



CITY OF COLUMBIA
AGENDA MEMORANDUM

MEETING DATE: July 19, 2016

DEPARTMENT: Purchasing

FROM: *Sandra Wright, Purchasing Agent*

SUBJECT: Purchase of Rapid Deployment Kit Atmospheric Monitoring System

FINANCIAL IMPACT:

ORIGINAL BUDGET: \$60,048.00

CLEAN WATER 2020?: No

STRATEGIC GOALS: Increase Public Safety Services

The Fire Department has requested the purchase of a Rapid Deployment Kit (RDK) Atmospheric Monitoring Equipment.

I respectfully request City Council's approval for this purchase using the sole source vendor, Rae Systems, at the following quantity and cost plus S.C. sales tax.

Qty.	Description	Unit Price	Extended Amount	Request Total
1	Rapid Deployment Kit	\$51,000.00	\$51,000.00	
6	ProRae Guardian License	\$ 750.00	\$ 4,500.00	
	Shipping	\$ 100.00	\$ 100.00	
	Sales Tax		\$ 4,448.00	
				\$60,048.00

Rae Systems is located in San Jose, CA.

This will be charged as follows:
Homeland Security Grant Control/ Machinery & Equipment-Capital/ MMRS
Program Enhancement

2549999-658300- 9906100114

\$ 60,048.00

ATTACHMENTS:

- Rae Systems Sole Source and Quote (PDF)

R175170

JUSTIFICATION FOR
SOLE SOURCE PROCUREMENT

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 1.16 of the City of Columbia, SC Procurement Regulation.

This Department proposes to procure for the _____ Suppression _____ Division.
(1)

Rae Systems Rapid Deployment Kit (RDK) atmospheric monitoring equipment

(2)

as a sole source procurement from Rae Systems

(3)

based upon the following justifications: _____

Rae Systems is the only manufacturer of this type of technology. The Department currently uses the same manufacturer for other atmospheric monitoring equipment from Rae Systems and in order for them to communicate the new equipment needs to be Rae Systems as well.

(Use back if more space is needed)

(4)

\$60,048.00

Fire
Department

Anthony D. Heekin
Signature of Department Head

5/10/2016
Date

John Wiley
Signature of Purchasing Agent

6/1/16
Date

Carson Wilson
Signature of City Manager

6/10/16
Date

MAK

- Notes: (1) Enter Division Name
- (2) Enter description of goods or services to be procured
- (3) Enter name of sole source contractor
- (4) Enter the basis of sole source procurement

Distribution: Original attached to requisition (Form PUR 108201) Copy retained in Department's file.

RECEIVED
JUN 08 2016

BY: CD



RAE Systems
3775 North First Street
San Jose, CA 95134, USA
Phone: (408) 952-8200
Fax: (408) 952-8480

Quote: IS02649-20160330-2029
Unknown field: SQQQ__Version__c

3/30/2016

Jason Krusen
COLUMBIA FIRE DEPARTMENT
1800 Laurel St.
COLUMBIA, South Carolina 29201
United States
cfdjkrusen@columbiasc.net
803-545-3721

Thank you for your recent request for a quotation for RAE Systems products.

RAE Systems hereby states and certifies that the wireless gas detection instruments and components manufactured by us are sold directly to end-using clients by RAE Systems.

RAE Systems Incorporated is the sole provider of the quoted wireless equipment.
Purchase orders for Wireless equipment should be made out to

RAE Systems, Inc., 3775 North First St., San Jose, CA 94134

The wireless instruments or integrated systems, include but may not be limited to the following:

- RDK Wireless Detection Systems - All versions; w/Gamma; w/GPS; etc.
- AreaRAE - Gas and Radiation Detectors
- ProRAE Remote Control software - All versions
- RAELink Modems, Repeaters and Host kits. All versions for 3rd-party product integration
- WeatherPak - Weather Station
- PlumeRAE™ - Plume Measurement software

RAE Systems, Headquartered in San Jose, CA, is a leading global developer and manufacturer of rapidly deployable gas, vapor and radiological detection equipment for homeland security, oil & gas and industrial applications. Products include a full line of portable, wireless and fixed monitors offering a wide variety of gas and radiation sensors.

Sincerely,
RAE Systems

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Thank you.



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To: COLUMBIA FIRE DEPARTMENT
 1800 Laurel St.
 COLUMBIA, South Carolina 29201 United States

Issued: 3/30/2016
 Expiration Date: 9/16/2016

Attn: Jason Krusen
 Phone: 803-545-3721
 Fax:
 Cell: 803-518-2539
 Email: cfdjkrusen@columbiasc.net

Rep Contact: Andrew Saksa
 Phone:
 Email: andrew.saksa@honeywell.com
 Prepared By: Roberta Potts

Project: Columbia SC Fire - RDK Steel Detector Kit

QTY	Part Number	Line Description	Unit	DISC (%)	Extended	
1	038-T112-121	Rapid Deployment Kit - System Package (Detector Package) Stainless	USD	51,000.00	0.0	USD 51,000.00
Included	Included	RDK AREARAE STEEL-DETECTOR	Included	Included	Included	Included
Included	Included	LEL,O2 SENSOR	Included	Included	Included	Included
Included	Included	H2S HYDROGEN SULFIDE SENSOR	Included	Included	Included	Included
Included	Included	CO CARBON MONOXIDE SENSOR	Included	Included	Included	Included
Included	Included	10.6EV LAMP	Included	Included	Included	Included
Included	Included	WIRELESS(RF) DATA TRANSMISSION(900MHZ)+GPS	Included	Included	Included	Included
Included	Included	MONITOR & 4-GAS (O2/LEL/CO/H2S) PLUS ISOBUTYLENE CALIBRATION KIT	Included	Included	Included	Included
Included	Included	PRORAE GUARDIAN LICENSE,TIER 3 CONCURRENT INSTRUMENTS	Included	Included	Included	Included
6	S01-3000-000	PRORAE GUARDIAN LICENSE,TIER 3 CONCURRENT INSTRUMENTS	USD	1,000.00	25.0	USD 4,500.00
1	SHIPPING	Shipping and Handling-Rates may change due to quantity, ship method, or final destination.	USD	100.00	0.0	USD 100.00

