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FINANCE SECTION

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)**  
IS2006 Assignment fbo Creditors, LLC  
  
Additional name(s) of conveying party(ies) attached?  Yes  No

**2. Name and address of receiving party(ies)**  
Name: Avaya Inc.  
Internal Address: \_\_\_\_\_  
  
Street Address: 211 Mt. Airy Road  
  
City: Basking Ridge  
State: NJ  
Country: USA Zip: 07920  
  
Additional name(s) & address(es) attached?  Yes  No

**3. Nature of conveyance/Execution Date(s):**  
Execution Date(s) July 21, 2006  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Joint Research Agreement  
 Government Interest Assignment  
 Executive Order 9424, Confirmatory License  
 Other \_\_\_\_\_

**4. Application or patent number(s):**  This document is being filed together with a new application.  
A. Patent Application No.(s)  
09/728,689  
  
Additional numbers attached?  Yes  No

B. Patent No.(s)

**5. Name and address to whom correspondence concerning document should be mailed:**  
Name: Docket Administrator  
Internal Address: \_\_\_\_\_  
  
Street Address: 307 Middletown-Lincroft Road  
Room 1N-391  
  
City: Lincroft  
State: NJ Zip: 07738  
  
Phone Number: 732-852-2047  
Fax Number: 732-852-1143  
Email Address: lchesal@avaya.com

**6. Total number of applications and patents involved:** 1  
  
**7. Total fee (37 CFR 1.21(h) & 3.41) \$** 40.00  
 Authorized to be charged by credit card  
 Authorized to be charged to deposit account  
 Enclosed  
 None required (government interest not affecting title)

**8. Payment Information**  
a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_  
b. Deposit Account Number 501602  
Authorized User Name David Volejnicek

**9. Signature:**  
David Volejnicek  
Signature  
Date 25 July 2006  
Name of Person Signing David Volejnicek

07/31/2006  
01 FC:802

Total number of pages including cover sheet, attachments, and documents: 25

## ASSIGNMENT AND BILL OF SALE AGREEMENT

This Assignment and Bill of Sale Agreement (the "Agreement") is made as of July 24, 2006, by and between IS 2006 Assignment fbo Creditors, LLC, a California corporation (the "Seller"), in its sole and limited capacity as Assignee for the Benefit of Creditors of iSpheres Corporation (the "Assignor"), and Avaya Inc., a Delaware corporation (the "Buyer"). Seller and Buyer are parties to a certain Asset Purchase Agreement dated as of July 24, 2006, (the "Asset Purchase Agreement"). Capitalized terms used without definitions herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

1. **Sale and Assignment of Required Assets.** Pursuant to the Asset Purchase Agreement, Buyer has on the date hereof purchased from Seller the Required Assets listed in Exhibit B of the Asset Purchase Agreement. In accordance with and subject to the terms and conditions set forth in the Asset Purchase Agreement, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby sell, assign, bargain, transfer, convey and deliver unto Buyer all of its right, title and interest in and to the Required Assets.

2. **Cooperation.** Buyer and Seller agree to cooperate with each other to execute and deliver such other documents and instruments and to do such further acts and things as may be reasonably requested by the other to evidence, document or carry out the sale of the Required Assets.

3. **Effect of Agreement.** Nothing in this Agreement shall, or shall be deemed to, modify or otherwise affect any provisions of the Asset Purchase Agreement or affect the rights of the parties under the Asset Purchase Agreement. In the event of any conflict between the provisions hereof and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

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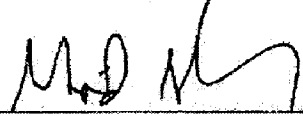
IN WITNESS WHEREOF, Seller and Buyer have caused this Assignment and Bill of Sale Agreement to be executed on the date first written above.

**SELLER:**

**BUYER:**

IS 2006 Assignment fbo Creditors, LLC  
in its sole and limited capacity as  
Assignee for the Benefit  
of Creditors of iSpheres Corporation

Avaya Inc.

By: 

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

Its: MEMBER

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

IN WITNESS WHEREOF, Seller and Buyer have caused this Assignment and Bill of Sale Agreement to be executed on the date first written above.

**SELLER:**

IS 2006 Assignment fbo Creditors, LLC  
in its sole and limited capacity as  
Assignee for the Benefit  
of Creditors of iSpheres Corporation

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

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

**BUYER:**

Avaya Inc.

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

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

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "**Agreement**") is made as of July 24, 2006 (the "Effective Date"), by and between IS2006 Assignment fbo Creditors, LLC, a California limited liability company (the "**Seller**"), in its sole and limited capacity as Assignee for the Benefit of Creditors of iSpheres Corporation, with principal offices located at 101 University Avenue, Suite 100, Palo Alto, California 94301, and Avaya Inc., a Delaware corporation (the "**Buyer**"), with principal offices located at 211 Mt. Airy Road, Basking Ridge, New Jersey 07920.

