

R.I. STATEWIDE PLANNING PROGRAM

LICENSE AGREEMENT

RHODE ISLAND STATEWIDE TRAVEL DEMAND MODEL

THIS AGREEMENT is made by and between the State of Rhode Island, Department of Administration, STATEWIDE PLANNING PROGRAM, hereinafter called "Licensor" and the client identified herein and on Attachment 1, hereinafter called "Licensee".

Whereas, the Licensor has been designated as the single metropolitan planning organization (MPO) for transportation planning for the State of Rhode Island, and in that capacity is required to develop and maintain a travel demand model for the use of the State of Rhode Island and its agencies in preparing estimates of current and future travel demand for application in transportation system and air resources planning and management; and

Whereas, said travel demand model is known as the **Rhode Island Statewide Travel Model**, hereinafter called "**RISM**", and consists of computer software and data produced by employees and agents of the R.I. Statewide Planning Program, and is formatted to operate using proprietary software package available from independent vendors. A description and release date of the version of the RISM covered by this agreement are further identified on **Attachment 1**.

Whereas, the RISM represents a publicly-supported forecasting tool that has unique value for application to a variety of transportation project planning – related needs of the public and private sectors; and

Whereas, the Licensor is desirous of promoting access to the RISM for usage and application in such projects, with appropriate controls to maintain distribution and quality assurance; and

Whereas, the Licensee is desirous of securing the non-exclusive right to use the RISM for usage in the project identified on Attachment 1.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Licensor and Licensee agree as follows:

1.1 License of Data Products -- Licensed data and related supporting software files identified herein as constituting "RISM" and as further described on Attachment 1 shall be subject to all the terms and provisions of this agreement.

1.2 Restriction on Use-- The services and products are solely and exclusively for the internal use of the Licensee and not for the use by any other person or entity, including, but not limited to any entity which is affiliated with the Licensee unless included in the term Licensee.

1.3 Permitted Use.

- a. **Copies.** The Licensee may copy RISM data for archival and backup purposes.
- b. **Equipment.** RISM digital data may be used on computer equipment and with software owned or leased by the Licensee.
- c. **Derived Products.** Graphic displays and printed tabular listings derived from RISM data may be used in publications and presentations, provided that credit is given to RI Statewide Planning Program as the source of the original/input information. All such credit notations shall include the following disclaimer: "**RISPP makes no warranty or representation as to the accuracy or suitability for a particular purpose of RISM or data provided for use with RISM. Any opinions expressed by the recipient or representations made by the recipient based upon RISM output data are the sole responsibility of the recipient.**"
- d. **Restriction to Identified Application.** The Licensee recipient, designee, or consultant agree to limit the use of the RISM to the project or application identified on Attachment 1.

1.5 Prohibited Use -- Unauthorized Distribution -- Any sale, distribution, loan, or offering for use of RISM digital data, in whole or in part, is prohibited without the approval of the Licensor. The licensee will not distribute RISM data to any party without the express written permission of the Licensor. Parties interested in using RISM will be referred directly to RISPP.

1.6 Prohibited Use -- Unauthorized Changes -- The Licensee agrees it will not make any changes to RISM data or parameters without first soliciting and receiving the consent of the Licensor. Such consent is not implied by this release agreement.

2.0 QUALITY ASSURANCE

2.1 Right of Review of Application -- At the Licensor's option, all modeling results of the Licensee's application of RISM will be submitted to the RISPP for review and concurrence prior to their release to any other parties. RISPP will, at its option, re-run any of the recipient's models to verify proper application and interpretation of the RISM data output.

3.0 ASSIGNMENT

3.1 No Assignment -- This Agreement may not be assigned by either party without the expressed written consent of the other, in advance; the permitted assignee thereof shall have all the rights and remedies of the original parties insofar as the same are assignable. Assignment shall be only as a whole and not as a part, nor as to any part interest therein.

4.0 INDEMNIFICATION

4.1 Indemnification -- Licensee agrees to hold the Licensor and all its employees, staff, and agents harmless from any claim, suit, or proceeding arising out of the subject matter of this Agreement, including indemnification of Licensor for reasonable expenses incurred in defending such claims.

5.0 WARRANTIES AND LIABILITIES

5.1 Warranties and Liabilities-- The Licensor does not make any warranty, expressed or implied, as to the results to be attained by the Licensee or others from the use of the licensed data, and there are no warranties of merchantability or fitness for a particular purpose or use. The information contained in the Licensed RISM Data shall be obtained from sources considered by the Licensor to be reliable, but the accuracy and completeness thereof are not guaranteed, and RISPP shall not be subject to liability for errors of human, or defect or failure of machines, or any material used in the connection with the machines, including, but not limited to, tapes, discs, punch cards and energy. No party shall be liable to the other for default resulting from FORCE MAJEURE, which shall be deemed to include any circumstances beyond the reasonable control of the party affected. Except with respect to liability for remedies which cannot be waived under State and Federal Law, Licensor shall not be liable for any lost profits for consequential damages, or claims against the Licensee by Third parties. The liability of Licensor hereunder for damages, regardless of the form of the action, shall not exceed the License fee paid for the product; and no action, regardless of form, arising from or pertaining to any of the Licensed Data may be brought by the Licensee more than (1) year after such action has accrued.

