicensed by Google, except, subject to the same obligations as Google, to its affiliates and its syndication partners in connection with their use of the Google Services.

1.2 License Fee.

1.3 Specific Content. Google will make the MTA Intellectual Property and proprietary data available to End Users only through Google Services, and always subject to the applicable Google Terms of Service Agreement. Google shall not copy or create a derivative work based on MTA's copyrighted maps. Google will first externally release

the Licensed Materials on a date mutually agreed upon by both parties.

1.4 Reservation of MTA Rights. Except for the rights and licenses granted hereunder, as between the parties, MTA retains any right, title and interest in and to the Licensed Materials and MTA marks in accordance with and subject to applicable law. For the sake of clarification, except as provided for in this Agreement, Google will not use for any purpose anywhere in the world all or any portion of a trademark, logo, other map, or other written, video, audio or any other intellectual property of the MTA or its operating agencies. This prohibition will not apply if the written consent to a specific use is duly requested by Google and granted in writing by MTA.

1.5 Reservation of Google Rights. Notwithstanding anything to the contrary, MTA understands and agrees that nothing in this Agreement will prevent or restrict Google from using materials and content which to the best of Google's knowledge are lawful and non-infringing, and which Google obtains from a source other than MTA.

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), MTA will make the Licensed Materials available 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, or some other mutually agreeable format and specifications. Google represents and warrants that the Google transit feed specifications are and will continue to be in an open format that will enable the MTA to make the Licensed Materials available to others. 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.

2.2 Updates; Refreshes. MTA shall provide Updates to the Licensed Materials (the Updates together with the Licensed Materials, the "Updated Licensed Materials") on a regular basis, timing and frequency of which shall be by mutual agreement, and make the Updated Licensed Materials available to Google in the manner pursuant to Section 2.1 hereof. MTA 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 MTA (or the entities originating the Updates and the Updated Licensed Materials in the event that MTA is an aggregator of licensed materials provided by other MTA subsidiaries or affiliates) 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

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). [REDACTED]

[REDACTED]. 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.

5. 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 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 if disclosure is required by law or governmental regulation such as disclosure under the New York Freedom of Information Law, New York Public Officers Law Section 87 et seq. ("FOIL") as contemplated by Section 5.1. 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 within a timeframe reasonably necessary to comply with legal requirements). 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. Following that announcement, Google may include the MTA's 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 MTA's implementation of the Services). Upon MTA's request, Google will furnish MTA with a sample of such usage.

5.1 Public Records. Notwithstanding the provisions of Section 5, 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 and/or copying under the New York Freedom of Information Law, New York Public Officers Law Section 87 et seq. ("FOIL"). For avoidance of doubt, Licensor, solely in compliance with FOIL, may disclose that information to which Licensor has a reasonable good faith belief that no applicable exemption under FOIL applies. If any requests for disclosure are made pursuant to the FOIL or comparable applicable laws requiring disclosure of information by public entities, MTA shall (i) within a reasonable time period of receiving such request notify Google of the same and (ii) work cooperatively with Google to file for or request any applicable exemptions, extensions, responses or petitions and the like to protect Google's trade secrets, confidential information and/or the confidentiality of all or part of this Agreement and documents submitted under this Agreement. Notwithstanding anything to the contrary, MTA acknowledges that Google's trade secrets and confidential business information include, without limitation, usage data regarding Google Services and any information marked as trade secret or confidential. In the event that Google, in its sole discretion, provides or provides access to usage data to MTA, then MTA's disclosure or use of such data must be first approved by Google in writing.

6. TERM AND TERMINATION.

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 will automatically renew for additional one (1) year terms unless Google notifies MTA 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").

6.2 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 5 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; or (c) for convenience by providing the other party with thirty (30) day prior written notice. Google may terminate this Agreement immediately upon written notice to MTA if MTA 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 MTA 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.

6.3 Effect of Termination, Expiration. Upon Termination, Sections 1.4, 1.5, and 3 through 7 will survive any termination or expiration of this Agreement. Google will use commercially reasonable efforts to cease display of the Licensed Content to end users within ninety (90) days after termination (and, if applicable, provision of the empty feed), and will use commercially reasonable efforts to end any applicable sub-license within ninety (90) days after termination. For the sake of clarity, any termination or expiration of this Agreement, will not prohibit Google, at its own risk and expense, from using any data, information or other facts contained in the Licensed Content that has been independently verified.

7. MISCELLANEOUS.

Each party will comply with all laws, rules and regulations, if any, applicable to it in connection the performance of its obligations under the Agreement. All notices will be in English and in writing and (a) if sent to MTA to: MTA, 347 Madison Avenue, New York, New York 10017 Attn: General Counsel 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. 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. The laws of New York, excluding its choice of law rules, and applicable federal U.S. laws will govern the

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 will display branding or attribution on desktops and on handheld devices, where feasible, of MTA (or the entities originating the Licensed Materials in the event that MTA 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.

2.4 Accuracy. If MTA informs Google of any errors on the Google Sites, Google and MTA shall work cooperatively to update the Site in question within seven (7) days after Google receives MTA's notification or within a timeframe as otherwise agreed upon.

3. WARRANTIES AND DISCLAIMER.

Each party represents and warrants that it has full power and authority to enter into the Agreement. MTA represents and warrants that: (a) it has all necessary rights to grant the licenses set forth in Section 1; and (b) to the best of MTA's knowledge, the Licensed Materials provided to Google will not contain any viruses, worms, Trojan horses or other similar harmful components. In the event that MTA is an aggregator of licensed materials provided by other entities, MTA 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 5. MTA agrees to make commercially reasonable efforts to supply accurate data, but it expressly disclaims all warranties concerning the accuracy of such data. Except as expressly provided 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. LIMITATION OF LIABILITY.

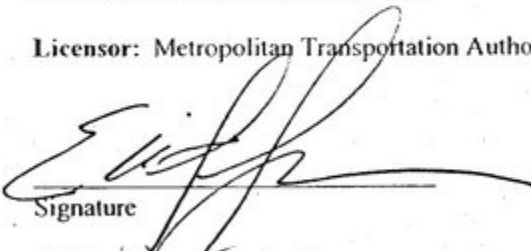
EXCEPT FOR (A) BREACHES OF CONFIDENTIALITY UNDER SECTION 5, AND (B) BREACHES OF MTA'S WARRANTIES AND REPRESENTATIONS UNDER SECTION 3, (1) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, 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

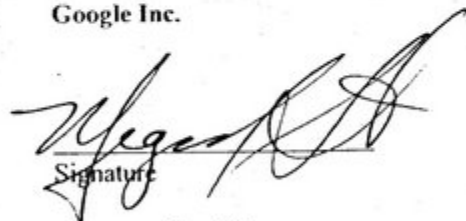
Agreement. Each party agrees to submit to the personal and exclusive jurisdiction of the courts located in New York County, New York. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer 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 MTA'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.

Licensors: Metropolitan Transportation Authority

Google Inc.


 Signature
 Elliot G. Sanders
 Printed Name


 Signature
 Megan Smith
 Printed Name

MTA Executive Director & CEO

VP, NEW BUSINESS DEV

Title

Title

8/5/08

8/11/08

Date

Date

