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Hearing Date and Time: November 14, 2002 @ 10:00 a.m. (EDT)  
Objection Deadline: November 11, 2002 @ 4.00 p.m (EDT)

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020000-P4

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re	:	Chapter 11
	:	
ENRON CORP., et al.,	:	Case No. 01-16034 (AJG)
	:	
	:	Jointly Administered
Debtors.	:	
-----		X

**MOTION FOR AN ORDER, PURSUANT TO  
SECTIONS 105, 363(b), (f), AND (m), AND 365 OF THE BANKRUPTCY  
CODE, AUTHORIZING AND APPROVING (A) ENRON ENERGY  
INFORMATION SOLUTIONS, INC.'S SALE OF CERTAIN  
SOFTWARE AND RELATED PROPERTY AND THE ASSUMPTION  
AND ASSIGNMENT OF THE ASSUMED CONTRACT TO AMERICAN  
INTELLIGENCE, INC. PURSUANT TO AN ASSET PURCHASE AGREEMENT.  
SUBJECT TO HIGHER AND BETTER OFFERS, AND (B) THE  
CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED THEREIN**

TO THE HONORABLE ARTHUR J. GONZALEZ,  
UNITED STATES BANKRUPTCY JUDGE:

Enron Energy Information Solutions Inc., as debtor and debtor in  
possession ("EEIS"), respectfully states as follows:

**Summary of Relief Requested**

1. By this motion (the "Motion"), pursuant to sections 105, 363(b), (f),  
and (m) and 365 of title 11, United States Code (the "Bankruptcy Code"), EEIS seeks  
entry of an order for authorization to sell all its rights, title, and interest in certain

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Assignor further covenants and agrees that Assignor will at any time upon request of Assignee, and at its expense, communicate to Assignee any facts relating to the Marks known to Assignor, and that Assignor will testify upon the request of Assignee as to the same in any proceeding in the United States Patent and Trademark Office.

All capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase Agreement.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed by its proper officer thereunto duly authorized, as of this \_\_\_\_ day of \_\_\_\_\_ 2002.

**ASSIGNOR:**

ENRON ENERGY INFORMATION SOLUTIONS, INC.  
Debtor and Debtor In Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

software and related assets (the "Property"),<sup>1</sup> including that certain proprietary energy management and monitoring software known as Enron Energy Analyzer (formerly known as E2IS) ("Energy Analyzer") and FASER ("Faser") pursuant to that certain Asset Purchase Agreement (the "Agreement"), dated as of October 14, 2002, by and between EEIS and American Energy Intelligence, Inc. ("AEI"), and the assumption and assignment of that certain OEM Software Distribution Agreement by and between EEIS and iAnywhere Solutions, Inc., dated May 10, 2001 (the "Assumed Contract"), free and clear of liens, claims, encumbrances, and other interests, subject to higher or better offers, and (b) authorizing the consummation of the transactions contemplated therein.

**Jurisdiction**

2. This Court has subject matter jurisdiction to consider and determine this motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Procedural Background**

3. Commencing on December 2, 2001 (the "Enron Petition Date") and periodically thereafter, Enron Corp. ("Enron"), and certain of Enron's direct and indirect subsidiaries (collectively, the "Enron Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Enron Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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<sup>1</sup> The Property is identified in the Agreement (as defined herein) annexed hereto as Exhibit "A."

4. On December 21, 2001 (the "EEIS Petition Date"), EEIS filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. EEIS continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. EEIS is an affiliate of Enron Corp. and the other Enron Debtors and its chapter 11 case is being jointly administered with those of the Enron Debtors.

5. On December 12, 2001, in accordance with section 1102 of the Bankruptcy Code, the United States Trustee for the Southern District of New York (the "United States Trustee") appointed a statutory committee of unsecured creditors in the Debtors' chapter 11 cases (the "Creditors' Committee"), and on March 27, 2002, the United States Trustee appointed the employment-related issues committee (the "Employee Committee"). The Employee Committee was subsequently reconstituted on March 29, 2002.

#### **The Software**

6. Prior to the commencement of its chapter 11 case, EEIS was a leading publisher of energy information management software, including Faser and Energy Analyzer. Faser was originally developed by OmniComp, which was acquired by Enron Energy Services, Inc. ("EES") in 1995. EEIS is a wholly owned subsidiary of EES.

7. For over twenty years, Faser has served the utility tracking and analysis needs of schools, retail chains, municipalities, universities, performance contractors, industries, government, hotels, hospitals and property managers. Faser is a packaged software application designed to track, analyze, and report on energy usage and billing. Faser provides the following functionality:

- *Budgeting:* Sets energy cost targets and compares them to actual cost.
- *Cost Avoidance:* Calculates and reports energy savings due to energy management projects. Functions include weather data entry, adjustments, baseline creating, baseline adjustments, reports and graphs, and other functions needed for performance contract tracking. Includes a link to Accu-Weather®.
- *Energy Alarms:* Checks utility bills 17 different ways to help spot abnormalities and errors.
- *Benchmark Comparison:* Various reporting facilities to aid in discovering trends and abnormalities.
- *Links to A/P software:* Interfaces with Accounts Payable. Includes security access, batch entry controls, G/L codes at the meter level, A/P posting file, and transaction control features.
- *Custom Report Writing:* Via Crystal Reports. FASER was sold with a full copy of Crystal Reports for reporting.
- *EDI Data Conversions:* For automated data input; there are a series of EDI converter programs for various file formats.

8. Energy Analyzer is an internet-based application designed to operate as Enron's next generation of energy analysis software. Energy Analyzer is an online suite of energy management and consumption analysis tools for retail, commercial and institutional organizations. Energy Analyzer's features include:

- *Summarized data:* Validating proactive, money-saving solutions through concise overviews of energy usage data.
- *Billing information:* Reviewing bills to quickly understand potential problems that could be causing avoidable energy expense.
- *Analysis & reporting:* Managing energy consumption by identifying peaks in energy demand, as well as use vs. cost and average loads.

- *Benchmarking:* Discovering anomalies by comparing facility energy use profile to that of comparable facilities.
- *Charting:* Understand energy usage through clear, simple graphical interfaces.

**EEIS's Prior Marketing of the Property**

9. Prior to the commencement of its chapter 11 case, EEIS was in the process of discontinuing Faser and replacing it with Energy Analyzer. Shortly after EEIS's Petition Date, EES began receiving unsolicited calls from third parties interested in purchasing the rights to Faser and, in January of 2002, EES began soliciting additional prospective buyers for Faser and Energy Analyzer.

10. In that regard, EES initially contacted approximately seventeen (17) parties who EES believed would be interested in purchasing the Property (the "Initial Contacts"). Approximately fourteen (14) of the Initial Contacts signed confidentiality agreements with EES (the "Interested Parties") and each of the Interested Parties received an informational memorandum from EES describing the Property. EES also provided each of the Interested Parties with a demonstration copy of Faser, as well as ID's and passwords to the Energy Analyzer demonstration site for a self-guided software demonstration. A dataroom was created and due diligence meetings were conducted for the Interested Parties.

11. Bid packages were distributed to each Interested Party on February 8, 2002, with bids due by February 19, 2002. EES received six (6) bids ranging from \$15,000 to \$2,000,000. EES, in consultation with its advisors, reviewed the bids and determined that the bid of AEI represented the highest and best offer for the Property.

### The Agreement

12. After substantial negotiations, and subject to Court approval, EEIS, as seller (the "Seller"), entered into the Agreement with AEI, as buyer (the "Buyer"), a copy of which is annexed hereto as Exhibit "A". The Agreement, which is the result of arm's-length, good faith negotiations, provides that EEIS will sell the Property and assume and assign the Assumed Contract to AEI pursuant to sections 363 and 365 of the Bankruptcy Code, in consideration of a purchase price aggregating \$2,000,000.

13. The Agreement has the following major provisions:<sup>2</sup>

- (a) Purchase Price. The aggregate purchase price to be paid by Buyer to Seller shall be Two Million Dollars (U.S. \$2,000,000) (the "Purchase Price").
- (b) The Seller's Deliveries to the Buyer at the Closing. On the Closing Date, the Seller shall deliver to the Buyer a bill of sale, duly executed by the Seller, in the form and on the terms of the Bill of Sale attached to the Agreement as Exhibit C (the "**Bill of Sale**"), a Copyright Assignment, duly executed by Seller, in the form and on the terms of the Copyright Assignment attached to the Agreement as Exhibit D (the "**Copyright Assignment**"), a Trademark Assignment, duly executed by Seller, in the form and on the terms of the Trademark Assignment attached to the Agreement as Exhibit E (the "**Trademark Assignment**"), and a Domain Name Assignment, duly executed by Seller, in the form and on the terms of the Domain Name Assignment attached to the Agreement as Exhibit F (the "**Domain Name Assignment**").
- (c) Buyers Delivery at the Closing. At the Closing, the Buyer shall deliver to the Seller the Purchase Price in immediately available funds by wire transfer or in such other form as reasonable requested by Seller to an account designated by Seller prior to closing, which payment will be made by Buyer or Seller without set-off of any kind. Buyer waives any right of set-off it ever had or has against Seller or any affiliate of Seller.

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<sup>2</sup> This summary of the Agreement is qualified in its entirety by the terms of the Agreement and to the extent a conflict exists, the terms of the Agreement govern.