SUBTOTAL: USD 55,600.00

TOTAL: USD 55,600.00

tax 8% 4,448.00
 \$ 60,048.00

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Signature and Purchase Order

PO# _____ Required Delivery Date: ____/____/____

Signature: _____ Effective Date: ____/____/____

Name (Print): _____ Title: _____

Please sign and email to Roberta Potts at roberta.potts@honeywell.com or fax to

Shipping Address _____ Billing Address _____

Required Delivery Date _____

Method of Delivery _____

PO Number _____

Comments _____

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RAE Systems Inc. – Terms and Conditions

The terms and conditions of sale contained herein apply to all quotations and purchases made and purchase orders received by RAE Systems Inc. ("RAE Systems") and are the exclusive binding agreement between the parties regarding the products or services purchased ("Products"), unless otherwise expressly agreed in writing by RAE Systems and buyer ("Buyer"). THE ACCEPTANCE OF ANY OR ALL OF THE BUYER'S PURCHASE ORDERS IS CONDITIONAL UPON BUYER'S ASSENT TO THE TERMS AND CONDITIONS IN THIS DOCUMENT, IN LIEU OF THE TERMS CONTAINED IN BUYER'S PURCHASE ORDER. RAE Systems hereby rejects all provisions contained in communications from Buyer that conflict with or are inconsistent with the terms contained herein. RAE Systems' failure to object to any of the provisions contained in Buyer's documentation shall not be deemed a waiver of these provisions.

1. Quotation and Prices: All quotations are subject to the terms and conditions stated herein as well as any additional Terms and Conditions that may appear on RAE Systems' quotation. In the case of a conflict between the terms and conditions stated herein and those appearing on RAE Systems' quotation, the latter shall control. RAE Systems prices and quotations are subject to the following:

- a) Buyer will be billed at the prices in the list price or specifically quoted to Buyer at the time of RAE Systems' purchase order acceptance.
- b) All published prices are subject to change without notice.
- c) Unless otherwise specified in writing, all quotations are firm for, and will expire, thirty (30) days after date thereof. Budgetary quotations and estimates are for preliminary information only and shall neither constitute firm offers nor impose any responsibility or liability upon RAE Systems.
- d) Unless otherwise stated in writing by RAE Systems, all prices quoted and billed shall be exclusive of transportation fees, insurance, taxes (including without limitation any use tax, sales tax or similar tax), license fees, customs fees, duties and other charges related thereto, and Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and shall hold RAE Systems harmless therefrom.
- e) The sale of any of RAE Systems' Products to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property license or rights whatsoever, except any limited license rights as may be expressly granted by RAE Systems in the materials which accompany the Products as delivered.

2. Payment: Unless otherwise agreed to in writing, payment shall be paid Net 30 days from the date of invoice. Should custom work be involved, purchase orders shall be accompanied by a non-refundable 50% payment of the total amount with an additional 30% of such total amount due upon the scheduled shipment date, and the final 20% of such total amount is due 30 days after RAE Systems makes shipment. International orders must be accompanied by an irrevocable letter of credit confirmed through a U.S. bank acceptable to RAE Systems and to be drawn at sight when presented with proper documents consisting of (1) signed commercial invoice in triplicate and (2) clean airway bill for the Product. Alternately, wire transfer of funds must be received before shipment (International). Past due balances shall be subject to a finance charge of the lesser of 1.5% per month or the maximum amount allowed by law.

Buyer agrees to accept partial shipments in satisfaction of a single purchase order; when partial shipments are made, pro-rata payments shall become due in accordance with the designated terms for each shipment. RAE Systems may withdraw credit, suspend or cancel performance under any purchase orders or delay delivery of Products in the event Buyer fails to comply with these payment terms.

If Buyer becomes insolvent or bankruptcy proceedings are instituted against Buyer or Buyer makes an assignment for the benefit of its creditors, any such event shall be deemed a material default, entitling RAE Systems to cease performance under a purchase order and to avail itself of all legal or equitable remedies it may have against Buyer. In the event of a default by Buyer under these terms, and the matter is placed in the hands of an attorney for collection, or suit is brought at law, or in equity, to enforce the provisions herein, the Buyer agrees to pay a reasonable attorney's fee together with costs in addition to the amount due under said purchase order.

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3. Title and Delivery: Unless otherwise agreed to in writing by RAE Systems, shipment shall be F.O.B. RAE Systems' location and the manner of shipment shall be any commercially reasonable option determined at RAE Systems' option. Buyer shall be responsible for all shipping charges. RAE Systems reserves the right to ship Products freight collect and to select the means of transportation and routing. Unless otherwise advised, RAE Systems will insure to full value of the Product or declare full value to the transportation company at the time of delivery and all such freight; provided that such insurance costs shall be for Buyer's account. Any and all taxes levied on or with respect to Products after delivery to the F.O.B. point, including without limitation taxes levied on or assessed to RAE Systems by reason of its retention of title, shall be paid by Buyer. In the event RAE Systems, in its sole discretion, chooses to pay such taxes, then Buyer shall reimburse RAE Systems in full upon demand. All Products must be inspected by Buyer upon receipt and claims should be filed with the transportation company when there is evidence of damage, either concealed or external.