### RECITALS

A. By resolution of the board of directors (the "**Board**") of iSpheres Corporation, a California corporation (the "**Assignor**"), Assignor has transferred ownership of all its right, title and interest in and to tangible and intangible assets (the "**Assets**") to Seller, and in so doing has also designated Seller to act, pursuant to California law, as the Assignee for the Benefit of Creditors of Assignor. The General Assignment agreement (the "**General Assignment**") between Assignor and Seller, as assignee, is attached hereto as Exhibit A.

B. Seller and Buyer have identified a subset of the Assets that Buyer desires to purchase from Seller (the "**Required Assets**"). The Required Assets are identified in Section 1.2 below. After consummation of the Closing contemplated under this Agreement, Seller will liquidate any remaining Assets that are not Required Assets (the "**Remaining Assets**"), and will undertake the winding down of Assignor, which shall ultimately include, but shall not be limited to, the distribution of net funds, after payment of fees and costs associated with the liquidation and winding down, to Assignor's creditors, which are generated from the sale of the Assets.

C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Required Assets, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter set forth, Buyer and Seller hereby agree as follows:

### 1. PURCHASE AND SALE OF REQUIRED ASSETS.

**1.1 Agreement to Sell and Purchase Required Assets.** Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants set forth in this Agreement, Seller agrees to sell, assign, transfer and convey to Buyer at the Closing (as defined in Section 2.2 below), and Buyer agrees to purchase and acquire from Seller at the Closing, all of Seller's right, title and interest in and to all of the Required Assets. The Required Assets will be sold, assigned, transferred and conveyed to Buyer (subject to Section 1.3) on the Closing Date "as is" and "where is", with no representations or warranties other than those specifically set forth below, and subject to any and all pledges, liens, licenses, rights of possession, security interests, restrictions, encumbrances, charges, title retention, conditional sale or other security arrangements of any nature whatsoever (collectively, "**Encumbrances**").

**1.2 Required Assets Defined.** As used in this Agreement, the term "**Required Assets**" means, collectively, Seller's right, title and interest in and to the assets listed in **Exhibit B** attached hereto, provided, however, that the Required Assets shall not, under any circumstances, include Seller's or Assignor's (i) cash, (ii) accounts receivable, (iii) claims or preference or fraudulent conveyance recoveries under applicable law, (iv) state or federal tax refunds, (v) insurance refunds or recoveries, and (vi) utility or leasehold security deposits. Buyer shall promptly execute and deliver to Seller any and all such further assignments, endorsements and other documents as Seller may reasonably request for the purpose of effectuating the terms and conditions of this Section.

**1.3 Asset Transfer; Passage of Title; Delivery.**

(a) **Title Passage.** Except as otherwise provided in this Section, upon the Closing, title to all of the Required Assets shall pass to Buyer; and Seller shall make available to Buyer possession of all of the Required Assets as provided in subsection 1.3(b), and shall further, upon Buyer's request, execute assignments, conveyances and/or bills of sale reasonably requested to convey to Buyer title to all the Required Assets, subject to the Encumbrances, in accordance with Section 1.1 of this Agreement.

(b) **Delivery of Required Assets.** On and after the Closing Date (as defined in Section 2.2), Seller shall make available to Buyer possession of the Required Assets, provided however, that the expenses of retrieving, removing and transferring the Required Assets shall be borne exclusively by Buyer.

(c) **Retention of Documents.** As Assignee, Seller is responsible for maintaining business records during the assignment process and, among other things, will have to prepare and file final tax returns. To the extent Buyer requires business records of Assignor that are not Required Assets that Seller requires to administer the assignment estate, Buyer shall, at its own expense, arrange to obtain copies of such records from Seller. To the extent that Seller is required by law to retain any business records that are Required Assets to administer the assignment estate, Seller shall provide Buyer with a list of such records prior to the Closing (the "Retained Records"). Seller shall not disclose the Retained Records to any third party except as required by law and shall only use such Retained Records for the purposes of such administration. Seller shall keep copies of the Retained Records for only so long as required by law for such administration. Promptly following the delivery of the Required Assets to Buyer, Seller shall delete or otherwise destroy all copies of the Intellectual Property in its possession.

**2. PURCHASE PRICE; PAYMENTS.**

**2.1 Purchase Price.** In consideration of the sale, transfer, conveyance and assignment of all the Required Assets to Buyer at the Closing, Buyer shall, as of the Closing, assume only those liabilities, if any, expressly set forth as Assumed Liabilities in Section 3.1 of this Agreement and shall pay by wire transfer \$500,000 (the "**Purchase Price**") to the Seller at the Closing.