- D.
- (d) Conditions Precedent to the Closing. Closing subject to the satisfaction of each of the following conditions: (i) the Bankruptcy Court shall have entered a final non-appealable Approval Order (as defined and in form and substance as provided in Section 6 of the Agreement) approving Seller's consummation of the Agreement, and (ii) the respective representations and warranties taken as a whole of other party contained in the Agreement shall continue to be true and correct in all material respects as of the Closing Date and the other party shall have performed in all material respects all covenants and agreements required of such party between the Effective Date and the Closing Date. In addition to the foregoing, the obligations of Buyer shall also be subject to the satisfaction of each of the following conditions: (w) at the Closing, in all material respects the Property is present and in substantially the same condition (ordinary wear and tear excepted) as when previously examined by the Buyer on May 29, 2002, and immediately prior to the Closing Seller shall have provided Buyer a reasonable opportunity to verify such presence and condition by means of an on-site examination of, for electronic format Property, the contents of server hard drives and compact disks, and for tangible Property, the contents of cartons containing hard copy files, product inventory and related materials, (x) Seller shall have registered the Software or applied for registration of the Software under applicable copyright laws with the cost and expense of such registration to be solely borne by Buyer and be in a position to assign such registrations or applications to the Buyer at the Closing and (y) Seller shall have provided Buyer with a letter on Seller's stationery, in the form of Exhibit G to the Agreement and addressed generally to the parties whose agreements will be rejected pursuant to Section 7.25 of the Agreement, which informs such parties of the identity of the successor organization (as designated by Buyer) that will offer future support for the Software and which may be included without alteration in a mailing made by Buyer (or the successor organization) to such parties with 90 days following the Closing; provided, however, that such mailing shall not be undertaken in the event Closing does not occur, and (z) no third party shall have asserted a claim (which continues to exist on the Closing Date) that could reasonably be expected to have a material adverse effect on the Property or the transactions contemplated by the Agreement.
- (e) "As Is" Transaction Except as provided in Section 4 of the Agreement, Buyer acknowledges and agrees that the Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property and the Buyer



will accept the Property at the Closing “as is”, “where is” and “with all faults.”

- (f) Limited Trademark License. Seller grants to Buyer a limited, non-exclusive, non-transferable, royalty free, license to use the ENRON trademark and distinctive logo (collectively, the “**Enron Marks**”) for the purpose of the notice letter to be provided by Seller to Buyer pursuant to Section 3(y) of the Agreement and to the extent such Enron Marks have been previously affixed to Seller’s existing stock of training manuals, user manuals, and related hard copy versions of similar documentation (collectively, the “**On Hand Stock**”). This limited license shall terminate by its own terms without any action taken by Seller when the above described letter has been sent and the On Hand Stock has been depleted in the ordinary course of Buyer’s business or otherwise disposed of by Buyer. This license does not grant any rights to Buyer to (i) use the Enron Marks in any manner on any good or in connection with any service other than in connection with the On Hand Stock, (ii) print or create new documentation that includes the Enron Marks or any confusingly similar variant thereof, or (iii) use the Enron Marks in association with Buyer’s marketing or promotion of any portion of the Property other than the On Hand Stock.
  
- (g) Limited Faser License. Notwithstanding the provisions of Section 7.21 of the Agreement, Buyer grants to Seller a non-exclusive, non-transferable, royalty free license to use the FASER software program in object code form for Seller’s internal use only until December 31, 2003, and not for the benefit of any third party. Seller shall have no right to the source code of FASER software program, and Seller agrees not to disassemble or decompile the FASER software program. Seller’s use shall be restricted to the single-seat licenses currently in use that are identified on Schedule 5 of the Agreement for the period of time necessary for Seller to perform reconciliations and maintain historical billing information, but Seller may not otherwise copy or distribute the FASER software program.
  
- (h) Non-Compete. For a period of two (2) years after the Closing Date, Seller shall not engage in the business of acquiring, developing, marketing, distributing, licensing, or maintaining systems and application computer programs having any function similar to, competitive with, or substitutable for, the Software, anywhere in the United States.

14. The terms and conditions of the Agreement were negotiated by EEIS and AEI at arm's length and in good faith. AEI does not hold any interests in any of the Debtors and is not otherwise affiliated with the Debtors or their officers or directors.

**Relief Requested**

15. By this Motion, EEIS requests, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Rules 2002, 6004, and 6006 of the Bankruptcy Rules and Local Bankruptcy Rule 9013-1(c), entry of an order approving (a) the sale of the Property and the assumption and assignment of the Assumed Contract to AEI free and clear of liens, claims, and encumbrances, and rights of set-off, netting, deduction or recoupment, and (b) authorizing the consummation of the transactions contemplated by the Agreement.

**Assumption and Assignment Under Section 365**

16. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Upon finding that debtors have exercised their sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

17. Section 365(b) of the Bankruptcy Code requires that a debtor in possession meet certain additional requirements to assume an executory contract:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume

such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). This section does not apply to a default that is a breach of a provision relating to

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

*Id.* § 365(b)(2).

18. EEIS is not in any payment default under the Assumed Contract.

Accordingly, EEIS should be permitted to assume the Assumed Contract. Upon assumption of the Assumed Contract, EEIS requests that iAnywhere Solutions, Inc.

(“iAnywhere”) be forever barred from asserting cure or other amounts pursuant to section 365(b)(1) of the Bankruptcy Code.

19. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor in possession may assign an executory contract or unexpired lease of nonresidential real property if

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

*Id.* § 365(f)(2).

20. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

21. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient

funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

22. The assignment of the Assumed Contract to AEI will, in and of itself, provide iAnywhere with adequate assurance of future performance. In the event of an objection by iAnywhere, AEI will provide evidence of adequate assurance of future performance at the hearing on this Motion.

**Sale of the Property Under Section 363**

23. Numerous courts have held the assignment of an executory contract or unexpired lease is a use, sale, or lease of property governed by section 363 of the Bankruptcy Code. *See, e.g., In re Am. Banknote Corp.*, No. 99 B 11577 M-47, 2000 WL 815910, at \*2 (S.D.N.Y. June 22, 2000); *In re Angelika Films 57th, Inc.*, Nos. 97 Civ. 2239 (MBM), 97 Civ. 2241 (MBM), 1997 WL 283412, at \*5 (S.D.N.Y. May 29, 1997) (“whether 363 or 365 govern . . . the law in this Circuit requires that the bankruptcy judge determine whether the assignment is supported by a good business justification or is in the best interest of the estate”).

24. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To obtain court approval to use property under section 363(b), the Debtors must show a legitimate business justification for the proposed action. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). As this Court has stated, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not

entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). When a valid business justification exists, the law vests the debtor's decision to use property out of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Once a court is satisfied there is a sound business reason justifying the preconfirmation sale, the court must also determine whether the trustee has provided the interested parties with adequate and reasonable notice, the sale price is fair and reasonable, and the purchaser is proceeding in good faith. *See In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

25. EEIS submits the sale of the Property and the assignment of the Assumed Contract to AEI is in the best interests of EEIS, its estate, its creditors, and all parties in interest. EEIS has determined, in the exercise of its business judgment, that the Property and the Assumed Contract are not integral to nor contemplated to be part of Enron's reorganization. Following a competitive auction process, EEIS determined that AEI submitted the highest and best offer for the Property. Given the foregoing, EEIS submits that the sale of the Property and the assignment of the Assumed Contract to AEI in consideration of the Purchase Price represents a proper exercise of its business judgment.

Sale Free and Clear of Liens, Claims, and Encumbrances

26. EEIS further submits it is appropriate that the Property be sold and the Assumed Contract be assigned free and clear of liens, claims, encumbrances, and interests, as well as rights of set-off, netting, deduction or recoupment (the "Interests"), pursuant to section 363(f) of the Bankruptcy Code, with any such Interests to attach to the sale proceeds. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
  - (2) such entity consents;
  - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
  - (4) such interest is in bona fide dispute;
- or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, when selling property of the estate it is only necessary to meet one of the five conditions of that section.

27. EEIS believes (i) its secured lenders will consent to the proposed sale of the Property under section 363(f)(2), (ii) the value to be received by EEIS in consideration of the sale of the Property is equal to or exceeds the value of the liens upon such collateral under section 363(f)(3), or (iii) creditors with interests in the Property can

be compelled to accept a monetary satisfaction of their claims under section 363(f)(5). Thus, EEIS submits the sale of the Property free and clear of the Interests satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

**Good Faith Purchaser**

28. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

29. As stated above, the terms and conditions of the Agreement were negotiated by EEIS and AEI at arm's length and in good faith. AEI does not hold any interests in any of the Debtors and is not otherwise affiliated with the Debtors or their officers or directors. Accordingly, EEIS requests the Court determine AEI to be acting in good faith and to be entitled to the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code.

**Private Sale**

30. Federal Rule of Bankruptcy Procedure 6004(f)(1) provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Courts often allow chapter 11 debtors to sell assets outside the ordinary course of business by private sale when the debtors demonstrate that the sale is permissible pursuant to section 363(b) of the Bankruptcy Code. *See, e.g., Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.)*, 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy



court's approval of a private sale conducted by a chapter 11 debtor); *In re Condere Corp.*, 228 B.R. 615 (Bankr. S.D. Miss. 1998) (approving a private sale of a chapter 11 debtor's assets where the standards of § 363(b) were met); *In re Wieboldt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale). *Cf. In re Embrace Systems Corp.*, 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995) (holding that a private sale of a chapter 11 debtor's assets is appropriate if all provisions of § 363 are followed, the bid is fair and the sale is in the best interests of the estate and its creditors).

31. As discussed above, EEIS extensively marketed the Property and conducted an auction to obtain the highest and best offer therefor. As a result, EEIS submits that the Purchase Price constitutes fair market value for the Property and request that the Court approve the sale transaction as a private sale pursuant to Bankruptcy Rule 6004(f)(1).