Shipping dates are approximate and are based upon prompt receipt of all necessary information from Buyer. RAE Systems shall not be liable for delay in delivery or non delivery due to causes beyond RAE Systems' reasonable control, including but not limited to acts of God, acts of Buyer, acts of civil or military authority, war, riots, priorities, fires, strikes, lockouts, delays in transportation and inability due to causes beyond RAE Systems' reasonable control to obtain necessary labor, materials, manufacturing facilities, or compliance with any law, regulation or order, whether such circumstances or causes have been remedied. RAE Systems reserves the right, in its sole discretion, to allocate inventories and current production and substitute suitable materials when, in its opinion, such allocation or substitution is necessary due to any such circumstances or causes. No penalty clause of any kind shall be effective.

4. Testing Procedures: RAE Systems will conduct industry standard testing procedures to confirm RAE Systems' compliance with Buyer's purchase order. Such testing procedures include verification of model number and serialized inventory, power-up test confirmation, instrumentation calibration and diagnostics verification. Any requested changes to these testing procedures require a separate price quotation.

5. Termination: All purchase orders are firm and non-cancellable by Buyer. Buyer is responsible for the full price of Products as ordered. Termination by mutual agreement is subject to the following conditions: (a) Buyer will pay for all Products which are completely manufactured and allocable to Buyer at the time of RAE Systems receipt of notice of termination; and (b) Buyer will pay all costs which have been incurred by RAE Systems with regard to Products which have not been completely manufactured at the time of RAE Systems receipt of notice of termination, plus a pro rata portion of normal profit on the purchase order using RAE Systems' standard accounting practices. To reduce termination charges, RAE Systems shall divert completed parts, material or work-in-process from terminated purchase orders to the Buyer whenever in RAE Systems' sole discretion, it is practical to do so.

6. Limited Warranty: RAE Systems' Product warranty is incorporated as part of the RAE Systems product manuals supplied with each individual Product shipment. Such warranty does not extend to any damage or failure which results from alteration, accident, theft, misuse, abuse, abnormal use, improper or unauthorized repairs or improper maintenance. RAE Systems neither assumes nor authorizes any other firm or person to assume on RAE Systems behalf any liability in any way connected with the sale of RAE Systems Products. The sole and exclusive remedy in the event of any breach of the foregoing warranty is to return Products to RAE Systems with delivery or postage prepaid for a refund pursuant to the terms of the applicable Product warranty. To the extent that other manufacturers' components are used in the RAE Systems Product, those other manufacturers' product manuals will be provided for said components, and Buyer shall rely on the warranty provided by said other manufacturers as to those components.

THIS LIMITED WARRANTY SHALL EXTEND TO ORIGINAL BUYER ONLY AND NOT TO BUYER'S CUSTOMERS OR BUYER'S FOREIGN LOCATIONS AND, EXCEPT FOR THE WARRANTY OF TITLE, IT IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

7. Limitation of Liability: IN NO EVENT SHALL RAE SYSTEMS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR OTHER DAMAGES WHATSOEVER RESULTING FROM RAE SYSTEMS' PERFORMANCE OR FAILURE TO PERFORM UNDER THESE TERMS OR THE FURNISHING, PERFORMANCE OR USE OF ANY GOODS SOLD PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF RAE SYSTEMS OR OTHERWISE. IT IS AGREED, HOWEVER, THAT IN NO EVENT SHALL RAE SYSTEMS' LIABILITY EXCEED THE U.S. DOLLAR AMOUNT EQUAL TO THE AMOUNT PAID BY BUYER FOR THE COST OF THE PRODUCTS PAID BY BUYER UNDER THE APPLICABLE INVOICE. THE DAMAGE LIMITATIONS

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PROVIDED IN THIS AGREEMENT AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY. THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE. Certain jurisdictions do not permit the limitation of certain types of liability, so this limitation may not apply to the Buyer.

8. Governing Law and Disputes: The terms and conditions of sale stated herein shall be governed by and construed according to the laws of the State of California without regard to its conflict of law provisions. All disputes under any purchase order concerning Products not otherwise resolved between RAE Systems and Buyer shall be resolved in a court of competent jurisdiction at the location of RAE Systems' place of business fulfilling the purchase order, and in no other location. In RAE Systems' sole discretion, such action may be heard in some other place designated by RAE Systems (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in an action. Buyer agrees to appear in any such action and consent to the jurisdiction of such court upon written notice. No action, regardless of form, arising out of, or in any way connected with, the Products furnished or services rendered by RAE Systems, may be brought by Buyer more than one (1) year after the cause of action has accrued.

9. Indemnification: In the event of a claim by a third party of infringement of proprietary rights, trademarks, or patents, resulting from compliance with Buyer's designs, specifications, or instructions Buyer will defend, indemnify and hold RAE Systems harmless against any expense or loss ensuing from such a claim. Except as otherwise provided above, RAE Systems shall defend any suit or proceeding brought against Buyer to the extent the same is based upon a claim that any Product, or any part thereof, delivered to Buyer under a purchase order constitutes an infringement of any United States patent; provided that, RAE Systems is notified promptly in writing and given authority, information and assistance (at RAE Systems' expense) for the defense of same. In case said Product, or any part thereof, is in such suit held to constitute infringement and the use of said Product or part is enjoined, RAE Systems shall, at its sole and exclusive option and expense, either (i) procure for Buyer the right to continue using said Product or part, (ii) replace said Product with a comparable non-infringing product, (iii) modify said Product so it becomes non-infringing; or (iv) remove said Product and refund to Buyer the actual cost of said Product paid to RAE Systems by Buyer, less a reasonable amount for depreciation. The foregoing states the entire liability of RAE Systems for any patent infringement by the said Product or any part thereof. Notwithstanding the foregoing, in no event shall RAE Systems be obligated to indemnify Buyer pursuant to this Section 10 if a claim, suit or proceeding arises out of or is related to: (a) RAE Systems' compliance with Buyer's designs, specifications or instructions; (b) modifications made to the Products other than by RAE Systems; or (c) Buyer's combination or use of the Product with software, services or products developed by Buyer or a third party.

