

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

<p>In the Matter of</p> <p>ASPEN TECHNOLOGY, INC., a corporation.</p>
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Docket No. 9310

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having heretofore issued its complaint charging Aspen Technology, Inc. (“Respondent”), with violations of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and Respondent having been served with a copy of that complaint, together with a notice of contemplated relief, and Respondent having answered the complaint denying said charges but admitting the jurisdictional allegations set forth therein; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Aspen Technology, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Ten Canal Park, Cambridge, Massachusetts 02141.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “AspenTech” or “Respondent” means Aspen Technology, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Aspen Technology, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Acquisition” means Respondent’s acquisition of Hyprotech on or about May 31, 2002.
- C. “AEA Partnership Agreement” means the AXSYS.Integrity Development Partnership Agreement, dated July 26, 2001, between AEA Technology plc, and Respondent under which AEA Technology plc, licenses Integrity Modules, as defined therein, to Respondent.
- D. “AXSYS” means AXSYS collaborative engineering Software and other products for collaborative engineering and knowledge management for plant engineering and design automation including but not limited to AXSYS.Engine, AXSYS.Process, AXSYS.Integrity, AXSYS.Server, and PlantSchema and the associated Interfaces.
- E. “AXSYS Assets” means the following:
 1. all of Respondent’s interests in and rights to all Software and other products (including all development work in process for existing and proposed or terminated products) comprising the AXSYS collaborative engineering and knowledge management software solution for plant engineering and design automation, including but not limited to:
 - a. AXSYS.Engine, AXSYS.Process, AXSYS.Integrity, AXSYS.Server, and PlantSchema; and
 - b. all associated Interfaces, including but not limited to process,

sizing, and costing interfaces;

2. all inventories (including but not limited to all inventories of finished AXSYS products and all development work) of the AXSYS Business, and the computer equipment listed in Schedule 1.2 of the Bentley Purchase Agreement;
3. a copy of all books, records, and financial files relating to the AXSYS Business;
4. all rights to all licenses, license agreements, and customer contracts described in Section 4.10 of the Disclosure Statement of the Bentley Purchase Agreement, including the AEA Partnership Agreement;
5. all Owned Intellectual Property Rights used solely in the operation of AXSYS Business;
6. a non-exclusive right to all Owned Intellectual Property Rights used both in AXSYS and in other of Respondent's Software and other products;
7. rights to all Licensed Intellectual Property Rights necessary to the operation of the AXSYS Business; *provided, however*, that, after divestiture to the Commission-approved Acquirer, Respondent shall not be responsible for payment of any fees or charges associated with the Commission-approved Acquirer's use of the Licensed Intellectual Property;
8. for material relating solely to the AXSYS Business, all marketing and sales materials used anywhere in the world, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials (including product data, price lists, and mailing lists), promotional and marketing materials, marketing information, educational materials, competitor information (including research data, market intelligence reports, and statistical programs), customer information (including customer sales information, customer lists, customer files, customer contact information, and customer support log data bases), sales forecasting models, Website content, and advertising and display materials; *provided, however*, that Respondent may retain a copy of such material to the extent necessary for tax, accounting, or legal purposes, including as required by applicable laws and regulations; and

9. for material relating both to the AXSYS Business and to other of Respondent's businesses, a copy of all marketing and sales materials used anywhere in the world to the extent such materials relate to the AXSYS Business, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials (including product data, price lists, and mailing lists), promotional and marketing materials, marketing information, educational materials, competitor information (including research data, market intelligence reports, and statistical programs), customer information (including customer sales information, customer lists, customer files, customer contact information, and customer support log data bases), sales forecasting models, Website content, and advertising and display materials.