**Request for Relief Under Bankruptcy Rules 6004(g) and 6006(d)**

32. Fed. R. Bankr. P. 6004(g) provides an "order authorizing the use, sale, or lease of property is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(g). In addition, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006(d). EEIS requests any order approving the relief requested herein be effective immediately by providing that the ten-day stay shall not apply.

Waiver of Memorandum of Law

33. This Motion does not raise any novel issues of law. Accordingly, EEIS respectfully requests that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

Notice

34. AEI has requested that a comprehensive notice procedure be undertaken before approval of the transactions set forth in the Agreement. AEI's request is based upon the fact that former EEIS employees and independent contractors employed by EEIS may have worked on the "codes" that comprise the software portion of the Property. AEI is concerned that such entities may assert an interest in the software after it is purchased by the AEI. Accordingly, notice to such parties may be necessary to sell the Property free and clear of all Interests.

35. EEIS believes that all of its former employees and independent contractors have either expressly waived or assigned their rights to EEIS. However, EEIS cannot provide copies of all such waivers and assignments or addresses for former employees and contractors for confidentiality reasons. In addition, employment and other records are not easily obtainable, as the employees responsible for maintaining such records are no longer employed by EEIS. Regardless, EEIS believes that no former employee or independent contractor, most of whom are located in the Houston, Texas area, has an interest in the Software.

36. In addition, it is apparently common for persons code-writing software to utilize existing code freely available on the internet to short-cut the development

process or to construct a remedy for an existing problem. Such code is generally free or is available in exchange for a nominal one-time fee. AEI is concerned that parties alleging rights in such code may assert an interest in the software. As with former employees and independent contractors, notice to such parties may be necessary to sell the Property free and clear of all Interests.

37. Accordingly, EEIS has determined to provide notice of this Motion in accordance with the Court's Amended Case Management Order Establishing, Among Other Things, Noticing Electronic Procedures, Hearing Dates, Independent Website and Alternative Methods of Participation at Hearings, dated February 26, 2002 and upon (i) AEI, (ii) EEIS' secured and unsecured creditors, (iii) each independent contractor of EEIS that participated in the developments of the Software, (iv) current and former employees employed by EEIS during the two years prior to the Effective Date and whose identity and location are reasonably determinable by EEIS after diligent inquiry (v) any other person who may, as solely determined by EEIS in the reasonable exercise of its judgment and after diligent inquiry, assert a claim, lien or other interest in the Property, (vi) to the extent they are not already identified in (ii) through (v) above, those parties listed in Schedule 4 to the Agreement and (viii) iAnywhere Solutions, Inc. EEIS submits that no other notice need be given.

WHEREFORE EEIS respectfully requests that the Court enter an order granting the relief requested herein and such other and further relief as it deems just and proper.

Dated: New York, New York  
October 18, 2002

By: /s/ Martin A. Sosland  
Martin J. Bienenstock (MB 3001)  
Brian S. Rosen (BR 0571)  
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ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**

(Asset Purchase Agreement)

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made and entered into as of this \_\_\_ day of October, 2002 (the "Effective Date"), by and between American Energy Intelligence, Inc., a Texas corporation, having an address at P.O. Box 780, Wichita Falls, Texas 76307 (the "Buyer") and Enron Energy Information Solutions, Inc., a Pennsylvania corporation, having a principal place of business at 1400 Smith Street, Houston, Texas 77002 (the "Seller").

### Recitals

A. The Seller has developed or acquired certain proprietary energy management and monitoring software known as ENRON ENERGY ANALYZER (formerly known as E2IS), which is referred to herein as "Energy Analyzer" and is more particularly described in Exhibit A attached hereto and incorporated herein, and FASER, which is referred to herein as "Faser" and is more particularly described in Exhibit B attached hereto and incorporated herein (collectively, the "Software"),

B. The Seller wishes to sell, and the Buyer wishes to purchase, the Software and certain related intellectual property as more particularly described herein, subject to all terms and provisions of this Agreement; and

C. The Seller has commenced Case No. 01-16034 (the "Bankruptcy Case") under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") by filing a voluntary petition in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and remains in possession of the Property (as hereinafter defined).

### Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. Purchase and Sale of the Property. On the Closing Date, as hereinafter defined, in consideration of the respective covenants, representations, and obligations of Buyer and Seller hereunder, and subject to the conditions hereinafter set forth, the Seller shall sell, assign, transfer, convey, and deliver to the Buyer, and the Buyer shall purchase from the Seller the following assets, wherever located, including any and all intellectual property rights therein (collectively, the "Property") as such exists on the Closing Date:

1.1 The Software, including source and object codes for all available versions and the media or electronic files on which they are stored; all information, materials, electronic files, databases, technical data, drawings, engineering files, flow charts, methods, techniques, processes, documentation, records, design specifications, know-how, technology, ideas, concepts, technological innovations, inventions (whether or not patentable), discoveries, improvements, modifications, enhancements, upgrades, corrections, adaptations, works of authorship, derivative works, and Seller's confidential or proprietary information, if any, relating to the Software; all Software documentation in printed and electronic format, user's guides, build environments, software components, developer's guides, programmers' notes, logic manuals, principles of operation, source code files, link libraries, manuals, programming tools and other materials used to develop, enhance, modify, support and maintain the Software, if any; and all intellectual property rights in the foregoing and all claims and damages by reason of past infringement thereof and the right to sue and collect for such.

1.2 The common law trademarks, service marks, and trade names and the trademark and/or service mark registrations and/or applications identified on Schedule 1 attached hereto, together with the goodwill of the business appurtenant thereto and which is symbolized thereby, and all claims and damages by reason of past infringement thereof and the right to sue and collect for such.

1.3 The Internet domain names identified on Schedule 2 attached hereto.

1.4 All of Seller's on-hand marketing materials for the Software.

1.5 All of Seller's on-hand training manuals, user guides, online help files, and training videos, and the master beta-format copy of such videos.

1.6 The computer servers and modems identified on Schedule 3 attached hereto.

1.7 Copies of Seller's on-hand business and marketing records as they pertain to the Property, including existing accounting and operating records, asset ledgers, inventory records, budgets, customer lists, supplier lists, information and data respecting leased or owned equipment, files, correspondence and mailing lists, advertising materials and brochures, and other business records, if any.

1.8 All of Seller's rights and obligations under that certain OEM Software Distribution Agreement by and between Seller and Anywhere Solutions, Inc., dated May 10, 2001. (the "Assumed Contract") that are assignable by Seller to Buyer as of the Closing Date, and Buyer shall accept such assignment and shall assume all responsibilities and obligations of Seller under such Assumed Contract as of Closing.

1.9 Copies of the records and files reviewed by Buyer in Seller's offices in Houston, Texas on April 1, 2 and 3, 2002.

1.10 Notwithstanding any other provisions of this Agreement to the contrary, Seller shall retain, and there shall not be any transfer or assignment to Buyer of (i) any of Seller's personnel files, employment agreements, or other confidential employment related information, (ii) any agreements licensing the Software, or any portion thereof, to third parties, (iii) any maintenance and service agreements related to servicing or maintaining the Software for the benefit of any third party, including but not limited to all existing PSP agreements and weather data agreements, and (iv) any documents, records, files or other property of Seller that Seller is contractually or legally prohibited from transferring to Buyer.

2. Consideration; Closing.

2.1 Purchase Price. The cash consideration to be paid by the Buyer to the Seller for the Property (the "Purchase Price") shall be TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00).

2.2 Closing. The closing of the transactions provided for herein (the "Closing") shall take place at Seller's offices at 1400 Smith Street, Houston, Texas 77002 or such other location as may be mutually agreed by the Seller and Buyer (i) two business days after the satisfaction of all conditions precedent to Closing as set forth in Section 3; or (ii) such other time as may be mutually agreed by the Seller and the Buyer (the "Closing Date").

2.3 The Seller's Deliveries to the Buyer at the Closing. On the Closing Date, the Seller shall deliver to the Buyer a bill of sale, duly executed by the Seller, in the form and on the terms of the Bill of Sale attached hereto as Exhibit C (the "Bill of Sale"), a Copyright Assignment, duly executed by Seller, in the form and on the terms of the Copyright Assignment attached hereto as Exhibit D (the "Copyright Assignment"), a Trademark Assignment, duly executed by Seller, in the form and on the terms of the Trademark Assignment attached hereto as Exhibit E (the "Trademark Assignment"), and a Domain Name Assignment, duly executed by Seller, in the form and on the terms of the Domain Name Assignment attached hereto as Exhibit F (the "Domain Name Assignment").

2.4 Delivery of Property. On the Closing Date, Seller shall deliver or will cause to be delivered to Buyer, at a U.S. location designated by Buyer, all Property that is tangible and/or in electronic format. If Buyer selects a delivery location other than Seller's offices at 1400 Smith Street, Houston, Texas, then all costs and expenses associated with delivering such property to Buyer shall be borne and timely paid by Buyer and Buyer shall bear all risk of loss associated with such delivery.

2.5 Buyer's Delivery at the Closing. At the Closing, the Buyer shall deliver to the Seller the Purchase Price in immediately available funds by wire transfer or in such other form as reasonably requested by Seller to an account designated by Seller prior to closing, which payment will be made by Buyer to Seller without set-off of any kind. Buyer hereby waives any right of set-off it ever had or has against Seller or any affiliate of Seller.

