

STATE OF TEXAS           §  
   §  
 COUNTY OF FORT BEND    §

**ADDENDUM TO RAE SYSTEMS PURCHASE AGREEMENT**

THIS ADDENDUM is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Rae Systems, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

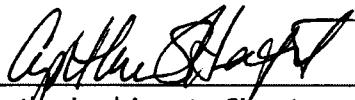
THAT, WHEREAS, the parties have executed and accepted that certain Purchase Agreement for Contractor's products, (hereinafter the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1.     **Payment.** Payment shall be made by County within thirty (30) days of receipt of invoice.
2.     **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
3.     **Confidential Information.** Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.
4.     **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to defending, indemnifying, holding or saving harmless for any reason are hereby deleted.
5.     **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.
6.     **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas. Venue shall lie in Fort Bend County, Texas, for any suit regarding the Agreement.

7. **Audit.** County is purchasing Contractor's products with federal Urban Area Security Initiative grant funds. The Department of Public Safety/State Administrative Agency, and agency of the State of Texas, has the right to conduct a financial and compliance audit of County's use of these grant funds. Contractor agrees to comply with any Department of Public Safety/State Administrative Agency audit of County's use of grant funds to purchase Contractor's products.
8. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, in any matter affecting the performance of this Agreement.

RAE SYSTEMS, INC.

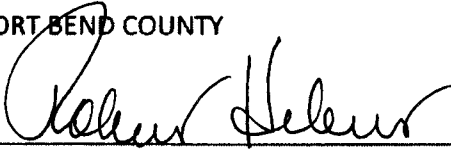
By:   
 Authorized Agent - Signature

CYNTHIA S. HELPERT  
 Authorized Agent - Printed Name

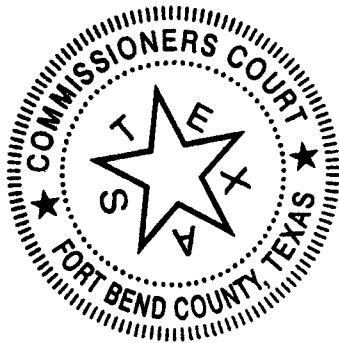
Title: Controller - RAE America


Date: 11/22/11

FORT BEND COUNTY

By:   
 Robert E. Hebert, County Judge

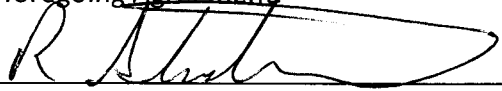
Date: 12-13-2011



ATTEST:  
  
 Dianne Wilson, County Clerk

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ 97,000.<sup>00</sup> are available to pay the obligation of Fort Bend County within the foregoing Agreement.

  
\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

# EXHIBIT A



**Rae Systems**  
3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: [rpotts@raesystems.com](mailto:rpotts@raesystems.com)

**Quotation: IS110914160154.00**

Wednesday, September 14, 2011

Thomas Anderson  
Captain  
Sugar Land Fire Department  
P O Box 110  
Sugar Land, TX 77478

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
- ChemRAE - WMD detector
- Weatherpak - Weather Station
- PlumRAE™ - 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

**CONFIDENTIALITY NOTICE**

The information contained in this facsimile message is privileged and confidential information intended solely for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any dissemination, disclosure, copying or distribution of this telecopy is strictly prohibited. If you received this communication in error, please immediately notify us by telephone and return the original message and documents to us at the above address via first class mail. Thank you.



**RAE**  
S Y S T E M S

**Rae Systems**  
3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

**Quotation: IS110914160154.00**

**To:** Sugar Land Fire Department  
P O Box 110  
Sugar Land, TX 77478

**Attn:** Thomas Anderson  
**Phone:** (281) 275-2175      **Extn:**  
**Fax:**  
**Cell:**  
**Email:** tanderson@sugarlandtx.gov

**Issued:** Wednesday, September 14, 2011  
**Expiration Date:** Tuesday, December 13, 2011  
**Rep Contact:**

Ray Dauterive  
**Phone:** 281-222-3621  
**Fax:** 408-925-8480  
**Email:** rdauterive@raaesystems.com  
**Project:** Sugar Land FD - RDK Steel with  
GPS & MXD Maps, with Option  
for Addl. PRG for existing  
equipment

Item	Qty	Part Number	Description	Price/Unit	Total
------	-----	-------------	-------------	------------	-------