“AXSYS Assets” shall not include:

1. items listed in Schedule 1.3 of the Bentley Purchase Agreement;
 2. except to the extent used solely in the AXSYS Business, business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill;
 3. rights to third-party Intellectual Property that the Commission-approved Acquirer either has or obtains independent of its acquisition of the AXSYS Assets;
 4. any other of Respondent's products that Interface with AXSYS; and
 5. contracts for support and maintenance services with customers who have not consented, or because of contractual constraints cannot consent, to the assignment of the contract to the Commission-approved Acquirer; *provided, however*, that if the Commission-approved Acquirer provides maintenance relating to AXSYS to these customers, then Respondent shall transfer all such maintenance payments due pursuant to the contracts to the Commission-approved Acquirer.
- F. “AXSYS Business” means the business of researching, developing, designing, marketing, selling, licensing, providing, maintaining, servicing, supporting, improving, enhancing, and updating AXSYS.

G. “Bentley” means Bentley Systems, Incorporated, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 685 Stockton Drive, Exton, PA, 19341.

H. “Bentley Purchase Agreement” means the Asset Purchase Agreement by and

- P. “Hyprotech” means Hyprotech, Ltd., which, prior to May 31, 2002, was a wholly-owned operating division of AEA Technology plc, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom and, subsequent to the Acquisition, became a wholly-owned subsidiary of Respondent, and includes all subsidiaries.
- Q. “Hyprotech Process Engineering Simulation Software” means the Hyprotech family of products, which includes the products and interfaces sold or licensed under the HYSYS name and the related batch process development, conceptual engineering, heat exchanger and hydraulics software identified in Appendix A(1), but shall not include the products identified in Appendix A(2).
- R. “Hyprotech Process Engineering Simulation Software Assets” means the following:
1. all of Respondent’s interests in and rights to all Software and other products (including all development work in process for existing and proposed or terminated products) comprising Hyprotech Process Engineering Simulation Software;
 2. all Owned Intellectual Property Rights used solely in the operation of the Hyprotech Process Engineering Simulation Software Business;
 3. a non-exclusive right to all Owned Intellectual Property Rights used both in Hyprotech Process Engineering Simulation Software and other of Respondent’s Software and other products;
 4. rights to all Licensed Intellectual Property Rights relating to Software embedded in Hyprotech Process Engineering Simulation Software; *provided, however*, that, after divestiture to the Commission-approved Acquirer, Respondent shall not be responsible for payment of any fees or charges associated with the Commission-approved Acquirer’s use of the Licensed Intellectual Property;
 5. a license to use trademarks owned by Respondent to the Hyprotech Process Engineering Simulation Software products for a period of one (1) year from the date of divestiture of the Hyprotech Process Engineering Simulation Software Assets;
 6. a copy of all marketing and sales materials used anywhere in the world to the extent such materials relate to the Hyprotech Process Engineering Simulation Software Business, including but not limited to all advertising materials, training materials (including all electronic files of training materials), sales materials, promotional and marketing materials,

marketing information, educational materials, Website content, and advertising and display materials; and

7. a list of all Hyprotech Process Engineering Simulation Software customers as of the date of the Acquisition and, if different, as of the date of divestiture of the Hyprotech Process Engineering Simulation Software Assets, including the name and address of the customer; the name of a contact person, and his or her mailing address, e-mail address, and telephone number; the products licensed or serviced; and the termination date of the customer's contract.

“Hyprotech Process Engineering Simulation Software Assets” shall not include:

1. any business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill;
 2. any other of Respondent's products that Interface with Hyprotech Process Engineering Simulation Software;
 3. rights to third-party Intellectual Property that the Commission-approved Acquirer either has or obtains independent of its acquisition of the Hyprotech Process Engineering Simulation Software Assets; and
 4. materials related to the pricing or discounting of Hyprotech Process Engineering Simulation Software, including but not limited to pricing or discount lists, plans, policies, practices, forecasts, strategies, or analyses.
- S. “Hyprotech Process Engineering Simulation Software Business” means the business of researching, developing, designing, marketing, selling, licensing, providing, maintaining, supporting, improving, and updating Hyprotech Process Engineering Simulation Software.
- T. “Intellectual Property” means all of the following throughout the world:
1. all patents, patent applications and patent disclosures and utility models, together with all re-issuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof;
 2. copyrightable works, copyrights and applications, registrations and renewals related thereto;
 3. know-how, trade secrets, improvements, designs, techniques, and

processes;

4. business names, registered and unregistered trademarks, service marks, trade names, logos, Internet domain names, and corporate names and applications, registrations and renewals related thereto (or portions thereof), and associated goodwill; and
 5. all other intellectual property rights of a proprietary nature, including but not limited to derivative rights.
- U. “Interface” means (1) (as a noun) the language and codes that two independent Software applications use to communicate with each other and with the hardware; and (2) (as a verb) to connect with or interact with by means of the language and codes that two independent Software applications use to communicate with each other and with the hardware.

perform and receive payments are for operator training services and Software) included in customer contracts that also include rights to perform and receive payment for other of Respondent's Software or other products;

quality control information (including lists of known bugs), test results, regression test software, enhancements, customization, development tools, development

II.

IT IS FURTHER ORDERED that:

A. Respondent shall either:

1. (a) divest the Engineering Software Assets, absolutely and in good faith, and at no minimum price, only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, no later than ninety (90) days after this Order becomes final; and (b) submit to the Commission, pursuant to Rule 2.41(f) of the Commission's Rules of Practice, a complete application (including an executed purchase agreement) for approval of the divestiture required by Paragraph II., no later than five (5) days after this Order becomes final;

or

2. if Respondent has not submitted to the Commission a complete application in compliance with Paragraph II.A.1. above, divest the Engineering Software Assets, absolutely and in good faith, and at no minimum price, no later than sixty (60) days after this Order becomes final, only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission;

provided, however, that Respondent shall have a right to obtain from the Commission-approved Acquirer: (1) for any purpose, a perpetual, world-wide, royalty-free right to prepare derivative works of, modify, enhance, improve, maintain, support, make, have made, use, develop, reproduce, demonstrate, promote, sell, offer to sell, distribute, transmit, and import Hyprotech Process Engineering Simulation Software products (in source code form, object code form, executable code form, or any other applicable form) and all Owned Intellectual Property used solely in the operation of the Hyprotech Process Engineering Simulation Software Business; and (2) for any purpose other than the OTS Business, a perpetual, world-wide, royalty-free right to prepare derivative works of, modify, enhance, improve, maintain, support, make, have made, use, develop, reproduce, demonstrate, promote, sell, offer to sell, distribute, transmit, and import MUSIC and OTISS (in source code form, object code form, executable code form, or any other applicable form).

B. Any Divestiture Agreement between Respondent and the Commission-approved Acquirer shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such Divestiture Agreement shall

constitute a failure to comply with this Order.

- C. Prior to the date of divestiture of the Engineering Software Assets to the Commission-approved Acquirer, Respondent shall secure all consents, approvals, and waivers from all Persons (other than Respondent or the Commission-approved Acquirer) that are necessary for the divestiture of the Engineering Software Assets to the Commission-approved Acquirer or for the continued use, development, designing, enhancement, improvement, production, licensing, sale, marketing, distribution, or servicing of the Engineering Software Assets by the Commission-approved Acquirer. In the event that Respondent is unable to satisfy all conditions necessary to divest any intangible asset as contemplated in this Order, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the Commission-approved Acquirer may reasonably request in the Commission-approved Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to all other intangible assets, including but not limited to Software, Intellectual Property (including patents), or contractual rights, substitute functionally equivalent assets or arrangements, subject to the approval of the Commission.