2.6 Sales, Use, and Other Taxes. Any sales, transfer, stamp, documentary stamp, use, or similar taxes which may be payable by reason of the sale of the Property or any other transfer or license under this Agreement or the transactions contemplated herein shall be borne and timely paid by the Buyer. This is a sale of the entire operating assets of Seller and it is the intent of the parties that this sale qualify as an occasional sale pursuant to Section 151.304 of the Texas Tax Code (2002). To the extent that any inventory items are acquired, however, Buyer

will issue a resale exemption certificate to Seller.

3. Conditions Precedent to the Closing The obligations of each party hereto to make the deliveries required of it pursuant to Section 2 shall be subject to the satisfaction of each of the following conditions: (i) the Bankruptcy Court shall have entered a final, non-appealable Approval Order (as defined, and substantially in form and substance as provided in Section 6) approving Seller's consummation of this Agreement, and (ii) the respective representations and warranties taken as a whole of the other party contained in this Agreement shall continue to be true and correct in all material respects as of the Closing Date and the other party shall have performed in all material respects all covenants and agreements required of such party between the Effective Date and the Closing Date. In addition to the foregoing, the obligations of Buyer hereto shall also be subject to the satisfaction of each of the following conditions: (w) at the Closing, in all material respects the Property is present and in substantially the same condition (ordinary wear and tear excepted) as when previously examined by the Buyer on May 29, 2002, and immediately prior to the Closing Seller shall have provided Buyer a reasonable opportunity to verify such presence and condition by means of an on-site examination of, for electronic format Property, the contents of server hard drives and compact disks, and for tangible Property, the contents of cartons containing hard copy files, product inventory and related materials, (x) Seller shall have registered the Software or applied for registration of the Software under applicable copyright laws with the cost and expense of such registration to be solely borne by Buyer and be in a position to assign such registrations or applications to the Buyer at the Closing, (y) Seller shall have provided Buyer with a letter on Seller's stationery, in substantially the form of the attached Exhibit G and addressed generally to the parties whose agreements will be rejected pursuant to Section 7.25 below, which informs such parties of the identity of the successor organization (as designated by Buyer) that will offer future support for the Software and which may be included without alteration in a mailing made by Buyer (or the successor organization) to such parties within 90 days following the Closing; provided, however, that such mailing shall not be undertaken in the event Closing does not occur, and (z) no third party shall have asserted a claim (which continues to exist on the Closing Date) that could reasonably be expected to have a material adverse effect on the Property or the transactions contemplated hereby.

4. Representations and Warranties of the Parties. Each party hereto hereby represents and warrants to the other party as follows: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and (ii) the execution, delivery and performance of this Agreement and the transaction contemplated herein are within its corporate powers, subject, in the case of Seller, to the entry of the Approval Order, have been duly authorized by all necessary corporate action on the part of each such party, and do not violate its governing documents as they may have been amended.

4.1 Additional Limited Seller Representations. In addition to the representations in Section 4, subject to Section 7.3, Seller represents that:

A. To the best of its knowledge, Seller owns the Property and has the right to sell the Property on the terms and conditions set forth in this Agreement;

B. Seller has not prior to the Closing Date exclusively licensed or otherwise conveyed the Property to any third party; and

C. None of the Property inspected by Buyer on May 29, 2002, or thereafter will be retained by Seller pursuant to Section 1.10 herein.

4.2 Additional Buyer Representations. In addition to its representations in Section 4, Buyer represents that Buyer verified to its satisfaction the completeness of the Property in all material respects on May 29, 2002 by means of an on-site examination of, for electronic format Property, the contents of server hard drives and compact disks, and for tangible Property, the contents of cartons containing hard copy files, product inventory and related materials.

5. "As Is" Transaction. Except as provided in Section 4 herein, Buyer hereby acknowledges and agrees that the Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property including, without limitation, the marketability or condition of Seller's title in and to the Property or that Buyer's use of the Property will be noninfringing, the value of the Property, the ability of Buyer to operate or commercially utilize and exploit the Property, the merchantability or fitness of the Property for any particular purpose, or any other matter or thing relating to the Property or any portion thereof. Without in any way



limiting the foregoing, Seller hereby disclaims any warranty, express or implied, of merchantability or fitness for any particular purpose as to any portion of the Property. FURTHER WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY OF TITLE WHATSOEVER WITH RESPECT TO THE PROPERTY. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the condition of the Property. Accordingly, the Buyer will accept the Property at the Closing "as is", "where is" and "with all faults."

6. Bankruptcy Court Approval. The Buyer and the Seller acknowledge that this Agreement and the completion of the purchase and sale transaction hereunder are subject to the approval of the Bankruptcy Court.

6.1 Other Approvals. Prior to submission of this Agreement to the Bankruptcy Court for approval, Seller shall seek to obtain all necessary internal approvals of this Agreement and the Seller's consummation of this Agreement. Seller shall promptly notify Buyer if Seller is unable to secure any such approvals and, in such event, Buyer shall have the right to terminate this Agreement without any liability to Buyer by notifying Seller to such effect within ten (10) days after Buyer's receipt of Seller's notice.

6.2 Sales Procedures. Promptly following execution of this Agreement, Seller shall commence all required approval processes, and, as soon as reasonably practicable, shall file a motion (the "Sale Motion") with the Bankruptcy Court requesting an order authorizing and approving the Seller's consummation of this Agreement pursuant to Section 363 of the Bankruptcy Code, subject to higher and better offers. The Sale Motion shall require, among other things, that:

(a) Seller shall provide at least twenty-five (25) days' advance notice of relief requested in the Sales Motion in accordance with the Court's Amended Case Management Order Establishing, Among Other Things, Noticing Electronic Procedures, Hearing Dates, Independent Website and Alternative Methods of Participation at Hearings, dated February 26, 2002 (the "Case Management Order"), and, in a form reasonably calculated under the circumstances to apprise interested parties of the transactions contemplated by this Agreement, to: (i) those persons or entities identified on the most current version of the Service List established in the Case Management Order, (ii) Seller's secured and unsecured creditors, (iii) each independent contractor of Seller that participated in the development of the Software, (iv) current and former employees employed by Seller during the two years prior to the Effective Date and whose identity and location are reasonably determinable by Seller, (v) any other person who may, as solely determined by Seller in the reasonable exercise of its judgment, assert a claim, lien or other interest in the Property, and to the extent they are not already identified in (i) through (v) above, those parties listed in Schedule 4 attached hereto. The Sale Motion shall also require that Seller provide appropriate notice by publication at least twenty-five (25) days' advance of the hearing on the Sale Motion in the Wall Street Journal, the Houston Chronicle, and via Seller's Internet website with the cost and expense of publication of the notice in the Wall Street Journal to be solely borne by Buyer and with the form of notice being in a form reasonably acceptable to Buyer; and

(b) Upon filing of the Sale Motion, Seller shall promptly comply with all requirements set forth therein. In the event that the Bankruptcy Court has not entered an order approving Seller's consummation of this Agreement (the "Approval Order") within ninety (90) days after the Effective Date, then this Agreement shall terminate by its own terms without further action by either party; provided, however, that in such event, either party shall have the unilateral option to extend this Agreement by no more than two ninety (90) day increments by notifying the other party in writing of the party's exercise of its extension option prior to the expiration of the relevant period.

6.3 Substance of the Sale Motion and the Approval Order. The Sale Motion and proceedings (including notice) to approve this Agreement shall be on terms and conditions and in a form reasonably acceptable to the Buyer. The Approval Order shall be on terms and conditions reasonably acceptable to the Buyer and in substantially the same form as Exhibit H attached hereto. Notwithstanding anything in this Agreement to the contrary, the Approval Order shall include findings that notice was given in accordance with the Sales Motion and was proper, adequate and timely and that the Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and shall direct that the sale be made free and clear of all interests pursuant to section 363(f) of the Bankruptcy Code.

7. Miscellaneous

7.1 Notices Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of mailing. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this paragraph

To the Seller: Enron Energy Information Solutions, Inc.  
1400 Smith Street  
P. O. Box 4428  
Houston, Texas 77210-4428  
Attention: Legal Dept.  
Facsimile: 713-646-2379

To the Buyer: American Energy Intelligence, Inc.  
P.O. Box 780  
Wichita Falls, TX 76307  
Attention: William S. Spears  
Facsimile: (940) 767-1547  
e-mail: wspears@energyed.com

With cc to: Joseph N. Sherrill Jr.  
Sherrill, Crosnoe & Goff  
P.O. Box 97511  
Wichita Falls, Texas 76307-7511  
Facsimile: (940) 322-8324  
e-mail: jsherrill@scglaw.com

7.2 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date (i) by duly authorized and approved mutual written agreement of the parties hereto, (ii) by either party in the event that the condition precedent to Closing set forth in Section 3(i) has not been met within 90 days of the Effective Date, or (iii) by a party if the condition precedent to Closing set forth in Section 3(ii), to the extent applicable to the other party, has not been met by the other party within 90 days of the Effective Date, or (iv) by Buyer if any of the conditions precedent to Closing set forth in Sections 3(w), 3(x), 3(y) or 3(z) has not been met by Seller within 90 days of the Effective Date; provided however, in the event a party exercises its extension option pursuant to Section 6.2(b), then with respect to each of (ii), (iii) and (iv) of this Section 7.2, such conditions precedent to Closing must be met within the extended period

7.3 Non-Survival of Representations and Warranties. The representations and warranties contained in this Agreement or in any instrument delivered pursuant to or in connection with this Agreement shall not survive the Closing and thereafter there shall be no liability in respect thereof, whether such liability has accrued prior to the Closing Date or after the Closing Date, on the part of any party hereto or its officers, directors, employees, agents and affiliates. The agreements of the parties hereto contained in this Agreement shall only survive the Closing as and to the extent that such agreements are expressly to be performed, in whole or in part, following the Closing.

