THIS AGREEMENT is made on the date set out in the Schedule

BETWEEN:

(1)     The Licensor

(2)     The Licensee

RECITALS

(1)     S-Paramics and Paramics Discovery are a software system for micro-simulation modelling (the Software")

(2)     The Authority has developed traffic models for various areas using the Software

(3)     The Intellectual Property Rights in the Software are jointly owned by the Authority

(4)     The Authority has delegated to the Licensor authorization to enter into this Licence

(5)     The Licensor has agreed with the Licensee that the Licensee may have access to and use the Licensed Work for the Area and for that purpose to grant to the Licensee a non-exclusive licence to use the Licensed Work on the terms and conditions hereinafter appearing

NOW IT IS AGREED as follows

**1.      Definitions and Interpretation**

1.1     In this Licence, unless the context otherwise requires, the expressions set out in the first column below have the meanings set out against them in the second column below:

| The Authority | Warwickshire County Council |
|---|---|
| Approved Auditor | an organisation or individual nominated by the Licensor and set out in the Schedule who will carry out an audit of the model produced by the Licensee or its Approved Consultant. |
| Approved Consultant | organisations or individuals employed by the Licensee and set out in the Schedule who are authorised to carry out modelling work on behalf of the Licensee |
| Area | the modelled Area set out in the Schedule |
| Authorised Users | individuals who are registered with the Licensee and the Licensee's Approved Consultant |
| Commercial Use | the use of the Licensed Work for any reason which generates a profit |
| Date | the date set out in the Schedule |

| | |
|---|---|
| Developer's Model | the result of work carried out by the Licensee, the Authorised Users and the Approved Consultant on the Licensed Work under this Licence |
| Fee | the Licence Fee set out in the Schedule |
| Intellectual Property Rights | patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world. |
| Licensed Work | The Licensed Work comprises:<br><br>(i)    the S-Paramics or Paramics Discovery base model for the Area and limited documentation or supporting information, including the Local Model Validation Report and associated documents and information.<br><br>(ii)    the S-Paramics or Paramics Discovery future year model(s) for the Area and limited documentation or supporting information, including the Model Development Report(s).<br><br>(iii)    access for the Licensee to the model(s) or officers of the Licensor, where applicable, to answer reasonable questions regarding the development of the model or the information contained within the Licensed Work. |
| Licensor | the Licensor set out in the Schedule |
| Licensee | the Licensee set out in the Schedule |
| Project | The Project set out in the Schedule |
| Service | a service provided by the Licensor |
| Use | means viewing, copying, adaptation, reproduction, manipulation or modification of the Licensed Work and any further use of such by Authorised Users in accordance with Clauses 3 and 4 |

1.2     In this Licence unless the context otherwise requires:

1.2.1   words importing any gender include every gender;

1.2.2   words importing the singular number include the plural number and vice versa;

1.2.3 words importing persons include firms, companies and corporations and vice versa;

1.2.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Licence

1.2.5 the headings to the clauses, schedules and paragraphs of this Licence will not affect the interpretation;

1.2.6 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment

1.2.7 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done

1.2.8 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

1.3 In the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in any schedule, the provision in the body of this Licence shall take precedence.

## 2. Grant of Licence

2.1 The Licensor grants to the Licensee a non-exclusive revocable licence to access and Use the Licensed Work and to allow Authorised Users to access and use the Licensed Work throughout the term of this Licence.

2.2 This Licence supersedes and replaces all previous agreements and licences between the Licensor and the Licensee in relation to the Licensed Work, together with any variations thereto, in their entirety.

## 3. Use of the Licensed Work

3.1 Throughout the term of this Licence the Licensee may:

3.1.1 make such temporary local electronic copies of parts of the Licensed Work as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Licence;

3.1.2 incorporate output from the Developer's Model in printed reports and submit those reports in support of any planning application judicial challenge or appeal during the term of this license;

3.1.3 publicly display output from the Developer's Model as part of a presentation;

3.2 Nothing in this Licence shall constitute a waiver of any statutory right available and held by the Licensee and/or Authorised Users from time to time under the Copyright, Designs and Patents Act 1988 or any amending legislation.

**4. Restrictions**

4.1 Save as provided herein, the Licensee shall not, and shall use its best endeavours to ensure that any Authorised User does not:

4.1.1 make copies of all or any part of the Licensed Work except to the extent permitted by clause 3.1.1.

4.1.2 sell or resell the Licensed Work unless the Licensee has been granted prior written consent by the Licensor to do so;

4.1.3 redistribute, publish or otherwise make the information contained in the Licensed Work available in any manner or on any media other than that allowed under this Agreement;

4.1.4 remove, obscure or modify copyright notices, text acknowledgments or other means of identification or disclaimers as they appear;

4.1.5 save in accordance with Clauses 3.1.2 and 3.1.3, display or distribute any part of the Licensed Work on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than on a secure network;

4.1.6 permit or allow anyone other than Authorised Users to access or use the Licensed Work;

4.1.7 permit the Licensed Work to be electronically transmitted to any other recipient except where the recipient is an Authorised User under the terms of a valid Licence Agreement.

4.2 The parties acknowledge that the Licensed Work will be adapted by the Licensee by its Use of the Licensed Work for the purposes of the production of the Developer's Model. Subject thereto, the Licensee undertakes not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Licensed Work without the Licensor's prior written consent and to use its best endeavours to ensure that any Authorised User gives the same undertaking,

4.3 This Clause shall survive termination for any reason of this Licence.

**5. Responsibilities of the Licensee**

5.1 The Licensee will:

5.1.1 issue passwords or other access information only to Authorised Users and use its best endeavours to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

5.1.2 use its best endeavours to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence;

5.1.3 use its best endeavours to monitor compliance with the terms of this Licence and notify the Licensor immediately and provide full particulars on becoming aware of any of the following (a) any

unauthorised access to or use of the Licensed Work or unauthorised use of any of the Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Licence. Upon becoming aware of any breach of the terms of this Licence the Licensee further agrees promptly to investigate fully and take appropriate action in accordance with the Licensee's standard practice and use its best endeavours to ensure that such activity ceases and to prevent any recurrence.

## 6. Responsibilities of the Licensor

6.1 The Licensor shall use all reasonable efforts to ensure that the Licensee has access to and use of the Licensed Work from the Date in accordance with the provisions of this Licence.

6.2 The Licensor shall use all reasonable efforts to ensure that customer support services are provided to the Licensee and to Authorised Users. Provision of supporting documentation in the form of Local Model Validation Reports, Audit Report, Technical Notes and limited development files will be provided where available.

6.3 The Licensor will use its best endeavours to update the models or provide data for the licensee to update the model to ensure it is fit for purpose.

## 7. Payment

7.1 The Licensee shall pay the Fee to the Licensor.

7.2 The Fee and other charges payable under this Licence are exclusive of any applicable VAT and other sales tax which shall be payable by the Licensee at the rate and in the manner prescribed by law against submission of a valid tax invoice.

7.3 The Fee and any charges payable by the Licensee under this Licence shall be paid within 30 days after the receipt by the Licensee of the Licensor's invoice therefor.

7.4 The Licensor shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgement.

## 8. Usage Data

8.1 The parties shall co-operate in gathering any data used in the development of the Licensed Model and shall provide such data to each other upon request during the term of this Licence,

8.2 Additional data that is not covered by clause 8.1 and is held by the Authority and is required by the Licensee to assist with development of the Developer's Model shall be negotiated outside the terms of this Agreement.

## 9. Audit

9.1 Save as provided for in clause 9.2, where the Developer's Model or any part of it will be relied on by the Licensee to support any document being submitted to a Local Planning Authority, the Developer's Model shall be audited by an Approved Auditor. Such audit will be carried out in accordance with the "The Microsimulation Consultancy Good Practice Guide"[1] or other similar document. The cost of the audit is not included in the Fee and must be negotiated separately by the Licensee with the Approved Auditor.