10. Compliance with Laws: RAE Systems represents that with respect to the production of the Products or the performance of the services covered by this purchase order, RAE Systems will fully comply with all applicable federal, state and local laws including, without limitation, all requirements of the Fair Labor Standards Act of 1938, as amended. RAE Systems is an Equal Opportunity Employer. It does not discriminate in any phase of the employment process against any person because of race, color, creed, religion, national origin, sex, age, veteran or handicapped status. The Equal Opportunity Certificate, which is mailed annually to all vendors, is hereby incorporated into these terms and conditions by reference.

11. Assignment: Buyer shall not assign this purchase order or any interest therein or any rights hereunder without the prior written consent of RAE Systems.

12. Changes: Upon written acceptance of RAE Systems, Buyer may make changes within the scope of this purchase order in specifications, drawings, or type of Products ordered or in the time or place of delivery or order quantity. Engineering charges for any specification changes will be quoted under a separate purchase order. Reduction in purchase order quantities and/or extension or delay of scheduled shipment dates will be subject to price adjustment as determined by RAE Systems and agreed to by the Buyer. RAE Systems reserves the right to reject any changes and thus the original purchase order quantities, shipment dates, and prices shall remain in effect.

13. Product Discontinuance: Buyer acknowledges that any of the Products may be discontinued by RAE Systems or RAE Systems' supplier without prior notice to Buyer. In the event of such discontinuance, RAE Systems shall notify Buyer to the extent that any Products ordered by Buyer are affected thereby. In the event of such discontinuance, RAE Systems reserves the right to terminate

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Buyer's purchase order for any Product which has not been delivered and which is affected by such discontinuance without any liability to RAE Systems.

14. Export Controls: Buyer acknowledges that all shipments by RAE Systems are or may be subject to restrictions and limitations imposed by United States export controls, trade regulations and trade sanctions. Buyer at all times will comply with such sanctions, controls and regulations and will cause compliance with such sanctions, controls and regulations in its use and disposition of the Products. With respect to each Products shipment pursuant to these terms and conditions, Buyer will obtain and supply to RAE Systems in writing all information required by RAE Systems to obtain any U.S. export license, permit, approval or documentation applicable to such shipment. Notwithstanding any contrary provision in these terms and conditions, RAE Systems will have no obligation to make any shipment to Buyer until it has received all such information and has obtained the applicable licenses, permits, approvals or documentation for shipment, if any. If RAE Systems learns, or has reasonable cause to believe, or if any branch or agency of the government of the United States claims, that a violation of any applicable trade sanctions, export controls or trade regulations has occurred or is likely to occur because of any shipment, RAE Systems may, in addition to any other remedy it may have, suspend all shipments to Buyer until: (a) RAE Systems is satisfied that such violation did not occur or has ceased to occur, or (b) such claim is withdrawn or otherwise resolved in favor of RAE Systems. Neither Buyer nor its employees, agents, subcontractors, officers or representatives shall cause or permit any shipment of the Products to be made by Buyer or by anyone acting on behalf of Buyer or to whom Buyer may sell the Products, to any country for which a validated export license is required by the United States, or to which shipment is prohibited under trade regulations or trade sanctions of the United States. It shall be the duty of Buyer to inform itself in detail of such export controls, trade regulations and trade sanctions. Buyer will not cause or permit any customer or user in other parts of the world until all necessary import and/or export approvals and clearances have been obtained, and until all United States export controls, trade regulations or trade sanctions applicable to such shipments have been fully complied with. Buyer will indemnify and will hold RAE Systems harmless from and against any claim, loss or liability arising out of any breach of the foregoing covenants contained in this Section 14.

15. Notices: Any notice or report required or permitted by these terms and conditions shall be in writing and shall be deemed given if delivered personally or if sent by either party to the other by confirmed overnight delivery or by certified or registered mail, return receipt requested, postage prepaid, addressed to the other party to its address as set forth on the purchase order or at such other address as such party shall designate by notice hereunder. Where Buyer is giving notice to RAE Systems, all notices shall be sent to the attention of RAE Systems' account representative or customer service representative.

16. Government Contracts: Unless otherwise stated by reference on the face hereof, all purchase orders are considered commercial sales regardless of government contract or subcontract references. RAE Systems pricing and production and shipment commitments shall be based on published price lists and RAE Systems internal accounting and production allocation procedures which shall be applied equitably to all customers as determined by RAE Systems. RAE Systems warrants that such prices and allocations that are made under such government contracts are the same as would have been made to RAE Systems "most favored customer" for the same Products or services under identical terms of sale.

17. Service Warranty: RAE Systems warrants all repair work performed on Products theretofore purchased by Buyer from RAE Systems for a period of ninety (90) days after completion of the repairs and shipment to Buyer (the "Warranty Period"). In the event that a Product shall fail within the Warranty Period, Buyer's sole and exclusive remedy shall be to return said Product to RAE Systems during the Warranty Period, transportation prepaid, for re-repair. In this event, this warranty will not be deemed to have failed of its essential purpose. Transportation from Buyer to RAE Systems shall be via a carrier selected by Buyer with all charges borne by Buyer. The aforementioned provisions will not extend the original warranty period for any Product that has been repaired by RAE Systems.

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- 6. Upgrade Policy.** RAE Systems may create, from time to time, upgraded versions of the SOFTWARE. At its option, RAE Systems will make such upgrades available to Licensee and transferees who have paid the upgrade fee, if any, and returned the Registration Card to RAE Systems.
- 7. Termination.** This License is effective until terminated. This License will terminate automatically without notice from RAE Systems if you fail to comply with any provision of this License. Upon termination, you agree to destroy, delete or purge the written materials and all copies of the SOFTWARE, including modified copies, if any.
- 8. Disclaimer of Warranties.** The SOFTWARE and accompanying materials (including the user's manual) are provided "as is" without warranty of any kind including the implied warranties of merchantability and fitness for a particular purpose, even if RAE Systems has been advised of that purpose. Further RAE Systems does not warrant, guarantee, or make any representation regarding the use, or the results of the use, of the SOFTWARE or written materials in terms of correctness, accuracy, reliability, current revision, or otherwise. RAE Systems specifically does not warrant the software after you assume the operation. If the SOFTWARE or written materials are defective, you and not RAE Systems or its dealers, distributors, agents, or employees, assume the entire risk and costs of all necessary servicing, repair, or correction, except as stated in paragraph (9) below.
- 9. Defective Disks.** As the only warranty under this Agreement, RAE Systems warrants, to the original Licensee only, that the disk(s) on which the SOFTWARE is recorded is free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of delivery as evidenced by a copy of the Receipt. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply.
- 10. Replacement of Defective Disks.** RAE Systems' entire liability and the original Licensee's exclusive remedy under this Agreement are at RAE Systems' option, to either (a) return of payment as evidenced by a copy of the Receipt, or (b) replacement of

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Thank you.



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Fax: (408) 952-8480

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the disk that does not meet RAE Systems' limited warranty and which is returned to RAE Systems with a copy of the Receipt. If failure of the disk has resulted from accident, abuse, or misapplication, RAE Systems will have no responsibility to either replace the disk or refund payment. Any replacement disk will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. This warranty gives you limited, specific legal rights. You may have other rights, which vary from state to state.

11. No Right to Rely. No oral or written information or advice given by RAE Systems, its dealers, distributors, agents or employees will create a warranty or in any way increase the scope of RAE Systems' obligations under this agreement, and you may not rely on any such information or advice.

12. Limitation of Liability. Neither RAE Systems nor anyone else who has been involved in the creation, production, or delivery of this product will be liable for any direct, indirect, consequential or incidental damages (including damages for loss of business profits, business interruption, loss of business information, possibility of such damages). Some states do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply.

13. U.S. GOVERNMENT RESTRICTED RIGHTS. The SOFTWARE and documentation is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable. Contractor/manufacturer is RAE Systems Inc., 3775 N. First Street, San Jose, California 95134.

14. Governing Law. This Agreement is governed by the laws of the State of California.

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RAE Systems Inc. PRG CloudServer Terms of Service

RAE Systems Inc. CloudServer Service Agreement
Last modified May 26, 2011

This ProRAE Guardian (PRG) CloudServer Service Agreement ("Agreement") contains the terms and conditions that govern your access to and use of the PRG CloudServer Service (as defined below) and is an agreement between RAE Systems Inc. ("COMPANY," "we," "us," or "our") and you or the entity you represent ("you"). This Agreement takes effect the fifteenth (15th) day after we notify you (my mail, email, phone, or otherwise) of your PRG CloudServer IP Address ("PRG IPAdd"), or upon your first use of the PRG CloudServer Service (the "Effective Date"), whichever comes first. By your use of the Service, you agree to these terms and conditions, and you represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity to these terms.

1. PRG CloudServer Service.

1.2 What you can and cannot do with it. You may use your PRG CloudServer instance to connect to any PRG Installations that you choose. It is your responsibility to manage and keep secure your PRG IPAdd, as well as any optional information such as PRG Access Control Access Codes. Company will not be responsible for the security of this information. Company will make every reasonable attempt to help you configure and/or manage this information, but may, at our sole discretion, impose additional charges if repeated requests by you cause us to create new and/or altered PRG IPAdds and/or passphrases. You cannot use your PRG CloudServer service for any purpose other than to connect legitimately licensed instruments, devices, and/or computer systems through PRG Installations. No other software may be operated on or with the PRG CloudServer without prior written consent of Company.

1.3 Usage restrictions. Each PRG CloudServer Service is intended to host instruments, monitors, and devices connected through PRG Installations. Although multiple PRG Installations are supported, each PRG CloudServer will support no more than a total of five hundred (500) individual instruments, devices, and/or monitors at any one time. PRG Installations that attempt to connect more than 500 devices at once are not supported. You may connect up thirty-two (32) PRG Viewers and up to ten (10) remote PRG Installations. Please contact Company if the need arises to connect more than this number of devices or PRG Installations. All connected instruments must be properly licensed. Further, although you may connect computers, instruments, and devices owned by others to your PRG CloudServer, you may not use your PRG CloudServer to host other people's data for a fee. You may host up to the maximum amount of instruments, computers, and viewers from any sources, but you may not erect a service nor may you extract service fees in any manner whatsoever for doing so.

1.4 Support. We will maintain the operational integrity of your PRG CloudServer, and will update it from time to time so that it is running the latest version of PRG. We will not update your PRG CloudServer without notifying you first and giving you a chance to defer the update to a more convenient time.

To update and/or troubleshoot your PRG CloudServer, we may need to take your instruments off-line and attach your PRG CloudServer to our own instruments to test with. This may result in data loss and downtimes, which are unavoidable. We will make every attempt to notify you prior to these actions.

2. Changes.

2.1 To the Service Offerings. We reserve the right to modify our Service Offerings at any time. We will notify you if such modifications affect your current service agreement. If such modifications materially affect your service, you will be given the opportunity to cancel your service contract and receive a pro-rated refund.

2.2 To Pricing. Our pricing for the PRG CloudServer service is subject to change at any time.

2.3 We can move your hosting or change your IP address. Company may engage with various third-party vendors to provide basic data center hosting capability upon which your PRG CloudServer service is based. Further, Company may, from time to time, add additional vendors and/or switch vendors for this capability. Company may move your PRG CloudServer instance to or from any such vendors at will at the sole discretion of Company. If it is determined beforehand that such actions will cause service disruption, Company will make every reasonable attempt to contact you and arrange for a mutually agreeable date and time for such movement.

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of basic service capability. You agree that it may not be possible to avoid service disruptions, and that Company may not be able to notify you in advance for this and/or any such service disruption. Further, you acknowledge that service disruptions may require you to change your PRG IPAdd or other settings in order to restore service, and that this is acceptable to you.

3. Security and Data Privacy.

3.1 PRG CloudServer Data Security. Company will make every reasonable attempt to keep Your Content secure; however, we do not guarantee such data security. If a data breach occurs, Company will notify you as soon as practicably possible, and make every reasonable attempt to address the situation to your satisfaction. Please note temporary service interruptions may occur as a result of this activity. Company is not responsible for any data loss that occurs as a result of your use of the PRG CloudServer service. We do not guarantee your data is secure. We strongly recommend you redundantly store your PRG CloudServer data in order to safeguard it.

3.2 Data Privacy. We will make every reasonable attempt to secure your data, but we cannot guarantee its ultimate privacy. Initially, most of our hosting sites will be in the U.S., but over time this may change. Under rare conditions, however, sensitive instrument data could be at risk of exposure. We suggest you fully consider this possibility when deciding to use the PRG CloudServer service. **Company is not responsible for any undesired exposure of Your Content beyond taking reasonable and customary precautions against it.**

3.3 No Guarantee of Uptime. We will make every attempt to maintain 24/7/365 uptime, but cannot guarantee it. We will make all reasonable attempts to restore service as soon as possible after an outage. Note service restoration may require new IP address assignment.

3.4 No refunds for service disruptions. Except for those cases explicitly called out in this document, Company will not issue any refunds for any service disruptions. Your use of the service signifies your knowledge of and agreement with this stipulation.

4. Your Responsibilities

You are responsible for all consequences of your (or your designated employees, contractors, vendors, or associates) use of the service. Company does not monitor your use of the PRG CloudServer service for appropriateness. You accept any and all responsibility for the consequences of your use of the service, including but not limited to, adhering to any prevailing legal authorities' laws, regulations, or requirements. Further, you warrant to us that you shall not use your PRG CloudServer for any illegal, unethical, or immoral means. You further warrant that you shall not use your PRG CloudServer in association with any objectionable content or unlicensed or improperly licensed software or content. **Company reserves the right to immediately terminate, without refund, your service contract if, in its sole discretion, you have violated any of these terms.**

4.1 Your PRG Network. You are solely responsible for the development, content, operation, maintenance, and use of Your PRG network. For example, you are solely responsible for:

(a) the technical operation of Your PRG Network, including operating and maintaining all PRG Installations that are connected to your PRG CloudServer;

(b) compliance of Your PRG Network with any state, local, and/or country-wide laws or legal entities; and

(c) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your PRG Network violates any laws or regulations of any kind.

4.2 Other Security and Backup. Although RAE personnel may initially help you set up Your PRG Network, you are responsible for properly configuring and using Your PRG Network and taking your own steps to maintain appropriate security, protection and backup of Your Content, which may include the use of redundant PRG machines. Upon your written request, RAE personnel may, at Company's sole discretion, assist you in obtaining copies of Your Content from your PRG CloudServer instance.

4.3 End User Violations. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your PRG Network or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to Your Content and the Service Offerings.

5. Fees and Payment

5.1. Order, payment, and setup. To use the PRG CloudServer service, you must enter into a business arrangement with Company, place an order for the PRG CloudServer term of your choice, and pay the license fee for such term in full. After we have received

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payment, we will contact you with your Certificate of Service, your private IP address (PRG IPAdd) and any other information you need to initiate your PRG CloudServer service.

5.2 Renewals are not automatic. PRG CloudServer service contracts are for a fixed term as specified in your Certificate of Service. Company may, at its sole discretion, offer to renew your service contract upon term expiration. Company will make every attempt to notify you prior to service contract termination of your then-available options to renew, if any, and prices that are in effect at that time.

5.3 Pricing. Pricing is subject to change upon contract renewal. Renewals to existing contracts, as well as new contracts, are not guaranteed to be available at previous pricing levels and are subject to change any time prior to the execution of such contracts.

6. Temporary Suspension

6.1 Generally. We may suspend your right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

(a) your or an End User's use of the Service Offerings (i) poses a security risk to the Company, the Service Offerings, or any other PRG CloudServer customer, (ii) may adversely impact the Service Offerings or the systems or Content of any other PRG CloudServer customer, or (iii) may subject us, our affiliates, or any third party to liability;

(b) you are, or any End User is, in breach of this Agreement, including if you are delinquent on any payment obligations for more than 15 days; or

(c) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

(a) you remain responsible for all fees and charges you have incurred through the date of suspension;

(b) you remain responsible for any applicable fees and charges for any Service Offerings to which you continue to have access, as well as any other obligations you have to Company;

(c) we will not erase any of Your Content as a result of your suspension, except as specified elsewhere in this Agreement; and

(d) you will not be entitled to a refund of any unused portion of your service Term.

Our right to suspend your right to access or use the Service Offerings is in addition to our right to terminate this Agreement pursuant to Section 7.2.

7. Term; Termination

7.1. Term. The term of this Agreement will commence on the Effective Date and will remain in effect until the Expiration Date as specified in your Certificate of Service, or until terminated by you or us in accordance with Section 7.2.

7.2 Termination.

7.2.1 We can cancel this service with 30 days notice. If Company determines, due to adverse business conditions, economic conditions, or other conditions, we can no longer continue offering the PRG CloudServer service, we can cancel your service at any time. If we cancel your service, we will notify you and give you at least thirty (30) days notice prior to service cancellation. We will also refund the unused portion of your contract fee based upon a simple pro-rated monthly schedule.

7.2.2 Other forms of acceptable termination are as follows:

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice. Note that you will not receive a refund for any unused term remaining in your service contract if you terminate for convenience.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause, if any act or omission by you or any End User results in a suspension described in Section 6.1, (B) if our relationship with a third party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services as described in Section 2.3, (c) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us, (D) in order to comply with the law or requests of governmental entities, or (E) if we determine use of the Service Offerings by you or any End Users or our provision of any of the Services to you or any End Users has become impractical or unfeasible for any legal or regulatory reason.

7.3. Effect of Termination.

(a) Generally. Upon any termination of this Agreement:

(i) all your rights under this Agreement immediately terminate;

(ii) no refunds will be given for previously paid service fees, except as specified in Sections 2.1, 7.2.1, and 7.2.2(ii)(B) and 7.2.2(ii)(C).

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(b) Post-Termination Assistance. Unless we terminate your use of the Service Offerings pursuant to Section 7.2.2(A), during the 30 days following termination:

- (i) we will not erase any of Your Content as a result of the termination;
- (ii) you may retrieve Your Content from the Services only if you have paid any charges for any post-termination use of the Service Offerings and all other amounts due; and
- (iii) we will provide you with the same post-termination data retrieval assistance that we generally make available to all customers. Any additional post-termination assistance from us is subject to mutual agreement by you and us.

8. Proprietary Rights

8.1 Your Content. As between you and us, you or your licensors own all right, title, and interest in and to Your Content. Except as provided in this Section 8, we obtain no rights under this Agreement from you or your licensors to Your Content, including any related intellectual property rights. You consent to our use of Your Content to provide the Service Offerings to you. We may disclose Your Content to provide the Service Offerings to you or any End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

8.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content; (b) you have all rights in Your Content necessary to grant the rights contemplated by this Agreement.

8.3 Service Offerings License. As between you and us, we or our affiliates or licensors own and reserve all right, title, and interest in and to the Service Offerings. We grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use your PRG CloudServer solely in accordance with this Agreement during the term of this agreement. Except as provided in this Section 8.3, you obtain no rights under this Agreement from us or our licensors to the Service Offerings, including any related intellectual property rights.

8.4 License Restrictions. Neither you nor any End User may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Service Offerings (except to the extent software included in the Service Offerings are provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings, or (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas. All licenses granted to you in this Agreement are conditional on your continued compliance this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service Offerings you have used. You may only use the PRG CloudServer and/or ProRAE Guardian Marks in accordance with the Trademark Use Guidelines.

8.5 Suggestions. If you provide any Suggestions to us or our affiliates, we will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. We and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

9. Indemnification.

9.1. General. You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Service Offerings (including use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you or any End User; (c) Your Content or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising or marketing of Your Content; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.

9.2. Process. We will promptly notify you of any claim subject to Section 9.1, but our failure to promptly notify you will only affect your obligations under Section 9.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate.

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provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

10. Disclaimers.

THE SERVICE OFFERINGS ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

11. Limitations of Liability.

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THIS AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

12. Modifications to the Agreement.

We may modify this Agreement (including any Policies) at any time by posting a revised version on the RAESYSTEMS.COM Site or by otherwise notifying you in accordance with Section 13.8. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the RAESYSTEMS.COM Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

13. Miscellaneous.

13.1 Confidentiality and Publicity. You will not disclose RAE Confidential Information during the Term or at any time during the 5 year period following the end of the Term. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Service Offerings. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors), or express or imply any relationship or affiliation between us and you or any other person or entity except as expressly permitted by this Agreement.

13.2 Force Majeure. We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

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13.3 Independent Contractors; Non-Exclusive Rights. We and you are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

13.4 No Third Party Beneficiaries. This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

13.5 NO RIGHT TO RELY. No oral or written information or advice given by Company, its dealers, distributors, agents, or employees will create a warranty or in any way increase the scope of Company's obligations under this agreement, and you may not rely on any such information or advice.

13.6 U.S. Government Rights. The Service Offerings are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Service Offerings. If you are using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Service Offerings. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

13.7 Import and Export Compliance. In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the region in which any of the foregoing occur.

13.8 Notice.

(a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on the RAESYSTEMS.COM Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the RAESYSTEMS.COM Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email. (b) To Us. To give us notice under this Agreement, you must contact RAE SYSTEMS by personal delivery, overnight courier or registered or certified mail to RAE Systems Inc., 3775 North First Street, San Jose, CA 95134. We may update the address or other means for notices to us by posting a notice on the RAESYSTEMS.COM Site. All notices to us must be clearly marked "URGENT" and sent to the attention of the RAE Legal Dept. Notices provided to us by personal delivery will be effective immediately. Notices provided to us by overnight courier will be effective one business day after they are sent. Notices provided to us by registered or certified mail will be effective three business days after they are sent. (c) Language. All communications and notices to be made or given pursuant to this Agreement must be in the English language.

13.9 Assignment. You will not assign this Agreement, or delegate or sublicense any of your rights under this Agreement, without our prior written consent. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

13.10 No Waivers. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

13.11 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

13.12 Governing Law; Venue. The laws of the State of California govern this Agreement and any dispute of any sort that might arise between you and us. We may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of our, our affiliates, or any third party's intellectual property or other proprietary rights.