7.4 Entire Agreement. This Agreement and the documents to be executed and/or delivered pursuant hereto (including all Exhibits and Schedules) contain the entire agreement between the parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect.

7.5 Modification. This Agreement, including any of the exhibits and schedules attached hereto, may be modified, amended, or supplemented only by a written instrument duly executed by all the parties hereto, which modification shall be subject to the same approvals and conditions as the Agreement itself.

7.6 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document, or transaction shall be deemed to have been taken, delivered, or effected until all such actions, documents, and transactions have been taken, delivered, or effected.

7.7 Severability. Should any term, provision, or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of this Agreement shall survive.

7.8 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

7.9 Further Assurances. Each party hereto will execute, acknowledge, and deliver any further assurances, documents, and instruments reasonably requested by any other party hereto for the purpose of giving effect to the transactions contemplated herein or the intentions of the parties with respect thereto.

7.10 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.11 Brokerage Obligations. The Seller and the Buyer each represent and warrant to the other that such party has incurred no liability to any broker or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby. It is agreed that if any claims for commissions, fees, or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against the Buyer or the Seller in connection with this transaction, all such claims shall be handled and paid by the party whose actions formed the basis of such claim.

7.12 Payment of Fees and Expenses. Each party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation, and consummation of this Agreement and the transaction described herein.

7.13 Assignments. The rights and obligations of Buyer or Seller under this Agreement may be assigned by Buyer or Seller to an affiliate of such party. Any other assignment by Buyer or Seller shall require the prior written consent of the other party, which consent shall also be subject to approval in the same manner and by the same persons required to approve the Agreement itself.

7.14 Binding Effect. Subject to the provisions of Section 7.13 above, this Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

7.15 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, except that its conflicts of law rules shall not apply.

7.16 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

7.17 Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature pages.

7.18 Limited Trademark License. Seller grants to Buyer a limited, non-exclusive, non-transferable, royalty free, license to use the ENRON trademark and distinctive logo (collectively, the "Enron Marks") for the purpose of the notice letter to be provided by Seller to Buyer pursuant to Section 3(y) and to the extent such Enron Marks have been previously affixed to Seller's existing stock of training manuals, user manuals, and related hard copy versions of similar documentation (collectively, the "On Hand Stock"). This limited license shall terminate by its own terms without any action taken by Seller when the above described letter has been sent and the On Hand Stock has been depleted in the ordinary course of Buyer's business or otherwise disposed of by Buyer. This license does not grant any rights to Buyer to (i) use the Enron Marks in any manner on any good or in connection with any service other than in connection with the On Hand Stock, (ii) print or create new documentation that includes the Enron Marks or any confusingly similar variant thereof, or (iii) use the Enron Marks in association with Buyer's marketing or promotion of any portion of the Property other than the On Hand Stock.

7.19 Bankruptcy Court Jurisdiction. THE BUYER AND THE SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER

MATTERS ARISING FROM (i) THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT HERETO; AND/OR (ii) THE PROPERTY, AND THE BUYER AND SELLER EXPRESSLY CONSENT TO AND AGREE NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION.

7.20 Exhibits and Schedules. The Exhibits and Schedules hereto are incorporated by reference herein and made a part of this Agreement, and to the extent any term, provision, or paragraph of the Exhibits or Schedules is deemed to be in conflict with any term, provision, or paragraph of this Agreement, this Agreement shall govern.

7.21 No Reservation of Rights. Subject to the provisions of Section 7.22, Seller shall not retain or reserve any rights to or in the Property following Closing, and Seller shall not use or disclose any of the Property after Closing, including specifically any source code for the Software.

7.22 Limited Faser License. Notwithstanding the provisions of Section 7.21, Buyer grants to Seller a non-exclusive, non-transferable, royalty free license to use the FASER software program in object code form for Seller's internal use only until December 31, 2003, and not for the benefit of any third party. Seller shall have no right to the source code of the FASER software program, and Seller agrees not to disassemble or decompile the FASER software program. Seller's use shall be restricted to the single-seat licenses currently in use that are identified on Schedule 5 hereto for the period of time necessary for Seller to perform reconciliations and maintain historical billing information, but Seller may not otherwise copy or distribute the FASER software program. Nothing contained in this Section shall ever be deemed to allow Seller to transfer such license to a third party.

7.23 Segregation and Safeguarding. From and after the Effective Date and until the Closing, Seller shall take such actions as may be reasonably requested by Buyer and at Buyer's expense to package the Property for shipping and to store the Property in a secure area on Seller's premises, but separate and apart from any other property of Seller, pending delivery of the Property to Buyer on the Closing Date.

7.24 Non-Compete. For a period of two (2) years after the Closing Date, Seller shall not engage in the business of acquiring, developing, marketing, distributing, licensing, or maintaining systems and application computer programs having any function similar to, competitive with, or substitutable for, the Software, anywhere in the United States. Seller acknowledges and agrees that the current market for the Software programs extends throughout the entire United States, and it is therefore reasonable to prohibit Seller from competing with Buyer anywhere in such market. Seller shall not engage in any of such activities, directly or indirectly, on its own behalf or in the service of or on behalf of others.

7.25 Rejection of License-Out Agreements. As soon after Closing as is reasonably practicable, Seller at its expense shall institute and consummate proceedings to reject in the Bankruptcy Case all license-out agreements of the Software to third parties and all maintenance and service agreements related to servicing or maintaining the Software for the benefit of any third party, including but not limited to all existing PSP agreements and weather data agreements.

7.26 Assumed Contract. As a part of the Bankruptcy Court approval procedures contemplated by Section 6, Seller shall take all necessary steps to assume the Assumed Contract in the Bankruptcy Case, cure any defaults thereunder and assign the Assumed Contract to Buyer as required by Section 1.8.

7.27 Cooperation. It is contemplated that to meet the condition precedent to Closing set forth in Section 3(x), Buyer shall prepare and file the application for copyright registration in Seller's name and on Seller's behalf. Seller shall cooperate with Buyer in the preparation and filing of such application and its prosecution to grant and shall provide Buyer with all necessary information that Buyer reasonably requests and that Seller can readily obtain in order for Buyer to prepare, file and prosecute such application to grant. Buyer shall not be responsible for the expense of any of Seller's personnel involved in furnishing Buyer information it requests for such application.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SELLER

ENRON ENERGY INFORMATION SOLUTIONS, INC.  
Debtor and Debtor In Possession

By: \_\_\_\_\_  
Name: Jeremy M. Blachman  
Title: Chief Operating Officer

BUYER

AMERICAN ENERGY INTELLIGENCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## List of Exhibits and Schedules

### Exhibits

- A. Energy Analyzer Description
- B. Faser Description
- C. Bill of Sale
- D. Copyright Assignme.it
- E. Trademark Assignment
- F. Domain Name Assignment
- G. Seller Letter
  
- H. Approval Order

### Schedules

- 1. Trademark List
- 2. Domain Name List
- 3. EEIS System Inventory List
- 4. Notice List
- 5. Single Seat License List

## Exhibit A

“Energy Analyzer” as used herein refers collectively to the utility bill management, energy management, and meter monitoring software package referred to by that name, including all versions and modules thereof, originally developed by Enron Energy Information Solutions, Inc., including:

- (a) All past and present releases and versions of Energy Analyzer in any format.
- (b) Any and all embedded or incorporated third party software;
- (c) The contents of the Enron Energy Analyzer Specification Sheet included with the original bid information (incorporated by reference herein); and
- (d) All modules and ancillary programs, including all of the following still in existence:

- E<sup>2</sup>IS
- Faser NG (next generation)
- Energy Sense
- Rates
- Rate Manager
- GUI Layer
- Process Layer
- Relational/Object Mapping Layer
- ODBC Layer
- Client and Web Energy Analyzer Modules

## Exhibit B

“Faser” as used herein refers collectively to the energy accounting and utility bill management software package referred to by that name, including all versions and modules thereof, that was originally developed by OmniComp, Inc. and subsequently purchased, modified, and updated by Enron Energy Information Solutions, Inc., including:

- (a) All releases and versions of Faser in any format still in existence from the original DOS versions (releases 1.0 through 9.12) up to the current Windows versions of Faser and Faser 2000 (i.e., releases 1.0 through 5.12);
- (b) Any and all embedded or incorporated third party software;
- (c) The contents of the Faser Specification Sheet included with the original bid information (incorporated by reference herein); and
- (d) All modules and ancillary programs, including all of the following still in existence:
  - Base Module
  - Cost Avoidance
  - Energy Alarm
  - Energy Production Tracking
  - Budget Module
  - A/P Link
  - Report Writer
  - Weather Import
  - Rate Creation
  - Energy Snapshot
  - Energy Benchmark
  - POSTBILL
  - POSTBILL Plus
  - AW Link
  - ESP Data
  - VI
  - Rate Analyst
  - Rate Products and Services (e.g., rate library, rate updates, rate programming)
  - FEAT
  - Meter Reading Recorder
  - Convert
  - Normalize
  - Smartmerge
  - EDI Conversion
  - Validation Program
  - Data Conversion Programs/Utilities (e.g., EDI converters)
  - Meter Reader/Readings
  - Joiner
  - Account Switcher
  - Accuweather Link/Weather Data Program
  - Faser Import Wizard



EXHIBIT C

GENERAL ASSIGNMENT AND BILL OF SALE

THIS GENERAL ASSIGNMENT AND BILL OF SALE is made as of the \_\_\_\_ day of \_\_\_\_\_, 2002, from Enron Energy Information Solutions, Inc., a Pennsylvania corporation ("Assignor") to American Energy Intelligence, Inc. a Texas corporation ("Assignee").