**RDK Steel with GPS & MXD Maps**

1.1	1	038-R112-121	<b><u>Rapid Deployment Kit Steel System Package</u></b> Rapid Deployment Kit Steel System Package  All RDK System Kits now include ProRAE Guardian Software and Four Tier 3 Licenses for 5 Years, for the AreaRAEs  LEL/O2 Combustible and Oxygen sensors H2S Hydrogen Sulfide sensor CO Carbon Monoxide sensor PID 10.6 eV lamp Wireless (RF) data transmission +GPS 900MHz Monitors, Host, and 4-gas (O2/LEL/CO/H2S) plus Isobutylene Calibration Kit	\$47,955.00	\$47,955.00
1.2	1	029-9003-UTX	<b><u>GPS MXD Map - TX</u></b> MXD GPS MAP,TEXAS,US	\$1,969.00	\$1,969.00
1.3	1	Shipping	<b><u>Fedex Ground Shipping</u></b> Shipping and Handling-Rates may change due to quantity, ship method, or final destination.	\$100.00	\$100.00

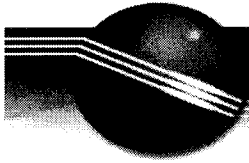
Section Total: \$50,024.00

**OPTION - Additional ProRAE Guardian Licenses for existing Equipment**

2.1	4	S01-0300-500	<b><u>TIER 3, ProRAE GUARDIAN LICENSE, 5 YEAR</u></b> Tier 3 Instruments: ppbRAE Plus, ppbRAE3000, UltraRAE3000, AreaRAE family, ChemRAE, WeatherPak and all 3rd party products	\$1,000.00	\$4,000.00
-----	---	--------------	--	------------	------------

Section Total: \$4,000.00

**Grand Total: \$54,024.00**



# RAE Systems

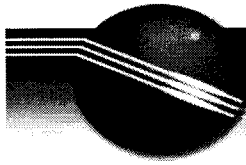
## Quotation

**To:** Christina Torres  
**Company:** Fort Bend County, Texas  
**City, State, Zip:**  
**Reference:** Requisition 63291  
**Phone:** 281 341-3793  
**Fax:**  
**Email:** [chris.torres@co.fort-bend.tx.us](mailto:chris.torres@co.fort-bend.tx.us)  
**Date:** November 22, 2011

**From:** Ray Dauterive  
**Company:** RAE Systems, Inc.  
 3775 North First Street  
 San Jose, CA 95134  
**Phone:** 281 222-3621  
**Fax:** (408) 952-8487  
**Email:** [rdauterive@raesystems.com](mailto:rdauterive@raesystems.com)  
**Page (s):** 1

Part Number	Description	Qty	Unit Price	Extended Price
009-3121-014	MultiRAE Plus with Calibration Cylinders and Regulators, Configuration 10.6eV PID-LEL-H2S-CO-O2, Sample Draw Pump	8	\$4,620.00	\$36,960.00
<p>OPTION NOTE: The MultiRAE Plus is being discontinued as a RAE Systems product, therefore may not be available for shipment at the time of purchase.</p> <p>The multiRAE instrument part number and description below is the replacement prouduct for the MultiRAE Plus.</p>				
MBB3A2C112-C	MultiRAE with Calibration Cylinders and Regulators, Configuration 10.6eV PID LEL-H2S-CO-02, Sample Draw Pump.	8	\$3,102.00	\$24,816.00
<b>Terms: Net 30 Days Upon Approved Credit    Ship Via: Best Way    Shipping: PP&amp; Add</b>			<b>Total Price: \$61,776.00</b>	
<b>Delivery: 2 Weeks ARO</b>				





# RAE Systems

## Quotation

**To:** Christina Torres  
**Company:** Fort Bend County, Texas  
**City, State, Zip:**  
**Reference:** Requisition 63290  
**Phone:** 281 341-3793  
**Fax:**  
**Email:** [chris.torres@co.fort-bend.tx.us](mailto:chris.torres@co.fort-bend.tx.us)  
**Date:** November 22, 2011

**From:** Ray Dauterive  
**Company:** RAE Systems, Inc.  
3775 North First Street  
San Jose, CA 95134  
**Phone:** 281 222-3621  
**Fax:** (408) 952-8487  
**Email:** [rdauterive@raesystems.com](mailto:rdauterive@raesystems.com)  
**Page (s):** 1

Part Number	Description	Qty	Unit Price	Extended Price
020-1111-1A0	QRAE II, Configuration O2-LEL-CO-H2S, Sample Draw Pump	8	\$718.00	\$5,744.00

Terms: Net 30 Days Upon Approved Credit    Ship Via: Best Way    Shipping: PP& Add  
Delivery: 2 Weeks ARO    Total Price: \$5,744.00



**RAE**  
S Y S T E M S

**Rae Systems**

3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

**Quotation: IS110914160154.00**

not include applicable sales taxes.