13.13 Entire Agreement. This Agreement is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. Notwithstanding any other agreement between you and us, the security and data privacy provisions in Section 3 of this Agreement contain our and our affiliates' entire obligation regarding the security, privacy and confidentiality of Your Content. We will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other

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Thank you.



RAE Systems
3775 North First Street
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document. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control.

14. Definitions.

"PRG" means ProRAE Guardian.

"PRG CloudServer" means ProRAE Guardian CloudServer, and represents the instantiation of one copy of ProRAE Guardian running on a computer which is on the public Internet with a Static IP address.

"Your PRG Network" means the combination of your PRG CloudServer instance and all the other PRG machines, devices, instruments, and monitors that are connected to it at any time.

"Expiration Date" means the date the Term of your PRG CloudServer service agreement expires. This date will be specified in your Certificate of Service.

"PRG Installation" means a computer running ProRAE Guardian software with or without attached instruments.

"Your Content" means Content you or any End User cause to be transferred to, created on, or otherwise manifested on your PRG CloudServer by you or by your legitimate use of your PRG CloudServer, including but not limited to, any instrument readings, DataLogs, or Event Logs.

"API" means an application program interface.

"RAE Confidential Information" means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. RAE Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. RAE Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortuous act; or (iv) can be shown by documentation to have been independently developed by you without reference to the RAE Confidential Information.

"PRG CloudServer Marks" means any trademarks, service marks, service or trade names, logos, and other designations of PRG CloudServer, PRG, ProRAE Guardian, and its affiliates that we may make available to you in connection with this Agreement.

"PRG CloudServer Content" means Content we or any of our affiliates make available in connection with the Services or on the RAESYSTEMS.COM Site to allow access to and use of the Services, including your PRG CloudServer instance.

"RAECENTER.COM Site" means <http://www.raecenter.com> and any successor or related site designated by us.

"RAESYSTEMS.COM Site" means <http://www.raesystems.com> and any successor or related site designated by us.

"Content" means data, text, audio, video, images or other content.

"Documentation" means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services.

"End User" means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your PRG Network and/or Your Content; or (b) otherwise accesses or uses the Service Offerings under your account.

"Privacy Policy" means the privacy policy currently referenced on the RAESYSTEMS.COM site, as it may be updated by us from time to time.

"Service" means each of the services made available by us or our affiliates, including but not limited to the PRG CloudServer service.

"Service Offerings" means the PRG CloudServer service (including associated APIs, if any), the PRG CloudServer Content, the PRG CloudServer Marks, the RAESYSTEMS.COM Site, the RAECENTER.COM Site, and any other product or service provided by us under this Agreement. Service Offerings do not include Third Party Content.

"Service Terms" means the rights and restrictions for the PRG CloudServer service, and specified in this document.

"Suggestions" means all suggested improvements to the Service Offerings that you provide to us.

"Term" means the term of this Agreement, beginning on the Effective Date, and ending on the Expiration Date as specified on the Certificate of Service.

"Certificate of Service" means the document you receive upon commencement of the Service detailing your Service Terms, the Term, and any other information pertinent to the PRG CloudServer service.

"Third Party Content" means Content made available to you by any third party on the PRG CloudServer Site or in conjunction with the Services.

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Environmental Systems Research Institute Software License Agreement

IMPORTANT: READ CAREFULLY. This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and RAE Systems Inc. ("RAE"). It covers software ("SOFTWARE") that RAE has licensed from Environment Systems Research Institute, Inc. ("ESRI") and that RAE in turn is sublicensing to you. RAE has embedded the SOFTWARE into the RAE software contained in the RAE product you are purchasing ("RAE PRODUCT"). By using the RAE PRODUCT, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, you must return the RAE PRODUCT unused, with all of its original packaging, for a refund.

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2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

- A. You may use only the executable code of the SOFTWARE, subject to the restrictions provided in the ESRI Business Partner Program OEM Program Addendum, which will be made available to you upon request.
- B. You may not (1) transfer the SOFTWARE from your hardware to hardware owned by a third party, except for temporary transfers in the event of computer malfunction; (2) assign, time-share, lend, lease, or rent the SOFTWARE; (3) use the SOFTWARE for commercial network services or interactive cable or remote processing services; or (4) use the SOFTWARE in any way that may adversely affect ESRI's title and rights in the SOFTWARE.
- C. You may not reverse engineer, disassemble, or decompile the SOFTWARE.
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- G. You must comply fully with all relevant export laws and regulations of the United States to ensure that the SOFTWARE and/or any direct product thereof is not exported, directly or indirectly, in violation of United States law.
- H. You may not remove, alter, or obscure any copyright, trademark notice, or restrictive legend that may be affixed to the RAE PRODUCT or to its packaging.
- I. If the United States Government is the end user of the RAE PRODUCT, then the SOFTWARE is provided as a "Commercial Item" pursuant to FAR 52.201(c), and in no event shall the Government acquire greater than Restricted/Limited Rights as provided in FAR 52.227-19 (June 1987), FAR 52.227-14 (ALT III) (June 1987), DFARS 252.227 7015 (November 1995), NFS 1852.227-86 (December 1987), or equivalent as applicable.

3. COPYRIGHT. All title and copyrights in and to (i) the SOFTWARE (including but not limited to any images, photographs, animations, video, audio, music, text, and applets incorporated into the SOFTWARE) and (ii) any copies of the SOFTWARE, are owned by ESRI. The SOFTWARE is protected by copyright laws and international treaty provisions. Therefore, you must treat the SOFTWARE like any other copyrighted material.

4. GOVERNING LAW. This EULA is governed by and is to be construed in accordance with the laws of the State of California.

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Thank you.