WHEREAS, Assignor, as Seller, and Assignee, as Buyer, have entered into an Asset Purchase Agreement dated as of \_\_\_\_\_, 2002 (the "Purchase Agreement") providing, among other things, for the sale by Assignor and the purchase by Assignee of the Property as defined therein, including but not limited to the FASER and Enron Energy Analyzer (formerly known as E<sup>2</sup>IS) software; and

WHEREAS, in order to effectuate the sale and purchase of the Property as aforesaid and for the purpose of satisfying the conditions imposed upon such sale and purchase by the Purchase Agreement, Assignor is executing and delivering this General Assignment and Bill of Sale;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, conveys, assigns, transfers, bargains and delivers unto Assignee all of Assignor's worldwide right, title and interest in, to and under the Property.

All capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase Agreement.

IN WITNESS WHEREOF, Assignor has caused this General Assignment and Bill of Sale to be executed by its proper officer thereunto duly authorized, as of this \_\_\_\_ day of \_\_\_\_\_ 2002.

**ASSIGNOR:**

ENRON ENERGY INFORMATION SOLUTIONS, INC.  
Debtor and Debtor In Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT D**

**COPYRIGHT ASSIGNMENT**

THIS COPYRIGHT ASSIGNMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2002, from Enron Energy Information Solutions, Inc., a Pennsylvania corporation ("Assignor") to American Energy Intelligence, Inc., a Texas corporation ("Assignee").

WHEREAS, Assignee and Assignor are parties to an Asset Purchase Agreement, dated \_\_\_\_\_, 2002 (the "Purchase Agreement"), pursuant to which Assignor has agreed to sell to Assignee, and Assignee has agreed to buy from Assignor, the Property (as defined in the Purchase Agreement), including but not limited to the FASER and Enron Energy Analyzer (formerly known as E<sup>2</sup>IS) software;

WHEREAS, in accordance therewith, Assignor desires to transfer and assign to Assignee, and Assignee desires to accept the transfer and assignment of, all of Assignor's worldwide right, title and interest in and to all of Assignor's registered and unregistered domestic and foreign copyrights and applications therefor in the Property (all of the foregoing being referred to herein as the "Copyrights");

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, conveys, assigns, transfers, bargains and delivers unto Assignee all of Assignor's worldwide right, title and interest in, to and under the Copyrights, and all rights to sue for infringement of any Copyrights, the same to be held and enjoyed by the said Assignee, its successors and assigns from and after the date hereof as fully and entirely as the same would have been held and enjoyed by the said Assignor had this Copyright Assignment not been made.

All capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase Agreement.

IN WITNESS WHEREOF, Assignor has caused this Copyright Assignment to be executed by its proper officer thereunto duly authorized, as of this \_\_\_\_ day of \_\_\_\_\_, 2002.

**ASSIGNOR:**

ENRON ENERGY INFORMATION SOLUTIONS, INC.  
Debtor and Debtor In Possession

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT E**

**TRADEMARK AND NAME ASSIGNMENT**

THIS TRADEMARK AND NAME ASSIGNMENT (this "Assignment") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2002, from Enron Energy Information Solutions, Inc., a Pennsylvania corporation ("Assignor") to American Energy Intelligence, Inc., a Texas corporation ("Assignee").

WHEREAS, Assignee and Assignor are parties to an Asset Purchase Agreement, dated \_\_\_\_\_, 2002 (the "Purchase Agreement"), pursuant to which Assignor has agreed to sell to Assignee, and Assignee has agreed to buy from Assignor, the Property (as defined in the Purchase Agreement), including but not limited to the FASER and Enron Energy Analyzer (formerly known as E<sup>2</sup>IS) software;

WHEREAS, Assignor is the owner of (i) the common law trademarks, service marks, tradenames, and other identifying names and marks associated with the Property and (ii) USPTO Trademark Registration No. 2188796 for the word mark "FASER" (collectively, the "Marks");

WHEREAS, Assignee is desirous of acquiring the Marks;

WHEREAS, Assignee is acquiring from Assignor that portion of the business to which the Marks pertain;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, conveys, assigns, transfers, bargains and delivers unto Assignee all of Assignor's worldwide right, title and interest in, to and under the Marks, together with the goodwill of the business appurtenant thereto and which is symbolized thereby, and the right to prosecute any applications to register such Marks and to renew any trademark registrations which shall issue from any such applications, to be held and enjoyed by Assignee for its own use and benefit and for the use and benefit of its successors, assigns and legal representatives to be used as fully and entirely as said rights would have been held and enjoyed by Assignor had this Assignment not been made, together with all claims for damages by reason of past infringement of said Marks with the right to sue and collect the same for its own use or for the use of its successors, assigns or other legal representatives.

Assignor hereby authorizes the Commissioner of Patents and Trademarks of the United States and other empowered officials of the United States Patent and Trademark Office to transfer all registrations or applications for the Marks to Assignee as assignee of the entire right, title and interest therein or otherwise as Assignee may direct, in accordance with this Assignment, and to issue to Assignee all registrations which may issue with respect to any applications for a trademark or service mark included in the Marks, in accordance with this Assignment.

Assignor will take, or cause to be taken, all such other and further action as may reasonably be required by Assignee in order to effect this Assignment.

Assignor further covenants and agrees that Assignor will at any time upon request of Assignee, and at its expense, communicate to Assignee any facts relating to the Marks known to Assignor, and that Assignor will testify upon the request of Assignee as to the same in any proceeding in the United States Patent and Trademark Office.

All capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase Agreement.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed by its proper officer thereunto duly authorized, as of this \_\_\_\_ day of \_\_\_\_\_ 2002.

**ASSIGNOR:**

ENRON ENERGY INFORMATION SOLUTIONS, INC.  
Debtor and Debtor In Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT F

DOMAIN NAME ASSIGNMENT

THIS DOMAIN NAME ASSIGNMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2002, from Enron Energy Information Solutions, Inc., a Pennsylvania corporation ("Assignor") to American Energy Intelligence, Inc., a Texas corporation ("Assignee").

WHEREAS, Assignor, as Seller, and Assignee, as Buyer, have entered into an Asset Purchase Agreement dated as of \_\_\_\_\_, 2002 (the "Purchase Agreement") providing, among other things, for the sale by Assignor and the purchase by Assignee of the Property as defined therein, including but not limited to the internet domain name www.faser.com registered with Network Solutions, Inc. (referred to herein as the "Domain Name"); and

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby grants, conveys, assigns, transfers, bargains and delivers unto Assignee all of Assignor's worldwide right, title and interest in, to and under the Domain Name.

All capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase Agreement.

IN WITNESS WHEREOF, Assignor has caused this Domain Name Assignment to be executed by its proper officer thereunto duly authorized, as of this \_\_\_\_ day of \_\_\_\_\_ 2002.

**ASSIGNOR:**

ENRON ENERGY INFORMATION SOLUTIONS, INC.  
Debtor and Debtor In Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dear FASER Software User,

Our records indicate that you are a licensed user of the FASER Energy Information and Utility Bill Management software program.

Please be advised that effective [insert date] and pursuant to an order of the Bankruptcy Court for the Southern District of New York, Enron Energy Information Solutions, Inc. (EEIS), has sold the FASER software to an unaffiliated buyer.

Pursuant to the order of the Bankruptcy Court approving the sale of the FASER software, and effective immediately, FASER is being serviced by Good Steward Software, LLC of Colorado Springs, Colorado. Good Steward Software is owned by Steve Heinz, the original (1982) author of FASER and the founder of Omnicomp, Inc. which Enron acquired in 1996. Steve's team consists of Dee Dee Bennett (Archuleta) who has managed FASER tech support since 1999, and Andy Hitchings, a FASER senior programmer since 1990.

EEIS and Enron have exercised their rights under the Bankruptcy Code to reject any continuing obligations under any existing agreements with you. Accordingly, neither Enron Corp nor EEIS has any further duties or responsibilities related to the FASER software and will no longer be available to receive or respond to any calls or other communications concerning FASER.

Good Steward Software has included information in this mailing concerning your options for a new maintenance contract that will provide you with technical support, software updates and program validation codes. You can contact Good Steward at [Support@GoodStewardSoftware.com](mailto:Support@GoodStewardSoftware.com), or call toll-free 1-877-327-3702.

Sincerely,

WEIL, GOTSHAL & MANGES LLP  
Attorneys for the Debtors  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000  
Martin J. Bienenstock (MB 3001)  
Brian S. Rosen (BR 0571)  
Martin A. Sosland (MS 7169)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
ENRON CORP., et al., : Case No. 01-16034 (AJG)  
: Jointly Administered  
Debtors. :  
-----X

ORDER, PURSUANT TO SECTIONS 105, 363 AND 365 OF  
THE BANKRUPTCY CODE AND RULES 6004 AND 6006 OF  
THE BANKRUPTCY RULES, AUTHORIZING AND APPROVING  
(A) THE TERMS AND CONDITIONS OF AN ASSET PURCHASE AGREEMENT FOR  
THE SALE OF CERTAIN SOFTWARE AND RELATED ASSETS AND THE  
ASSIGNMENT OF THE ASSUMED CONTRACT  
TO AMERICAN ENERGY INTELLIGENCE, INC., AND (B) THE CONSUMMATION OF  
THE TRANSACTIONS CONTEMPLATED THEREIN

Upon consideration of the motion, dated October 18, 2002 (the  
“Motion”),<sup>1</sup> filed by Enron Energy Information Solutions, Inc. (“EEIS”), as debtor and  
debtor in possession, for an order, pursuant to sections 105, 363 and 365 of title 11 of the  
United States Code ( the “Bankruptcy Code”) and Federal Rules of Bankruptcy  
Procedure (the “Bankruptcy Rules”) 6004 and 6006 authorizing and approving (a) the  
terms and conditions of the Agreement, a copy of which is annexed to the Motion as  
Exhibit “A”, by and between EEIS and American Energy Intelligence, Inc. (“AEI”),  
subject to higher and better offers; and (b) the consummation of the transactions

contemplated therein with respect to the Property; and a hearing having been held before this Court on November 14, 2002 (the "Sale Hearing") to consider the Motion and the relief requested therein; and the Court having determined that the relief sought in the Motion is in the best interest of EEIS, its estate and all parties in interest; and upon the Motion, the exhibits thereto, the evidence presented and the arguments made at the Sale Hearing, and all other proceedings had before the Court, and after due deliberation thereon, good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED:

A. The Motion constitutes a core proceeding and this Court has jurisdiction over the subject matter of this proceeding and the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

B. As evidenced by the certificate of service filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Agreement, the transactions contemplated therein, the form of Order, and the Sale Hearing has been provided in accordance with sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004(a) and (c), 6006(c), 9006, 9013, 9014, Local Bankruptcy Rule 9013-1(c) and the Court's Amended Case Management Order Establishing, among other things, Noticing, Electronic Procedures, Hearing Dates, Independent Website, and Alternative Methods of Participation at Hearings, dated February 26, 2002 (the "Amended Case Order") and to the following: (a) EEIS's secured and unsecured

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<sup>1</sup> All capitalized terms not defined herein shall have their meanings as set forth in the Motion.



creditors, (b) each independent contractor of EEIS that participated in the developments of the Software, (c) current and former employees employed by EEIS during the two years prior to the Effective Date and whose identity and location are reasonably determinable by EEIS after diligent inquiry, (d) any other person who may, as solely determined by EEIS in the reasonable exercise of its judgment after diligent inquiry, assert a claim, lien or other interest in the Property, (e) to the extent they are not already identified in (a) through (d) above, those parties listed in Schedule 4 to the Agreement, (f) iAnywhere Solutions, Inc., and (g) by publication in the Wall Street Journal, the Houston Chronicle, and via EEIS's Internet website, (ii) the notice was good and sufficient and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the relief requested therein or the Sale Hearing is required.

C. The requirements of Rule 9013(b) of the Local Rules of the United States Bankruptcy Court of the Southern District of New York have been waived.

D. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein and this Order has been afforded to all interested persons and entities appropriate under the particular circumstances as set forth in paragraph B above.

E. EEIS has demonstrated that its decision to sell the Property and assume and assign the Assumed Contract to AEI in accordance with the Agreement

and the transactions contemplated therein is an exercise of its sound business judgment.

F. The Agreement was negotiated, proposed and entered into by and among EEIS and AEI (collectively, the "Parties") without collusion and in good faith. AEI is a good faith purchaser under the Agreement in accordance with section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded thereby. Neither of the Parties have engaged in any conduct that would cause or permit the Agreement to be avoided (or the validity of the sale affected) under section 363(n) of the Bankruptcy Code or any other provisions of the Bankruptcy Code.

G. The relief sought in the Motion is in the best interests of EEIS, its estate and all parties in interest.

H. The Parties will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Agreement at any time after the entry of this Order.

I. EEIS conducted a bidding process and determined that AEI submitted the highest and best offer for the Property.

J. EEIS and AEI have entered into, subject to entry of this Order, the Agreement wherein EEIS and AEI agree that, inter alia, (i) the aggregate purchase price to be paid by AEI to EEIS is \$2,000,000; (ii) at Closing, EEIS will deliver to AEI a Bill of Sale, a Copyright Assignment, a Trademark Assignment, and a Domain Name Assignment; and (iii) at Closing, AEI will, via wire transfer or in such other form as reasonably requested by EEIS, deliver the Purchase Price in immediately

available funds to an account designated by EEIS prior to Closing, which payment will be made by AEI to EEIS without set-off of any kind.

**ACCORDINGLY, THE COURT HEREBY ORDERS THAT:**

1. The Motion is granted in its entirety and in all respects.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits. Those parties who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.
3. All recital paragraphs contained herein shall have the same force and effect as decretal paragraphs.
4. The Agreement and all ancillary documents and all the terms and conditions thereof, including, without limitation, the closing of the transactions contemplated therein, are hereby approved.
5. EEIS is authorized pursuant to sections 105(a) and 363(b) and (f) of the Bankruptcy Code to perform all of its obligations pursuant to the Agreement and to execute such other documents and take such other actions as are necessary to effectuate the transactions contemplated by the Agreement.
6. The sale of the Property to AEI pursuant to the Agreement will vest AEI with good title to the Property, free and clear of liens, claims, encumbrances and rights of set-off, netting, deduction or recoupment (the "Interests"), if any, pursuant to section 363(f) of the Bankruptcy Code and will be a legal, valid and

effective transfer of the Property; provided, that any existing Interests (including the DIP Liens<sup>2</sup>), shall be transferred and attached to the proceeds obtained for such Property, with the same validity, enforceability, priority, force and effect that they now have as against the Property, subject to the rights, claims, defenses and objections of the Debtors and all interested parties with respect to such Interests.

7. All proceeds received in respect of the transactions contemplated herein and by the Agreement shall be retained by EEIS and shall neither be disbursed nor used until the earlier to occur of (i) the written consent of the Creditors' Committee, or (ii) further order of the Court.

8. In the event that the Parties elect to consummate the transactions contemplated by the Agreement at any time after the entry of this Order, then with respect to the transactions approved and authorized herein, AEI, as a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code, shall be entitled to the protections of section 363(m) of the Bankruptcy Code in the event this Order or any authorization contained herein is reversed or modified on appeal, unless a stay of the Order is in effect when the parties consummate the transactions.

9. That certain OEM Software Distribution Agreement by and between EEIS and iAnywhere Solutions, Inc. ("iAnywhere"), dated May 10, 2001 (the "Assumed Contract") has not been terminated by its terms, applicable law, or

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<sup>2</sup> As defined in the Final Order Authorizing Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)(1), dated July 2, 2002 (the "Final Order").

otherwise and is valid and enforceable, and EEIS's assumption of the Assumed Contract pursuant to section 365 of the Bankruptcy Code is approved.

10. EEIS is not in default under the Assumed Contract and iAnywhere is hereby barred from asserting a claim against EEIS or AEI for cure or other amounts pursuant to section 365(b)(1) of the Bankruptcy Code with respect to the Assumed Contract.

11. EEIS is authorized to assign the Assumed Contract to AEI pursuant to section 365(f) of the Bankruptcy Code and as contemplated pursuant to the Agreement.

12. Upon assumption and assignment of the Assumed Contract, EEIS and its estate shall be relieved of any liability for breach of such Assumed Contract occurring after such assignment pursuant to section 365(k) of the Bankruptcy Code.

13. The conveyance and assignment of the Assumed Contract to AEI, in and of itself, shall provide iAnywhere with adequate assurance of future performance under the Assumed Agreement.

14. This Order shall be effective and enforceable immediately upon entry of this Order, pursuant to Bankruptcy Rules 6004(g) and 6006(d).

15. No person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in accordance with the Agreement or this Order.

16. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplanted by the parties thereto in accordance with the terms thereof without further order of the Court; provided, however, that in connection therewith, the parties shall obtain the prior written consent of the Creditors' Committee which consent shall not be unreasonably withheld and provided further that any such modification, amendment or supplement is neither material nor changes the economic substance of the transactions contemplated thereby.

17. The failure to specifically include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that EEIS's implementation of the transactions contemplated in the Agreement be approved in their entirety.

18. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

19. The Court shall retain exclusive jurisdiction (a) to enforce and implement the terms and provisions of the Agreement, any amendments thereto, any waivers and consents thereunder, and of any of the agreements, documents and instruments executed in connection therewith, (b) to compel delivery of the Property to AEI, (c) to compel delivery of the Purchase Price in accordance with the terms and conditions of the Agreement, (d) to resolve any and all disputes, controversies or claims arising out of or otherwise relating to the Agreement, and (e) to interpret,

implement and enforce the provisions of this Order, including without limitation, any and all disputes that may arise out of the consummation of the Agreement.

20. The terms of this Order shall be binding on EEIS, AEI and EEIS's creditors and all other parties in interest, and any successors of EEIS, AEI and EEIS's creditors, including any trustee or examiner appointed in these cases or any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

21. The requirement set forth in Rule 9013-1 (b) of the Local Rules that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion.

Dated: New York, New York

\_\_\_\_\_, 2002

\_\_\_\_\_  
HONORABLE ARTHUR J. GONZALEZ  
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Trademarks and Trademark Applications

FASER

USPTO Reg. No. 2188796



Schedule 2

Domain Names

www.faser.com

Registrar

NETWORK SOLUTIONS, INC.