2.2 **Closing.** The consummation of the purchase and sale of the Required Assets contemplated hereby will take place at a closing to be held at the offices of Sherwood Partners, LLC, 101 University Avenue, Suite 100, Palo Alto, California 94301 (the "**Closing**"), on July 24, 2006 (the "**Closing Date**"), or at such other time or date, and at such place, or by such other means of exchanging documents, as may be agreed to by the parties hereto. If the Closing does not occur on or prior to July 28, 2006, or such later date upon which Buyer and Seller may agree in writing, this Agreement shall terminate upon written notice of termination given by either party hereto that is not in default of its obligations hereunder, and thereupon this Agreement shall become null and void and no party hereto will have any further rights or obligations hereunder, except that Sections 6.1 and 7.3 shall survive such termination.

### 3. **OBLIGATIONS ASSUMED.**

3.1 **Liabilities.** Buyer agrees, upon consummation of, and effective as of, the Closing, to assume those (and only those) liabilities of Seller and of Assignor expressly listed below in this Section 3.1 (collectively, the "**Assumed Liabilities**"):

(a) None.

3.2 **Liabilities and Obligations Not Assumed.** Except as expressly set forth in Section 3.1 above, Buyer shall not assume or become obligated in any way to pay any liabilities, debts or obligations of Seller or of Assignor whatsoever, including but not limited to any liabilities or obligations now or hereafter arising from Assignor's business activities that took place prior to the Closing or any liabilities arising out of or connected to the liquidation and winding down of Assignor's business. All liabilities, debts and obligations of Seller and of Assignor not expressly assumed by Buyer hereunder are hereinafter referred to as the "**Excluded Liabilities.**"

3.3 **No Obligations to Third Parties.** The execution and delivery of this Agreement shall not be deemed to confer any rights upon any person or entity other than the parties hereto, or make any person or entity a third party beneficiary of this Agreement, or to obligate either party to any person or entity other than the parties to this Agreement. Assumption by Buyer of any liabilities or obligations of Seller under Section 3.1 shall in no way expand the rights or remedies of third parties against Buyer as compared to the rights and remedies such parties would have against Seller if the Closing were not consummated.

### 4. **REPRESENTATIONS AND WARRANTIES OF BUYER.**

Buyer hereby represents and warrants to Seller that all the following statements are true, accurate and correct:

4.1 **Due Organization.** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Buyer has all necessary power and authority to enter into this Agreement and all other documents that Buyer is required to execute

and deliver hereunder, and holds or will timely hold all permits, licenses, orders and approvals of all federal, state and local governmental or regulatory bodies necessary and required therefore.

**4.2 Power and Authority; No Default.** Buyer has all requisite power and authority to enter into and deliver this Agreement and to perform its obligations hereunder. The signing, delivery and performance by Buyer of this Agreement, and the consummation of all the transactions contemplated hereby, have been duly and validly authorized by Buyer. This Agreement, when signed and delivered by Buyer, will be duly and validly executed and delivered and will be the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the laws relating to bankruptcy, insolvency and relief of debtors, and rules and laws governing specific performance, injunctions, relief and other equitable remedies.

**4.3 Authorization for this Agreement.** No authorization, approval, consent of, or filing with any governmental body, department, bureau, agency, public board, authority or other third party is required for the consummation by Buyer of the transactions contemplated by this Agreement.

**4.4 Litigation.** To the best of Buyer's knowledge, there is no litigation, suit, action, arbitration, inquiry, investigation or proceeding pending or, to the knowledge of Buyer, threatened, before any court, agency or other governmental body against Buyer (or any corporation or entity affiliated with Buyer) which seeks to enjoin or prohibit or otherwise prevent the transactions contemplated hereby.

## **5. REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller represents and warrants to Buyer that all of the following statements are true, accurate and correct:

**5.1 Corporate Organization.** Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California.

**5.2 Power and Authority; No Default Upon Transfer.** As Assignee, Seller has all requisite power and authority to enter into and deliver this Agreement and to perform its obligations hereunder and under the General Assignment. The signing, delivery and performance by Seller of this Agreement, and the consummation of all the transactions contemplated hereby, have been duly and validly authorized by Seller. To the best of Seller's knowledge, the General Assignment was duly authorized by Assignor's Board and is a valid agreement binding on the Assignor and Seller. This Agreement, when signed and delivered by Seller, will be duly and validly executed and delivered and will be the valid and binding obligation of Seller, enforceable against Seller, as Assignee, in accordance with its terms as governed by applicable law, regulations and rules. Neither the signing and delivery of this Agreement by Seller, nor the performance by Seller of its obligations under this Agreement, will (i) violate Seller's certificate of formation or operating agreement, (ii) the General Assignment or (iii) to the best of Seller's knowledge, violate any law, statute, rule or regulation or order, judgment, injunction or decree of any court, administrative agency or government body applicable to Seller.