9.2 If the Licensee uses an Approved Auditor as an Approved Consultant to carry out the modelling work on its behalf, no audit under clause 9.1 will be required.

## 10. Term and Termination

10.1 The term of this Licence will commence upon the Date and unless terminated earlier as provided for in this Clause 10, will remain in full force and effect for twelve months or until completion of the Developer's Model, whichever shall be the earlier.

10.2 Either party may terminate this Licence at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Licence by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.

10.3 Upon termination of this Licence under either of the preceding sub-clauses, output from the Developer's Model made by the Licensee or Authorised Users may be retained and used only for the Project named on this Licence, but for no other purpose whatsoever.

10.4 Upon termination of this Licence the Developers Model and associated development files and technical reports shall be handed to the Licensor

10.5 Upon termination of this Licence, all electronic copies of the Licensed Work within the possession or control of the Licensee shall be deleted within thirty (30) days of a written request to that effect from the Licensor and the Licensee shall forthwith confirm such deletion to the Licensor in writing. The Licensee shall also use its best endeavours to procure that any electronic copies of the model within the possession or control of the Authorised Users or Authorised Consultants are also destroyed within the said period of thirty (30) days.

## 11 Acknowledgement and protection of Intellectual Property Rights

11.1 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Work are the sole and exclusive property of the Authority and

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[1] S-Paramics "The Microsimulation Consultancy Good Practice Guide", SIAS Limited 2005

that this Licence does not assign or transfer to the Licensee any right, title or interest therein except for the right to use the Licensed Work in accordance with the terms and conditions of this Licence.

11.2 The Licensee acknowledges that all Intellectual Property Rights in the Developers Model become the sole and exclusive property of the Authority upon termination of the Licence and that this Licence does not assign or transfer to the Licensee any right, title or interest therein.

11.3 The Licensee acknowledges that Intellectual Property Rights in the Developers Model become the sole and exclusive property of the Authority in accordance with clause 11.2 and that the Authority may permit use by third parties of the Developers Model in its current or adapted state under licence.

11.4 The provisions of sub-clauses 11.2 and 11.3 do not affect the right of the Licensee to use the output from the Developer's Model under sub-clause 10.3


## 12. Representations, Warranties and Indemnification

12.1 The Licensee represents and warrants that it has sufficient authority to enter into and perform its obligations under this Licence.

12.2 The Licensor makes no representation or warranty, and expressly disclaims any liability, with respect to the content of the Licensed Work, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information. It is expressly agreed that any use by the Licensee or by any Authorised Users of the Licensed Work is at the Licensee's sole risk.

12.3 The Licensee agrees to notify the Licensor immediately and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any matter contained in or related to the Licensed Work. It is expressly agreed that upon such notification, or if the Licensor becomes aware of such a claim from other sources, the Licensor may in its sole discretion remove such matter(s) from the Licensed Work. At the request of the Licensor, the Licensee will remove such matters(s) from any copies of the Licensed Work maintained by the Licensee and shall use its best endeavours to remove such matters from any copies of the Licensed Work in the possession or control of the Authorised Users or Authorised Consultants. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.

12.4 To the extent permitted by law, the Licensor shall not be liable to the Licensee for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Licensee as a result of an action brought by a third party.

12.5    The Licensee shall fully indemnify the Licensor against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements), losses and damages arising from or incurred by reason of any default, act or omission of the Licensee or its Authorised Users connected with any infringement or alleged infringement (including but not limited to the defence of such alleged infringements) of any Intellectual Property Rights enforceable in the United Kingdom in connection with the subject matter of this Licence.

12.6    The Licensed Work is provided on an "as is" basis, and the Licensor disclaims any and all warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Work or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. The Licensor further expressly disclaims any warranty or representation to Authorised Users, or to any third party. The Licensor accepts no liability for loss suffered or incurred by the Licensee or Authorised Users as a result of their reliance on the Licensed Work.