- D. Respondent shall:

1. for two (2) years following the date of divestiture of the Engineering Software Assets, at no additional cost to the Commission-approved Acquirer of the Engineering Software Assets, provide the Commission-approved Acquirer with all Releases (in source, object, and executable code form and including all related documentation) for Respondent's Hyprotech Process Engineering Simulation Software. Respondent shall ship Releases in source, object, and executable code form to the Commission-approved Acquirer of the Engineering Software Assets on or before the same date as Respondent ships such Releases to Respondent's manufacturing vendor for mass production of such Releases; *provided, however,* that, notwithstanding the above, Respondent shall provide any Releases, the sole purpose of which is to correct Defects, to the Commission-approved Acquirer of the Engineering Software Assets on or before the same date that such Releases are provided to Respondent's customers; and
2. no later than fourteen (14) days after the end of the two-year period described in Paragraph II.D.1, deliver to the Commission-approved Acquirer of the Engineering Software Assets a copy of the Releases for Respondent's Hyprotech Process Engineering Simulation Software in source, object, and executable code form that are under development by Respondent as such Releases exist on the second anniversary of the date of divestiture of the Engineering Software Assets.

- E. For two (2) years following the date of divestiture of the Engineering Software Assets, Respondent shall provide to the Commission-approved Acquirer of the Engineering Software Assets, upon reasonable notice and at reasonable times and levels, personnel, information, assistance, advice or training relating to Hyprotech Process Engineering Simulation Software as necessary or appropriate to effectuate the purposes of this Order. Respondent shall not charge the Commission-approved Acquirer of the Engineering Software Assets more than Respondent's own direct, out-of-pocket expenses of labor and travel in providing such services, not including overhead or administrative expenses.
- F. Respondent shall, for a period of two (2) years from the date of divestiture of the Engineering Software Assets:
1. allow any customer who uses Hyprotech Process Engineering Simulation Software, without penalty, to:
 - a. modify its current agreements with Respondent to allow for renewal of annual software maintenance and support with respect to less than the complete range of products covered by the current agreements and to allocate fees for the products remaining in the agreement on a pro rata basis, to enable such customer to deal with the Commission-approved Acquirer; and
 - b. obtain additional copies of Software from the Commission-approved Acquirer of the Engineering Software Assets without effecting a termination of an existing license agreement or maintenance and support services agreement with Respondent with respect to Software licensed by Respondent; *provided, however*, that Respondent shall not be under any obligation to provide maintenance and support services with respect to software licensed to customers by the Commission-approved Acquirer.
 2. remove any license impediment or grant any requisite intellectual property rights to allow the Commission-approved Acquirer of the Engineering Software Assets:
 - a. to provide software maintenance and support services for Software that has been installed by Respondent; and/or
 - b. upon expiration of the customer's license agreement with Respondent, to grant new licenses to the Hyprotech Process Engineering Simulation Software installed on its computers without requiring the deletion and re-installation of such Software.
- G. Respondent shall, within fourteen (14) days after the date of the divestiture of the

Hyprotech Process Engineering Simulation Software Assets:

1. provide notice either by electronic mail or by first class mail to all of Respondent's customers of Hyprotech Process Engineering Simulation Software of their rights as set forth in this Paragraph II.; such notice to the Hyprotech Process Engineering Simulation Software Customers shall be made by means of a letter in the form of Appendix C to this Order; and
 2. and for a period of six (6) months from the date of posting, post a notice, prominently displayed in the top portion of Respondent's home page of its web site, immediately below any header information, that provides a link to the complete copy of the complaint and Order in this matter in Adobe Portable Document Format.
- H. Respondent shall indemnify the Commission-approved Acquirer of the Engineering Software Assets in respect of, and hold the Commission-approved Acquirer of the Engineering Software Assets harmless against, any and all liabilities, monetary damages, fines, fees, penalties, costs, and expenses incurred or suffered by the Commission-approved Acquirer of the Engineering Software Assets from any claims, liabilities, or obligations relating to or arising out of the Specified Proceedings, including any claims that would restrict, or attempt to restrict, the use of the Engineering Software Assets.
- I. In the event that the use of the Delivered Intellectual Property by the Commission-approved Acquirer is held in the Specified Proceedings to infringe any intellectual property rights of a party to the Specified Proceedings (or constitute the misappropriation of a trade secret of a party to the Specified Proceedings) and the use of such Delivered Intellectual Property is enjoined, or Respondent or the Commission-approved Acquirer of the Engineering Software Assets reasonably believes that it is likely to be found to infringe or constitute a misappropriation or likely to be enjoined, then Respondent shall, at its sole cost and expense, either (at the option of Respondent):
1. procure from a party to the Specified Proceedings the right for the Commission-approved Acquirer of the Engineering Software Assets (and its then-existing, and any future, licensees) to (or to continue to) design, sell, offer for sale, manufacture, reproduce, distribute, develop, modify, create derivative works of, display, perform, import, export, and use the Delivered Intellectual Property;
 2. modify such Delivered Intellectual Property so that it becomes non-infringing or no longer constitutes a misappropriation or otherwise falls outside the subject matter of the Specified Proceedings, without affecting the basic functionality of such Delivered Intellectual Property; or

3. replace the applicable Delivered Intellectual Property with a new item that

Acquirer or for the continued use, development, enhancement, improvement, production, sale, marketing, distribution, or servicing of the AXSYS Assets by the Commission-approved Acquirer. In the event that Respondent is unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the Commission-approved Acquirer may reasonably request in the Commission-approved Acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to all other intangible assets, including but not limited to Software, Intellectual Property (including patents), or contractual rights, substitute functionally equivalent assets or arrangements, subject to the approval of the Commission.

- E. For a period of five (5) years from the date of divestiture of the AXSYS Assets, Respondent shall provide to the Commission-approved Acquirer of the AXSYS Assets access to all Releases (and all related data and documentation) of Respondent's products (including Respondent's process simulators) that Interface with any AXSYS product, at least as early as, and on at least as favorable terms as, offered by Respondent to any Third-party Developer.
- F. Respondent shall provide to the Commission-approved Acquirer of the AXSYS Assets support on all Interfaces to Respondent's products relating to the AXSYS products on the following terms:
 - 1. for a period of two (2) years following the date of divestiture of the AXSYS Assets to the Commission-approved Acquirer, at no cost; and
 - 2. thereafter, for a period of not less than the maximum duration of any term license assumed by the Commission-approved Acquirer, on at least as favorable terms as offered by Respondent to any Third-party Developer.
- G. Respondent shall, within fourteen (14) days after the date of the divestiture of the AXSYS Assets, provide notice either by electronic mail or by first class mail to all customers of Respondent with license rights to AXSYS or Zyqad by means of a letter in the form of Appendix D to this Order. Respondents shall attach to or enclose in that notice a complete copy of the complaint and Order in this matter.
- H. The purpose of the divestiture is to ensure the continued use and development of the AXSYS Assets in the same business in which the AXSYS Assets were used prior to the acquisition by Respondent and to remedy the lessening of competition alleged in the Commission's complaint in the market for integrated engineering software for process industries.

IV.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of divestiture of the Engineering Software Assets:

- A. Respondent shall maintain technical standards with respect to Respondent's Hyprotech Process Engineering Simulation Software to provide:
 - 1. compatibility of HYSYS cases so that HYSYS cases created with Version 3.2 of HYSYS will be compatible with all additional and subsequent versions of HYSYS released by Respondent; and
 - 2. support for:
 - a. version 1.0 of the CAPE-OPEN Thermo and Units Standards;
 - b. upgrading HYSYS to CAPE-OPEN Thermo Standard 1.1;
 - c. new versions of the CAPE-OPEN Thermo and Units Standards as new versions become available; and
 - d. new CAPE-OPEN Standards on Math solvers and Reactors.

disclosed to the members of that Standard-Setting Organization, and that is inconsistent with the purpose of Paragraphs II.K. and III.H. of this Order.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall, not later than ten (10) days after execution of the Divestiture Agreement:
1. provide to the Commission-approved Acquirers a list of all non-clerical employees of the AXSYS Business, the OTS Business, or Hyprotech, as applicable, who were employed by Respondent as of the date of execution of the Divestiture Agreement or who were employed by Respondent any time within the three (3) years prior to the date this Order becomes final;
 2. to the extent permissible under applicable laws, and for a period of six (6) months from the date of divestiture of the AXSYS Assets or the Engineering Software Assets, as applicable, allow each Commission-approved Acquirer to inspect the personnel files and other documentation relating to such employees; and
 3. ~~and for a period of six (6) months from~~ the date of divestiture of the AXSYS Assets or the Engineering Software Assets, as applicable, provide

Commission-approved Acquirer or to accept other employment with Respondent; and

3. Respondent shall remove any impediments that may deter employees of the AXSYS Business, the OTS Business, or Hyprotech from accepting employment with a Commission-approved Acquirer or that may interfere with the ability of such employee to accept employment with a Commission-approved Acquirer, including but not limited to waiving any confidentiality or non-compete provisions of employment or other contracts with Respondent that would affect the ability of those individuals to be employed by a Commission-approved Acquirer.
- C. Respondent shall continue all employee benefits, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law), offered by Respondent to employees of the AXSYS Business, the OTS Business, or Hyprotech until, for the employees of the AXSYS Business, the date of the divestiture of the AXSYS Assets; and, for the employees of the OTS Business and Hyprotech, until the date of the divestiture of the Engineering Software Assets.
- D. Respondent shall not, for two (2) years following the date of the divestiture of the AXSYS Assets and the Engineering Software Assets, directly or indirectly, solicit, induce, or attempt to solicit or induce any employees of Respondent who have accepted offers of employment with a Commission-approved Acquirer to terminate their employment relationship with the Commission-approved Acquirer unless such individual is no longer employed by the Commission-approved Acquirer; *provided, however*, it is not a violation of this provision if:
(1) Respondent advertises for employees in newspapers, trade publications or other media not targeted specifically at the employees, or (2) Respondent hires employees who apply for employment with Respondent, as long as such employees were not solicited by Respondent in violation of this Paragraph.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Engineering Software Assets within the time and in the manner required by Paragraph II.A. of this Order, or the AXSYS Assets within the time and in the manner required by Paragraphs III.A. or III.B. of this Order, the Commission may appoint a trustee to accomplish either or both divestitures, at no minimum price. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the

Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VI.A. of this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the AXSYS Assets and/or the Engineering Software Assets.
 3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect either or both of the divestitures required by this Order.
 4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.B.3. to accomplish either or both of the divestitures. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, provided, however, the Commission may extend the period for no more than two (2) additional periods of twelve (12) months each.
 5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the AXSYS Assets or the Engineering Software Assets or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as

or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VI.A. of this Order.
10. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
11. The trustee shall have no obligation or authority to operate or maintain the AXSYS Assets or the Engineering Software Assets.
12. The trustee shall report in writing to the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestitures required by this Order.

VII.

IT IS FURTHER ORDERED that, until the divestitures of the AXSYS Assets and of the Engineering Software Assets are completed, Respondent shall not cause, and will use

- C. Within thirty (30) days after the date this Order becomes final, one year from the date this Order becomes final, and then annually for four (4) years thereafter, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs II.H., II.I. II.J., III.E., and IV.A.-D.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment or the creation or dissolution of subsidiaries.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, employees, independent contractors, or agents of Respondent, who may have counsel present, relating to any matters contained in this Order.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on December 20, 2014.

By the Commission, Commissioner Harbour not participating.

Donald S. Clark
Secretary

SEAL:

ISSUED: December 20, 2004

Appendix A(1)

Hyprotech Process Engineering Simulation Software

HYSYS

HYSYS Dynamics Option

MASSBAL

HYSYS Amines Interface

HYSYS for Ammonia Plants Interface

HYSYS Upstream Interface

HYSYS OLGAS Transient Interface

HYSYS OLGAS 3-Phase Interface

HYSYS OLGAS Interface

HYSYS OLI Interface

PIPESIM Interface

HYSYS PIPESYS Interface

HYSYS RTO Offline Interface

HYSYS RTO Online Interface

HYSYS Syntex Reactor Models Interface

HYSYS Syntex Reactor Models DYCATJT0.0001 1 3-Phase 002 TS0ge pAirface

Appendix A(2)

Excluded Hyprotech Process Engineering Simulation Software

HYSYS Upstream Steady-State Option

HYSYS Upstream Dynamics Option

SULSIM

HYPROPIII

BatchCAD

HYSYS Pipesim Net Option

HYSYS UREA++ Option

FLARENET

TICP

Harwell Math Library

Proconex SX006

Appendix A(3)

Operator Training Software

OTISS	Steady State Report Generation Spreadsheet
MUSIC	Stream Checker Spreadsheet
AMCL Translator - Desktop	T3 TDC Emulation
Bailey Infi90 Link	TDC_Builder
CIMIO Link	TDC3000 Functions
CL Tracer	Tdcomd
Column Builder	TriconImp
CONCERT	Visio Graphics Generation Kit
CONTRALTO	VPC-Honeywell - AMCL add on
CPGEN	VPC-Honeywell TDC3000 Web update system
Cplink	Web enablement of Melody tools
CrEdit Macros	Xeng
Cslink	Xstation
Custom Hard Panel Links	Yocomd-HP
Datatracker	Yocomd-NT
Deltcomd	ZOE
diffpara	Alarm Manager
DMC Ref File Generator	Automated Training Exercises
Dmccomd	Command Channel
Engineering Spreadsheet	CS3000 offline tools
FSC Unplot	DDLGen
FSIMlink	deltaV DCS Link
Generic IEC 1131 system handling	EB Parser
History Extraction Spreadsheet	EB Viewer
Honutils	Hygreen Instructor Station
idef/ odef	Hylinker
Imcomd	IS tester
IssueMonitoring	Performance Evaluation and Record Keeping
jpdef	Proconex SX003 Interface
mdef	Siemens Interface
O/I/Flink	Simulation Coordinator
Olgacomd	Simulation Server
PCON	SX003 driver
pdef	T3 Emulation Link
PMCL Translator	Trend
Potential Control Checkout Toolset	Yokogawa CS Link
Proconex SX003	Yokogawa CS offline tools
Proserve	Yokogawa CS3000 Interface
Recomd	ATUKOPCSERVER
Remlink	MOORCOMD

RTAP
Softex HTL

OPCCOMD
serialpan

Appendix B – Confidential

Bentley Purchase Agreement

[Redacted From Public Record Version, But Incorporated By Reference]

Appendix C

[Aspen Technology, Inc. letterhead]

[date]

[Name of customer]

Attention: [name of contact person at customer]

[Address of contact person at customer]

[telephone number of contact person]

Dear [contact person]:

This letter is to inform you that, pursuant to an order of the Federal Trade Commission (“FTC”), Aspen Technology, Inc. (“AspenTech”) is required to notify certain customers that it has divested its operator training simulator business and rights to Hyprotech Ltd.’s (“Hyprotech”) process engineering software to [insert name of Commission-approved Acquirer].

The FTC order is part of a settlement between AspenTech and the FTC resolving the FTC’s action challenging AspenTech’s acquisition of Hyprotech. Under the settlement, AspenTech has the right to obtain a license back from [insert name of Commission-approved Acquirer] and to continue selling and developing all of its existing engineering software products, including those acquired in its acquisition of Hyprotech (with the exception of AXSYS and certain operator training products).

The order requires AspenTech, for a period of two years from [date of divestiture], to allow customers of Hyprotech process engineering simulation software to choose without penalty to maintain their current agreements for annual software maintenance and support with AspenTech or to pursue similar agreements with [insert name of Commission-approved Acquirer]. The order also provides for customers to be able to obtain additional copies of Hyprotech process engineering software from [insert name of Commission-approved Acquirer] without affecting current license agreements with AspenTech. AspenTech is further required to maintain certain published and open interface standards with respect to HYSYS, Aspen Plus and certain CAPE-OPEN standards.

A link to [copy of] the Federal Trade Commission’s complaint and final order in this matter may be found at www.aspentech.com [is attached].

Sincerely,

David L. McQuillin
President and Chief Executive Officer
Aspen Technology, Inc.

Appendix D