**5.3 Title.** To the best of Seller's knowledge, after reasonable inquiry consisting of, among other things, a reasonable and competent assessment of a national UCC search, and excepting only as otherwise set forth in this Agreement and in accordance with the provisions of the California Code of Civil Procedure sections 493.010 et seq., Seller, as Assignee, has good and marketable title to all of the Required Assets. Seller hereby represents, warrants and covenants that it has been and expects it will continue at all times to be in compliance with all of the provisions of the California Code of Civil Procedure sections 493.010 et seq. and 1802. Seller has no knowledge of any violation of the provisions of the California Code of Civil Procedure by Assignor. Seller sells, assigns, transfers and conveys all of its right, title and interest in and to the Required Assets to Buyer "as is" and "where is", with no representations or warranties as to merchantability, fitness or use, and the Required Assets shall be subject to the Encumbrances. Other than this Agreement and the General Assignment, Seller has not entered into any agreement encumbering, selling, assigning, licensing or otherwise transferring or conveying any rights with respect to the Required Assets.

(a) **AS-IS SALE; DISCLAIMERS; RELEASE.** IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE REQUIRED ASSETS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE REQUIRED ASSETS TO BUYER AND BUYER SHALL ACCEPT THE REQUIRED ASSETS **"AS IS, WHERE IS, WITH ALL FAULTS."** BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE REQUIRED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE REQUIRED ASSETS ARE BEING SOLD **"AS IS, WHERE IS, WITH ALL FAULTS."**

(c) BUYER ACKNOWLEDGES TO SELLER THAT BUYER WILL HAVE THE OPPORTUNITY TO CONDUCT PRIOR TO CLOSING SUCH INSPECTIONS AND INVESTIGATIONS OF THE REQUIRED ASSETS AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE REQUIRED ASSETS AND ITS ACQUISITION THEREOF. BUYER FURTHER WARRANTS AND REPRESENTS TO SELLER THAT BUYER WILL RELY SOLELY ON ITS OWN

REVIEW AND OTHER INSPECTIONS AND INVESTIGATIONS IN THIS TRANSACTION AND NOT UPON THE INFORMATION PROVIDED BY OR ON BEHALF OF SELLER, OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES WITH RESPECT THERETO. BUYER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

(d) BUYER ACKNOWLEDGES THAT SOME ASSETS DESCRIBED IN EXHIBIT B MAY CONTAIN THIRD-PARTY INTELLECTUAL PROPERTY THAT MAY HAVE BEEN LICENSED BY ASSIGNOR OR OTHERWISE ACQUIRED BY ASSIGNOR. BUYER UNDERSTANDS THAT SELLER IS UNABLE TO TRANSFER INTELLECTUAL PROPERTY BELONGING TO, OWNED OR OTHERWISE RESTRICTED BY A THIRD-PARTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THAT PARTY, WHICH WILL NOT BE OBTAINED OR SOUGHT BY SELLER AS A PART OF THIS AGREEMENT. BUYER SHALL ACCEPT FULL RESPONSIBILITY FOR COMMUNICATING WITH THIRD-PARTIES WHOSE INTELLECTUAL PROPERTY MAY BE INCLUDED IN THE REQUIRED ASSETS TRANSFERRED HEREBY AND SHALL PAY ANY AND ALL LICENSING OR OTHER FEES, COSTS, EXPENSES OR CHARGES THAT MAY BE ASSOCIATED WITH USING SAID ASSETS.

**5.4 Litigation.** To the best of Seller's knowledge, there is no claim, action, arbitration, inquiry, investigation, suit or proceeding pending or, to Seller's knowledge, threatened, against Seller or Assignor that might affect in any way any Required Asset or the transaction contemplated by this Agreement, nor is Seller aware or have grounds to know of any reasonable basis therefor. To the best of Seller's knowledge, there are no judgments, decrees, injunctions or orders of any court, governmental body, department, commission, agency, instrumentality or arbitrator against Seller or Assignor affecting the Required Assets.

**5.5 Authorization for this Agreement.** To the best of Seller's knowledge, no authorization, approval, consent of, or filing with any governmental body, department, bureau, agency, public board, authority or other third party is required for the consummation by Seller of the transactions contemplated by this Agreement.

**5.6 Assignee.** All rights of Seller with regard to the ownership and possession of the Required Assets are rights held as Assignee pursuant to the General Assignment made by Assignor. Pursuant to the General Assignment, Assignor has informed Seller that it transferred all of Assignor's right, title and interest in and to the Required Assets to Seller. Pursuant to this Agreement, Seller, solely in its capacity as Assignee, sells, assigns, and transfers all of its right, title and interest in and to the Required Assets to Buyer.

**5.7 Contracts.** To the best of Seller's knowledge, Exhibit C sets forth the only non-open source software license agreements and software escrow agreements relating to the Required Assets that are in effect as of the date hereof.