12.7    The Licensee represents to the Licensor that its computer system through which the Licensed Work will be used is configured, and procedures are in place, to prohibit access to the Licensed Work by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the License; and that during the term of this Licence, the Licensee will continue to use its best endeavours to bar non-permitted access and to convey appropriate use information to its Authorised Users.


**13.    Force Majeure**

13.1    Either party's failure to perform any term or condition of this Licence as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ("Force Majeure") shall not be deemed to be, or to give rise to, a breach of this Licence.

13.2    If either party to this Licence is prevented or delayed in the performance of any of its obligations under this Licence by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.


**14.    Assignment**

14.1    Neither this Licence nor any of the rights and obligations under it may be assigned or sub-licensed by the Licensee without obtaining the prior written consent of the Licensor, which shall be at the sole discretion of

the Licensor.  In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Licence and agrees to be bound to all the terms of this Licence

## 15.    Freedom of Information

15.1    For the purposes of Clause 15.3, "Disclosing Party" means the party to this Licence from whom the relevant information originated. "Receiving Party" means the party in receipt of the relevant information and which is asked to disclose the relevant information under the Freedom of Information Act 2000 ('FOIA').

15.2    Each party shall, both during and following expiry of this Licence, use all reasonable endeavours to assist the other party to comply with its obligations (if any) under FOIA.

15.3    Pursuant to Clause 15.2, but without prejudice to the generality of the same, a Receiving Party shall:

15.3.1 promptly inform the Disclosing Party of any request for information received under FOIA and the nature of the information being sought;

15.3.2 not disclose, release information or otherwise respond to a request for information without prior reference to, discussion with and authorisation from the Disclosing Party, unless such failure to disclose, release information or otherwise respond to a request would result in the Receiving Party being in breach of its legal obligations under FOIA or otherwise;

15.3.3 consider and apply all lawful exemptions provided under FOIA to withhold information sought under a request for information

## 16.    Governing Law and Dispute Resolution

16.1    This Licence shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within the jurisdiction of the English courts.

16.2    Where the parties agree that a dispute arising out of or in connection with this Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Strategic Director for Environment and Economy at Warwickshire County Council.

16.3    Any person to whom a reference is made under Clause 16.2 shall act as an expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

16.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

16.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

## 17. Notices

17.1 All notices required to be given under this Licence shall be given in writing in English and sent by electronic mail, fax or first class registered or recorded delivery post to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Licence, and all such notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) on the second working day after the date of posting in the case of first class registered or recorded delivery post:

If to the Licensor:
Alan Law

Transport Planning Group

Warwickshire County Council

PO Box 43

Shire Hall

Warwickshire County Council CV34 4SX
Email alanlaw@warwickshire.gov.uk

If to the Licensee, to the name, address and email set out in the Schedule.

## 18. General

18.1 This Licence and its Schedules constitute the entire agreement between the parties relating to the Licensed Work and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.

18.2 The Schedules shall have the same force and effect as if expressly set in the body of this Licence and any reference to this Licence shall include the Schedules.

18.3 The Licensor may enforce the terms of this Licence subject to and in accordance with the terms of this Licence and the provisions of the Contract (Rights of Third Parties) Act 1999, as amended or substituted from time to time.

18.4 The invalidity or unenforceability of any provision of this Licence shall not affect the continuation in force of the remainder of this Licence.

18.5    The rights of the parties arising under this Licence shall not be waived
         except in writing. Any waiver of any of a party's rights under this
         Licence or of any breach of this Licence by the other party shall not be
         construed as a waiver of any other rights or of any other or further
         breach. Failure by either party to exercise or enforce any rights
         conferred upon it by this Licence shall not be deemed to be a waiver of
         any such rights or operate so as to bar the exercise or enforcement
         thereof at any subsequent time or times.


AS WITNESS the signatures on behalf of the parties hereto:


SIGNED on behalf of the Licensor        )
by                                       )



SIGNED on behalf of the Licensee        )
by                                       )