Schedule 3

EEIS System Inventory List

<u>Inventory #</u>	<u>Type</u>	<u>Description</u>	<u>Ship To:</u>
1	CD	SourceSafe: EA Client, EA Web; FASER Build Machine (copy 1)	A
2	CD	C++ Builder components; EA Build Machine, EESDEVEL-DB1 (copy 1)	A
3	CD	AccuWeather; ESP; VI-NextGen; VI-FASER (copy 1)	A
4	CD	SourceSafe: FASER (copy 1)	A
5	CD	SourceSafe: EA Client, EA Web; FASER Build Machine (copy 2)	A
6	CD	C++ Builder components; EA Build Machine, EESDEVEL-DB1 (copy 2)	A
7	CD	AccuWeather; ESP; VI-NextGen; VI-FASER (copy 2)	A
8	CD	SourceSafe: FASER (copy 2)	A
9	CD	Energy Analyzer Client Setup File (copy 1)	A
10-45	Boxes	Boxes #10-45 are customer files, not included	B
46	Box	New FASER Manuals, 12 count	A
47	Box	New FASER Manuals, 12 count	A
48	Box	New FASER Manuals, 12 count	A
49	Box	New FASER Manuals, 12 count	A
50	Box	New FASER Manuals, 12 count	A
51	Box	New FASER Manuals, 12 count	A
52	Box	New FASER Manuals, 12 count	A
53	Box	New FASER Manuals, 12 count	A
54	Box	11 ea FASER Training Guide Course F112; 20 ea Energy Analyzer spiral bound brochure	A
55	Box	Approx 200 ea FSR 5.12 CD; 2 ea floppy cases of weather data disks; beta masters of 2 video trng courses; 2 zip disks with FSR expo booth design; approx 100 ea FSR 5.11 CD; 25 cy FSR Report Writer Manual	A
56	Box	49 ea FSR Training video #2	A
57	Box	50 ea FSR Training video #1	A
58	Box	Important documents - see itemization below	A
59	Server Hardware	EESDevel-DBESENSE (user - administrator, PW=null)	A
60	Server Hardware	EESHOU-FSR1	A
61	Server Hardware	EEIS-MTEK1	A
62	Server Hardware	EESHOU-DB5	A

Schedule 3

EEIS System Inventory List

63	Drive Array Hardware	Drive array for EESHOU-DB5	A
64	Server Hardware	EESHOU-DB4	A
65	Server Hardware	EnergySense Web Server	A

<u>Inventory #</u>	<u>Type</u>	<u>Description</u>	<u>Ship To:</u>
66	Box	Metretek components: 2 ea Radio telephone units; 3 ea SNI-II units; 2 ea Commercial Pulse Accumulators	C
67	Box	Metretek components: 3 ea SNI-II units; 5 ea Commercial Pulse Accumulators; 1 ea Remote Notification Module	C
68	Hardware	Metretek meter modem unit	C
69	Hardware	Metretek meter modem unit	C
70	CD	Energy Analyzer Client Setup File (copy 2)	A
71	CD	FASER & EA Home Drives (copy 1)	A
72	CD	FASER & EA Home Drives (copy 2)	A
73	CD	OmniNotes (copy 1)	A
74	CD	OmniNotes (copy 2)	A
	Tapes	Backup tapes of server contents. Not inventoried by AEII.	A

Shipping addresses:

A

10012 Clovercrest Drive (residential)  
 Colorado Springs, CO 80920  
 attn: Steve Heinz  
 719-272-8042

B

N/A

C

300 North Drive

Schedule 3

EEIS System Inventory List

Melbourne, FL 32934

attn: Dan MacDonald

800-327-8554 x2300

58 quantity

Detailed inventory of box 58

10 FSR Rate Analyst Manuals

5 FSR SmartMerge Manuals

1 White 3-ring binder (unlabeled) - Energy Analyzer Product Development

1 White 3-ring binder - Advanced Report Construction

1 Fundamentals of Energy Analyzer (spiral)

2 EEIS - Product Development June 18, 2001 (Spiral)

1 EEIS - Quality Assurance June 18, 2001 (spiral)

1 E2is Online & Client Manual (black clip)

2 FASER Rate Language Manuals (1 spiral, 1 staple)

1 FASER 2000 Rate Creation Procedures & Checklists (spiral)

1 E2is Technical Design Specification (black clip)

1 E2is Online Training Guide (spiral)

1 File folder - Metrotek License Agreement

1 File folder - iAnywhere Solutions - Sybase 7/10/01

1 File folder - FASER PSP Termination Notices

1 File folder - VI Documentation

1 E2is Online Fundamentals (black clip)

1 Fixing R\_Energy with ISQL (staple)

1 FASER 2000 EDI 810 Formatter for Trans Gas

1 Overview Doc (staple)

1 Common Conversions for R\_Energy Fix (staple)

1 Energy Analyzer Release Plan (spiral/blue)

1 FASER 2000 Implementation Guide 810 (black clip)

1 E2is Rates Reference Material (staple)

1 FASER Importer Overview

## Schedule 4

### 1. Notice by Mail

- Parties in interest in accordance with the Court's Amended Case Management Order Establishing, Among Other Things, Noticing, Electronic Procedures, Hearing Dates, Independent Website, and Alternative Methods of Participation At Hearings, dated February 26, 2002
- All secured creditors
- All unsecured creditors
- All independent contractors of Seller<sup>1</sup> that participated in the development of the Software
- All current and former employees employed by Seller during the two years prior to the Effective Date and whose identity and location are reasonably determinable by Seller after diligent inquiry
- All persons who may, as solely determined by Seller in the reasonable exercise of its judgment after diligent inquiry, assert a claim, lien or other interest in the Property
- iAnywhere Solutions, Inc.
- All parties to contracts or leases with Seller that are being assumed and assigned to Buyer

### 2. Notice by Publication.

- All unknown secured and unsecured creditors
- All unknown persons that may assert a lien, claim, encumbrance or other interest in the Property
- All persons identified in part 1 above whose address is not readily ascertainable or to whom notice by mail is impracticable

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<sup>1</sup> To the extent not defined herein, capitalized terms shall have the meaning set forth in the Asset Purchase Agreement.

## Faser - Single-Seat Licenses Currently in Use

<b>Data Base Name</b>	<b>Data Source Names</b>
AGY	fsr5sAGY
ArchChicago	FSR5SArchChicago
CommodityOnlyP~)=ents	FSR5SCommodityOnlyPayments
COIllinois	FSR5SCOIllinois
DemoData	FSR5SDemoData
Dillards	FSR5SDillards
Excelsior	FSR5S
Frito	FSR5SFrito
GeneralCable	FSR5SGeneralCable,
IBM	FSR5SIBM
KaiserHawaii	FSR5SKaiserHawaii
KaiserKansas	FSR5SKaiserKansas
KaiserNorth	FSR5SKaiserNorth
InfoMart	FSR5SInfoMart
Kaiser	FSR5SKaiser
KaiserColorado	FSR5SKaiserColorado
KaiserNW	FSR5SKaiserNW
KaiserMidAtlantic	FSR5SKaiserMidAtlantic
Lucent	FSR5SLucent
Marathon	FSR5sMarathon
MoldedFiberglass	fsr5sMoldedFiberglass
OceanSpray	FSR5SOceanSpray
OwensComing	FSR5SOwensComing
PackagedIce	FSR5SPackagedIce
Poloroid	fsr5sPoloroid
Prudential	fsr5sPrudential
RidgeTools	FSR5SRidgeTools
SchmalbachLubeca	fsr5sSchmalbachLubeca
Simon(Insite)	fsr5sSixnon Insite
ServiceBureau.	FSR5SServiceBureau
Sharis	FSR5SSharis;
Sonoco	fsr5sSonoco
Springs	fsr5sSprings
Tyco	FSR5STyco
WorldColorPress	FSR5SWorldColorPress
Starwood	Fsr5sStarwood
Suiza	fsr5sSuiza
Compaq	fsr5sCompaq
ChaseManhattan	fsr5sChaseManhattan
RichProducts	fsr5sRichProducts
AmericanNationalCan	fsr5sAmericanNationalCan
TexasCOP	fsr5sTexasCOP
NewYorkCOP	fsr5sNewYorkCOP
Macerich	fsr5sMacerich
Simon	fsr5sSimon
faserdemosql	FSR5local faser

## Verify Document(s)

01-16034-ajg Enron Corp.

Date	#	Docket Text
10/18/2002	<u>7301</u>	Motion to Authorize / <i>Motion For An Order, Pursuant To Sections 105, 363(b), (f), and (m), and 365 of the Bankruptcy Code, Authorizing And Approving (A) Enron Energy Information Solutions, Inc.'s Sale of Certain Software And Related Property And The Assumption And Assignment of The Assumed Contract To American Intelligence, Inc. Pursuant to an Asset Purchase Agreement, Subject To Higher And Better Offers, and (B) the Consummation Of The Transactions Contemplated Therein</i> filed by Martin Sosland on behalf of Enron Corp.. with hearing to be held on 11/14/2002 at 10:00 AM at Courtroom 523 (AJG) (Sosland, Martin)

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File size is 121063

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## Original Signature(s)

Document No: 1741584

Document description:Main Document

Original filename:H:/FASER/FASER Motion (filing version).PDF

Electronic document Stamp:

[STAMP NYSBStamp\_ID=842906028 [Date=10/18/2002] [FileNumber=1741584-0]  
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712f7133e1a7e946ff10bb6c3d1973d2095ab65ac7c85306e9ba81b52824]]

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## Verified Signature(s)

Document No: 1741584

Document description:Main Document

Original filename:H:/FASER/FASER Motion (filing version).PDF

Electronic document Stamp:

[STAMP NYSBStamp\_ID=842906028 [Date=10/18/2002] [FileNumber=1741584-0]  
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