## **6. COVENANTS OF BUYER.**

**6.1 Confidential Information.** All copies, if any, of financial information, pricing, marketing plans, business plans, and other confidential and/or proprietary information of Assignor and/or Seller disclosed to Buyer in the course of negotiating the transaction contemplated by this Agreement, including the terms of this Agreement ("***Seller Confidential Information***"), will be held in confidence and not used or disclosed by Buyer or any of its employees, affiliates or stockholders, except to any public or private lender, for a period of six (6) months from the Effective Date and will be promptly destroyed by Buyer or returned to Seller, upon Seller's written request to Buyer at any time; *provided, however* that from and after the Closing, the foregoing covenant shall not be applicable to any Seller Confidential Information included in the Required Assets. It is agreed that Seller Confidential Information will not include information that: (a) is proven to have been known to Buyer prior to receipt of such information from Seller; (b) is disclosed by a third party having the legal right to disclose such information and who owes no obligation of confidence to Seller; (c) is now, or later becomes part of the general public knowledge or literature, other than as a result of a breach of this Agreement by Buyer; (d) is independently developed by Buyer without the use of any Seller Confidential Information or (e) is required to be disclosed by law or applicable governmental regulation.

**6.2 Press Releases and Public Announcements.** Buyer shall not issue any press release or make any disclosure or public announcement relating to the financial terms of this Agreement or identifying Seller without the prior written approval of Seller, which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may disclose certain information relating to this Agreement if required to do so by law or applicable governmental regulation.

**6.3 Taxes and any Other Charges Related to the Sale.** Buyer agrees to promptly pay all sales, transfer, use or other taxes, duties, claims or charges imposed on and/or related to the sale of the Required Assets to Seller under this Agreement (other than income taxes payable by Seller) by any tax authority or other governmental agency and to defend, indemnify and hold Seller harmless from and against any such taxes, duties, claims, or charges for payment thereof by any tax authority or other governmental agency.

**6.4 Survival of Covenants.** The covenants set forth in Sections 6.1, 6.2, 6.3, and this Section 6.4 shall survive the Closing. The covenants set forth in Section 6.1 above shall, in addition, survive the termination of this Agreement for any reason.

## 7. COVENANTS OF SELLER.

Seller covenants and agrees with Buyer as follows:

**7.1 Further Assurances.** From and after the Closing Date, Seller shall cooperate with Buyer and promptly sign and deliver to Buyer any and such additional documents, instruments, endorsements and related information and take actions as Buyer may reasonably request for the purpose of effecting the transfer of Seller's and/or Assignor's title to the Required Assets to Buyer, and/or carrying out the provisions of this Agreement, provided, however, that Seller shall be reimbursed for its reasonable costs and expenses incurred in providing such documents, instruments, endorsements or related information, which additional documents, instruments, endorsements or related information shall be prepared solely by Buyer.

**7.2 Press Releases and Public Announcements.** Seller shall not issue any press release or make any public announcement relating to the financial terms of this Agreement or identify the Buyer without the prior written approval of the Buyer, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may disclose information relating to this Agreement if required to do so by law or applicable governmental regulation or, in the case of Seller, if otherwise required in connection with the administration of the General Assignment and Seller shall be permitted, at its discretion, to prepare and distribute a tombstone regarding the General Assignment and the Agreement without mentioning the identity of Buyer or the terms of the Agreement.

**7.3 Survival of Covenants.** Each of the covenants set forth in Sections 7.1 and 7.2, this Section 7.3 and Section 7.4 shall survive the Closing.

**7.4 Confidential Information.** All copies, if any, of confidential and/or proprietary information of Buyer disclosed to Seller in the course of negotiating the transaction contemplated by this Agreement, including the terms of this Agreement ("**Buyer Confidential Information**"), will be held in confidence and not used or disclosed by Seller or any of its employees, affiliates or stockholders, except to any public or private lender, for a period of six (6) months from the Effective Date and will be promptly destroyed by Seller or returned to Buyer, upon Buyer's written request to Seller at any time. It is agreed that Buyer Confidential Information will include all information included in the Required Assets and will not include information that: (a) is proven to have been known to Seller prior to receipt of such information from Buyer; (b) is disclosed by a third party having the legal right to disclose such information and who owes no obligation of confidence to Buyer; (c) is now, or later becomes part of the general public knowledge or literature, other than as a result of a breach of this Agreement by Seller; (d) is independently developed by Seller without the use of any Buyer Confidential Information or (e) is required to be disclosed by law or applicable governmental regulation.

**8. CONDITIONS TO CLOSING.**

**8.1 Conditions to Buyer's Obligations.** The obligations of Buyer hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Buyer may expressly waive the same in writing:

(a) Accuracy of Representations and Warranties on Closing Date. The representations and warranties made herein by Seller shall be true and correct in all material respects, and not misleading in any material respect, on and as of the date given, and on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date.

(b) Compliance. As of the Closing Date, Seller shall have complied in all material respects with, and shall have fully performed, in all material respects, all conditions, covenants and obligations of this Agreement imposed on Seller and required to be performed or complied with by Seller at, or prior to, the Closing Date.

(c) Delivery of Required Assets. Seller shall have made the Required Assets available to Buyer as set forth in Section 1.3 above.

(d) Delivery of Closing Documents. Seller shall have delivered, and Buyer shall have received, the document(s) described in Section 9.2 hereof.

**8.2 Conditions to Seller's Obligations.** The obligations of Seller hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Seller may expressly waive the same in writing:

(a) Accuracy of Representations and Warranties on Closing Date. The representations and warranties made herein by Buyer in Section 4 hereof shall be true and correct in all material respects, and not misleading in any material respect, on and as of the date given, and on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date.

(b) Compliance. Buyer shall have complied in all material respects with, and shall have fully performed, the terms, conditions, covenants and obligations of this Agreement imposed thereon to be performed or complied with by Buyer at, or prior to, the Closing Date.

(c) Payment. Buyer shall have transmitted by wire transfer and Seller shall have received payment of the Purchase Price.

(d) Delivery of Closing Documents. Buyer shall have delivered, and Seller shall have received, the document(s) described in Section 9.1 hereof.

## **9. CLOSING OBLIGATIONS.**

**9.1 Buyer's Closing Obligations.** At the Closing, Buyer shall deliver to Seller the following:

- (a) Payment of the Purchase Price plus applicable sales tax by wire transfer to Seller;
- (b) The Assignment and Bill of Sale Agreement, in the form attached hereto as Exhibit D, signed by an authorized officer of Buyer on behalf of Buyer;
- (c) A certificate of an appropriate officer of Buyer, dated the Closing Date, certifying the fulfillment of the conditions set forth in Sections 8.2(a) and (b); and
- (d) A certificate of an Assistant Secretary of Buyer certifying as to the incumbency and corporate power and authority of the officer executing the Assignment and Bill of Sale Agreement on behalf of Buyer.

**9.2 Seller's Closing Obligations.** At the Closing, Seller shall make available to Buyer the following:

- (a) The Required Assets in accordance with Section 1.3;
- (b) The Assignment and Bill of Sale Agreement, in the form attached hereto as Exhibit D, signed by an authorized officer of Seller on behalf of Seller;
- (c) A certificate of an appropriate officer of Seller, dated the Closing Date, certifying the fulfillment of the conditions set forth in Sections 8.1(a) and (b);
- (d) A certificate of an Assistant Secretary or other appropriate officer or member of Seller certifying as to the incumbency and limited liability company power and authority of the officer executing the Assignment and Bill of Sale Agreement on behalf of Seller; and
- (e) An invoice for sales tax payable in California with respect to the purchase by Buyer of the Required Assets pursuant to this Agreement.

## **10. SURVIVAL OF WARRANTIES AND INDEMNIFICATION.**

**10.1 Survival of Warranties.** All representations and warranties made by Seller or Buyer herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the Closing for a period of one (1) year after the Closing.

**10.2 Indemnified Losses.** For the purpose of this Section 10.2 and when used elsewhere in this agreement, "*Loss*" shall mean and include any and all liability, loss, damage, claim, expense, cost, fine, fee, penalty, obligation or injury including, without limitation, those

resulting from any and all actions, suits, proceedings, demands, assessments, judgments, award or arbitration, together with reasonable costs and expenses, including the reasonable attorneys' fees and other legal costs and expenses relating thereto.

**10.3 No Indemnification by Seller.** Seller is selling to Buyer all of its right, title and interest in and to the Required Assets defined in this Agreement "as is" and "where is", with no representations or warranties as to merchantability, fitness or usability or in any other regard (except for the limited representations and warranties specifically set forth above) and does not agree to defend, indemnify or hold harmless Buyer, any parent, subsidiary or affiliate of Buyer or any director, officer, employee, stockholder, agent or attorney of Buyer or of any parent, subsidiary or affiliate of Buyer from and against and in respect of any Loss which arises out of or results from the transaction described herein; provided, however, that notwithstanding the foregoing, Seller shall indemnify Buyer, including its subsidiaries and affiliates, and any director, officer, employee, stockholder, agent or attorney of Buyer or of any subsidiary or affiliate of Buyer, for any Losses incurred by any of them as a result of any breach by Seller of any covenant, or the inaccuracy or untruth of any representation or warranty of Seller made herein.

**10.4 Indemnification By Buyer.** Subject to the provisions and limitations set forth in this Section 10, Buyer agrees to defend, indemnify and hold harmless Seller, any parent, subsidiary or affiliate of Seller and any director, officer, employee, stockholder, agent or attorney of Seller or of any parent, subsidiary or affiliate of Seller (collectively, the "***Seller Indemnitees***") from and against and in respect of any Loss which arises out of or results from:

- (a) any breach by Buyer of any covenant, or the inaccuracy or untruth of any representation or warranty of Buyer made herein or in any document or certificate delivered in accordance herewith;
- (b) use by Buyer of the Required Assets after the Closing; or
- (c) the Assumed Liabilities (if any).

*provided, however,* that nothing in this Section 10.4 shall impose on Buyer any duty to indemnify Seller for any Excluded Liabilities.

**10.5 Period for Making Claims.** A claim for indemnification by either party under this Section 10 may be brought, if at all, at any time after the Closing Date, with respect to any claim or claims for indemnification under this Section 10, provided, however, that any claim under Section 10.3 or 10.4(a) with respect to the inaccuracy or untruth of any representation or warranty must be brought, if at all, prior to the time such representation or warranty expires pursuant to Section 10.1.

## 11. MISCELLANEOUS.

**11.1 Expenses.** Except as otherwise provided herein, each of the parties hereto shall bear its own expenses (including without limitation attorneys' fees) in connection with the negotiation and consummation of the transaction contemplated hereby.

**11.2 Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be personally or sent by certified or registered United States mail, postage prepaid, or sent by nationally recognized overnight express courier and addressed as follows:

(a) If to Seller:

IS 2006, LLC  
101 University Avenue, Suite 100  
Palo Alto, CA 94301  
Tel: 650-329-9996  
Fax: 650-329-9993  
Email: mam@shrwood.com  
Attention: Michael Maily

(b) If to Buyer:

Avaya Inc.  
211 Mt. Airy Road  
Basking Ridge, NJ 07920  
Tel: 908-953-7229 Michael C. Bond  
Fax: 908-953-4912  
Email: mbond@avaya.com  
Attention: Michael C. Bond, Vice President – Corporate Development

With copy to:

Avaya Inc.  
211 Mt. Airy Road  
Basking Ridge, NJ 07920  
Tel: 908-953-2544  
Fax: 908-953-4912  
Email: lorimarino@avaya.com  
Attention: Lori B. Marino, Managing Corporate Counsel, Avaya Law

**11.3 Entire Agreement.** This Asset Purchase Agreement, the Exhibits hereto (which are incorporated herein by reference) and any agreements to be executed and delivered in connection herewith, together constitute the entire agreement and understanding between the parties and there are no agreements or commitments with respect to the transactions



contemplated herein except as set forth in this Agreement. This Agreement supersedes any prior offer, agreement or understanding between the parties with respect to the transactions contemplated hereby.

**11.4 Amendment; Waiver.** Any term or provision of this Agreement may be amended only by a writing signed by Seller and Buyer. The observance of any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound by such waiver. No waiver by a party of any breach of this Agreement will be deemed to constitute a waiver of any other breach or any succeeding breach.

**11.5 No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or to give any person, firm or corporation, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

**11.6 Execution in Counterparts.** For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**11.7 Benefit and Burden.** This Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and their respective successors and permitted assigns.

**11.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California (excluding application of any choice of law doctrines that would make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law.

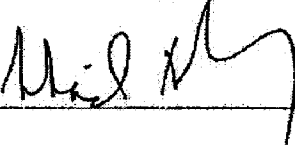
**11.9 Severability.** If any provision of this Agreement is for any reason and to any extent deemed to be invalid or unenforceable, then such provision shall not be voided but rather shall be enforced to the maximum extent then permissible under then applicable law and so as to reasonably effect the intent of the parties hereto, and the remainder of this Agreement will remain in full force and effect.

**11.10 Attorneys' Fees.** Should a suit or arbitration be brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed in amount by the Court or the Arbitrator(s) (including without limitation costs, expenses and fees on any appeal). The prevailing party will be entitled to recover its costs of suit or arbitration, as applicable, regardless of whether such suit or arbitration proceeds to a final judgment or award.

IN WITNESS WHEREOF, Buyer and Seller executed and delivered this Asset Purchase Agreement by their duly authorized representatives as of the Effective Date.

**SELLER:**

IS 2006 Assignment fbo Creditors, LLC,  
in its sole and limited capacity as  
Assignee for the Benefit  
of Creditors of iSpheres Corporation

By: 

Its: MENBER

**BUYER:**

Avaya Inc.

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

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

IN WITNESS WHEREOF, Buyer and Seller executed and delivered this Asset Purchase Agreement by their duly authorized representatives as of the Effective Date.

**SELLER:**

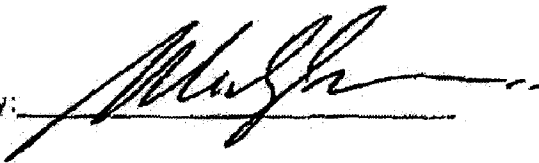
IS 2006 Assignment fbo Creditors, LLC,  
in its sole and limited capacity as  
Assignee for the Benefit  
of Creditors of iSpheres Corporation

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

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

**BUYER:**

Avaya Inc.

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

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

**EXHIBIT A**

**General Assignment**

## EXHIBIT B

### Required Assets

1. All of Assignor's interests and rights in the intellectual property used by Assignor in connection with its business, including, but not limited, to copyrights, patents, service marks, trademarks, trade names, domain names, industrial models, trade secrets, mask work rights, any applications and registrations for any of the foregoing, and any other proprietary and intellectual property rights, for all countries, jurisdictions, and political entities of the world, along with the right to sue for past infringement, including but not limited to its rights in the following US patents and patent applications and their corresponding counterpart foreign patents and patent applications (collectively, the "Intellectual Property"):

Name	Patent Office Filing #	File Date
Technique for Extracting Data from Structured Documents	09/728,689	12/1/2000
A Learning Automatic Data Extraction System	6,662,190	3/20/2001
Multi-phase Detection Algorithm	10/222,388	8/16/2002
Parser generation based on example Document	10/365,747	2/14/2003
Finite-State Machine Augmented for Multiple Evaluations of Text	10/775,745	2/9/2004
Edit distance string search	10/775,576	2/9/2004
Time series monitoring system	10/775,744	2/9/2004
Phase Match Detection with Variably Concurrent Input	60/326,487	2001
Event Detection with Concurrent Data Updates	09/858,801	2002
Index Array-Object Level Indices for Object Search	60/656,142	2005

2. All iSpheres computer program code.

3. Two servers (Redhat Linux-based server with CVS repository containing all iSpheres source code and version history including documentation wiki and automated build server used to build, test, and prepare for deployment the Assignor's products).
4. Backup disk containing the Intellectual Property.
5. All books, records, ledgers, documents and files, and other similar information (in any form or medium, including data stored in electronic form) used or held for use by Assignor to the extent related to the Required Assets, including, but not limited to, manuals of operations or business procedures, research and development files and materials, data and laboratory books, invention disclosures, litigation files, plans, and specifications, but excluding any such items to the extent any applicable law prohibits their transfer.

## EXHIBIT C

1. Software License Agreement between Assignor and the U.S. Securities and Exchange Commission (Date of Award of SECHO1-04-C0375).
2. Software License Agreement between Assignor and FMR Corp, effective November 2, 2001 (Fidelity Contract # 70001408), including all exhibits thereto and the following documents:
  - a. Software Trial Agreement #70009646,
  - b. Solutions Engineering Agreement effective January 22, 2002, and
  - c. First Amendment effective June 17, 2005.
3. OEM Software Agreement between Assignor and International Business Machines Corporation (Number 4903810257), including:
  - a. the Base Agreement
  - b. Earned Discount Transaction Document Number: 001, and
  - c. Program Registration Form
4. Technology License Agreement between Assignor and Oracle Corporation effective June 30, 2004.
5. Jidesoft.com license for Jide software.
6. Japisoft.com license for JSyntaxColor.

**EXHIBIT D**

**ASSIGNMENT AND BILL OF SALE AGREEMENT**

This Assignment and Bill of Sale Agreement (the "Agreement") is made as of July 24, 2006, by and between IS 2006 Assignment fbo Creditors, LLC, a California corporation (the "Seller"), in its sole and limited capacity as Assignee for the Benefit of Creditors of iSpheres Corporation (the "Assignor"), and Avaya Inc., a Delaware corporation (the "Buyer"). Seller and Buyer are parties to a certain Asset Purchase Agreement dated as of July 24, 2006, (the "Asset Purchase Agreement"). Capitalized terms used without definitions herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

1. **Sale and Assignment of Required Assets.** Pursuant to the Asset Purchase Agreement, Buyer has on the date hereof purchased from Seller the Required Assets listed in Exhibit B of the Asset Purchase Agreement. In accordance with and subject to the terms and conditions set forth in the Asset Purchase Agreement, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby sell, assign, bargain, transfer, convey and deliver unto Buyer all of its right, title and interest in and to the Required Assets.

2. **Cooperation.** Buyer and Seller agree to cooperate with each other to execute and deliver such other documents and instruments and to do such further acts and things as may be reasonably requested by the other to evidence, document or carry out the sale of the Required Assets.

3. **Effect of Agreement.** Nothing in this Agreement shall, or shall be deemed to, modify or otherwise affect any provisions of the Asset Purchase Agreement or affect the rights of the parties under the Asset Purchase Agreement. In the event of any conflict between the provisions hereof and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall govern and control.

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IN WITNESS WHEREOF, Seller and Buyer have caused this Assignment and Bill of Sale Agreement to be executed on the date first written above.

**SELLER:**

**BUYER:**

IS 2006 Assignment fbo Creditors, LLC  
in its sole and limited capacity as  
Assignee for the Benefit  
of Creditors of iSpheres Corporation

Avaya Inc.

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

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

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

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