GSA Contract: GS-07F-0627X  
DUNS# 626122519  
FEDERAL TAX ID# 77-0280662  
CAGE# 06JB6

_____	_____
Accepted By	Date of Acceptance

Shipping Address: _____	Billing Address: _____
_____	_____
_____	_____
_____	_____

Required Delivery Date: \_\_\_\_\_

Method of Delivery: \_\_\_\_\_

PO#: \_\_\_\_\_

Comments: \_\_\_\_\_



**Rae Systems**  
3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

Quotation: IS110914160154.00

## EXHIBIT 1. GENERAL TERMS AND CONDITIONS OF SALE (PR 12/17/98)

### RAE Systems Inc. Terms and Conditions

Terms and conditions of sale contained herein apply to all quotations and purchases made and purchase orders received by RAE System, 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 there from.
- 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.

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.



**RAE**  
S Y S T E M S

**Rae Systems**

3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

**Quotation: IS110914160154.00**

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-cancelable 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 Product Operating and Service manual 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. 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 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. 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.



**Rae Systems**  
3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

**Quotation: IS110914160154.00**

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 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 15.

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.

#### RAE Systems Software License

1. **Grant of License.** In consideration of payment of the License Fee, which is a part of the price paid for this product as evidenced by the payment receipt (the "Receipt"), RAE Systems, hereby, grants to the Licensee, a nonexclusive right to use and display RAE Systems' SOFTWARE. The License granted covers all users on the above-mentioned SOFTWARE. RAE Systems reserves all rights not expressly granted to Licensee.

2. **Ownership of the software.** As the Licensee, you own the magnetic or other physical media on which the SOFTWARE is originally or subsequently recorded or fixed, but RAE Systems retains the title and ownership of the SOFTWARE and all subsequent copies of the



**Rae Systems**  
3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

Quotation: IS110914160154.00

SOFTWARE, regardless of the form or media in or on which the original and other copies may exist. This License is not a sale of the original SOFTWARE or any copy, thereof.

3. Copy Restrictions. This SOFTWARE and the accompanying written materials are copyrighted. Unauthorized copying of the SOFTWARE, including SOFTWARE that has been modified, merged or included with other software, or the written materials provided herewith, is expressly forbidden. You may be held legally responsible for any copyright infringement that is caused or encouraged by your failure to abide by the terms of this License. Subject to these restrictions, and to the extent the SOFTWARE is not copy-protected, you may make one copy of the SOFTWARE solely for backup and archival purposes. Copyright notices must be posted on any and all reproduced copies.

4. Use Restrictions. As the Licensee, you may physically transfer the SOFTWARE from one computer to another provided the SOFTWARE is used on only one computer at a time. You may not electronically transfer the SOFTWARE from one computer to another. You may not distribute copies of the SOFTWARE or accompanying written materials to others. You may not modify, adapt, translate, reverse engineer, de-compile, disassembly, or create derivative works based on the SOFTWARE or the written materials without the prior written consent of RAE Systems.

5. Transfer Restrictions. The foregoing License to use the SOFTWARE is granted only to you and may not be transferred, except a transfer of all your rights, title and interest in and to the License to another person upon that person's agreement to abide by the terms and conditions of the Agreement. In no event may you transfer, assign, rent, lease, sell or otherwise dispose of the SOFTWARE on a temporary or permanent basis except as expressly provided herein. All other attempts to transfer your License under this Agreement are void.

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 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.



**Rae Systems**  
3775 North First Street  
San Jose, CA 95134  
Phone: (408) 952-8200  
Fax: (408) 952-8487  
Email: rpotts@raesystems.com

**Quotation: IS110914160154.00**

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.

#### SOFTWARE LICENSE

The SOFTWARE is licensed, not sold, to you, and you have the rights of a licensee, not an owner, in the SOFTWARE.

1. **GRANT OF LICENSE.** This EULA grants you the right to use the SOFTWARE as described in the RAE Systems Software License, to which you are required to agree as a condition for your use of the RAE PRODUCT.

#### 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.

D. You may not duplicate the SOFTWARE except as necessary for the use of the RAE PRODUCT.

E. You disclaim, to the extent permitted by applicable law, ESRI's liability for any damages or loss of any kind, whether special, direct, indirect, incidental, or consequential, arising from your use of the SOFTWARE.

F. Upon the termination of this EULA for any reason, you must certify to RAE that you have discontinued use and have destroyed or returned to RAE all copies of the SOFTWARE.

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.

\_\_\_\_\_  
Authorized By: