

511 Data Disseminator Agreement

511 makes certain transportation-related data (“Provided Data”) available to a company, agency, individual, or institution that is providing transportation-related information to end users, is performing academic research, or is conducting planning in anticipation of launching a product or service that will do so. Such a person or entity wishing to obtain access to the Provided Data from the Metropolitan Transportation Commission (“MTC”) through an Application Programming Interface or data feed is required as a condition of its receipt to agree to the following terms and conditions (“Data Disseminator Agreement”). Upon accepting the terms and conditions, the person or entity becomes a Registered Data Disseminator.

As such, by selecting “I agree to the terms and conditions of usage” and accessing the Provided Data, you indicate that you have read, understand and agree to the terms and conditions of this Data Disseminator Agreement.

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, parking, 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 third party contractors (“511 Contractors”) to provide the 511 service.

MTC makes available several different static and real-time data feeds, including Bulk and API data for transit, traffic, and other transportation-related elements. MTC offers this data free-of-charge to the general public, media, public agencies, and commercial vendors to the extent feasible within the available funding.

Terms and Conditions

1. Grant of License

Subject to the limitations and disclaimers in Paragraphs 2 and 3 herein, MTC hereby grants to Registered Data Disseminator a nonexclusive, royalty-free, worldwide, non-transferable license to use, sublicense, copy, distribute, and store (electronically or otherwise) the Provided Data; to create derivative works from the Provided Data; to display (publicly or otherwise) the Provided Data; and to make the Provided Data available to end users through Registered Data Disseminator services, sites or applications.

2. Limitations on Grant of License

Registered Data Disseminator’s license to the Provided Data is subject to the following limitations and conditions:

- a) Registered Data Disseminator shall use commercially reasonable efforts to maintain the most current available Information 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 services, sites, or applications.

- b) The Provided Data shall not be sold as received on a standalone basis without the prior written agreement of MTC.
- c) Any sublicenses of the Provided Data shall be subject to the terms and conditions of this Agreement. Registered Data Disseminator agrees to secure from prospective sublicensees their written acceptance of these terms and conditions prior to providing the Provided Data and to provide MTC with copies of such acceptances upon request.
- d) Registered Data Disseminator waives any claims against MTC resulting from rights that others may assert based on Registered Data Disseminator exercise of this grant of license, including without limitation claims of copyright infringement or violation of other intellectual property rights.
- e) Registered Data Disseminator agrees that it will not use, display, or authorize third parties to use Data Suppliers' intellectual property, trademarks, 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.
- f) MTC, Caltrans, CHP, and Data Suppliers reserve the right to publicize Registered Data Disseminator's use of the Provided Data.
- g) 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.
- h) MTC reserves the right, at some future date, to charge a fee 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, the 511 Contractors, Data Suppliers, and their directors, commissioners, officers, and employees ("Indemnitees") harmless from and against any and all liability and expense, including reasonable defense costs and legal fees, caused by any breach of this agreement, or 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 whether 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 Operations

- a) MTC, through the 511 Contractors, 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 Contractors, 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 Contractors to advise Registered Data Disseminator of both expected and unexpected changes in the operational status of the Provided Data, to the extent feasible. Registered Data Disseminators are encouraged to contact MTC (developerresources@511.org) to report suspected system operational or maintenance problems.

5. Use of 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 service mark, 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/branding>.
- 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 Data Suppliers' 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

All notices or other communications to MTC under this Agreement shall be directed to MTC at developerresources@511.org.

Unless otherwise notified, MTC shall use the Registered Data Disseminator's e-mail address submitted and verified during registration for access to the Provided Data. The Registered Data Disseminator shall notify MTC if its contact information changes.

7. Term and Termination

This Agreement shall remain in force indefinitely, until or unless terminated by either Party with or without cause by thirty (30) day advance electronic notice. In the case of MTC terminating the Agreement, notice shall be given to the e-mail address provided by the Registered Data Disseminator at the time of registration. In the case of Registered Data Disseminator terminating the Agreement, notice shall be given to developerresources@511.org. The termination of this Agreement does not release Registered Data Disseminator from the responsibilities, liabilities, or indemnification set forth in the Agreement. Those provisions that by their nature should survive termination are deemed to survive termination.

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 San Francisco, 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 Contractors, 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.