6.0 TERMINATION

6.1 Termination -- In the event that the Licensee shall not faithfully perform any and all of the obligations to be performed by the Licensee under this License, the Licensor shall have the right to terminate and cancel this License if the default shall continue for more than (30) days after written notice thereof to the Licensee. Cancellation by the Licensor shall not release the Licensee from its obligation to pay any fees due herein.

6.2 Causes for Termination-- Licensor shall have the right to terminate this agreement if (a) Licensee attempts to assign its rights without the written consent of Licensor; (b) if Licensee delivers or attempts to deliver the Licensed Data to another agency, corporation, or person without the prior written consent of RISPP.

7.0 REMEDIES

7.1 Breach or Threatened Breach -- In the event of a breach or threatened breach of any of the provisions of this Agreement by the Licensee or any employee or representative of the Licensee, Licensor shall be entitled to preliminary and permanent injunctive relief to enforce the provisions hereof; but nothing herein shall preclude Licensor from pursuing any action or other remedy for any breach or threatened breach of this Agreement, all of which shall be cumulative. In the event that Licensor prevails in any such action, Licensor shall be entitled to recover from the Licensee all attorney's fees incurred in connection with.

8.0 BINDING

8.1 Acknowledgment -- The Licensee acknowledges that this Agreement has been read and agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the communications or representations relating hereto.

9.0 ADDITIONAL PROVISIONS

9.1 Laws of the State of Rhode Island -- This Agreement shall be governed by the laws of the State of Rhode Island and Providence Plantations and the parties hereby submit to the jurisdiction of the courts of the State of Rhode Island. This agreement represents the entire agreement between the parties with respect to the subject matter hereof. This agreement shall not be modified except in writing and when signed by the parties. Waiver of any breach of the terms and conditions of this agreement shall not be deemed to constitute a waiver of any other or future breach.

Authorized Agent / Licensee

Date

Agency/Company Name

(_____) _____
Phone

Address

(_____) _____
Fax

Address

Email

City/Town

State

Zip

APPROVED

R.I. Statewide Planning Program (Licensor)

Date

ATTACHMENT 1
Rhode Island Statewide Travel Model (RISM)
RELEASE AGREEMENT

Technical Assistance: The Rhode Island Statewide Planning Program (RISPP) has provided the licensee identified herein an updated version/components of the Rhode Island Statewide Travel Model (RISM) consisting of:

- network
- traffic analysis zone (TAZ) system
- demographic data sets, program control batch files
- model documentation, and
- any other files (exclusive of operating system and model software*) necessary to operate *RISM*

* RISM is configured to operate using the proprietary *TransCAD* software platform, version 4.7., which is not supplied by RISPP.

Version of RISM being released: *The current RISM version is dated March 24, 2005.*

Conditions for Release: As consideration for the technical assistance provided by RISPP described below, the recipient has signed a license agreement as a licensee for RISM, and agrees to abide by the conditions of usage, listed below, and other provisions set forth therein. Specifically:

- The recipient will not distribute *RISM* to any party without the express written permission of RISPP. Parties interested in using *RISM* will be referred directly to RISPP.
- The recipient will not make any changes to *RISM* parameters without first soliciting and receiving the consent of RISPP. Such consent is not implied by this release agreement.
- To the extent permitted by law, the recipient shall indemnify and hold harmless RISPP, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney's fees, incurred as a result of the recipient's use of *RISM*.
- The licensed recipient, designee, or consultant agree to limit the use of the travel model to the development of the project identified herein.
- At RISPP's option, all results of the modeling will be submitted to the RISPP for review and concurrence before release of the results to any other parties. RISPP will, at its option, re-run any of the recipient's models to verify proper use of the travel model.
- RISPP retains the right to change, update, or withdraw permission to use *RISM* without notice at any time. RISPP makes no warranty or representation as to the accuracy or suitability for a particular purpose of *RISM* or data provided for use with *RISM*. Any opinions expressed by the recipient or representations made by the recipient based upon *RISM* output data are the sole responsibility of the recipient.

Agreement: The undersigned acknowledges receipt of the herein identified version/components of RISM, and represents and warrants that she/he is duly authorized to enter into this agreement on behalf of the recipient and to bind the recipient to its terms and conditions.

Licensee/Recipient SIGNATORY

Date

PRINT NAME

TITLE

PROJECT / APPLICATION

Accepted by RISPP

Date