

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT														
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL														
CONVEYING PARTY DATA															
<table border="1"> <thead> <tr> <th>Name</th> <th>Formerly</th> <th>Execution Date</th> <th>Entity Type</th> </tr> </thead> <tbody> <tr> <td>Ubiquity Software Corporation Limited</td> <td></td> <td>03/31/2010</td> <td>COMPANY: UNITED KINGDOM</td> </tr> </tbody> </table>				Name	Formerly	Execution Date	Entity Type	Ubiquity Software Corporation Limited		03/31/2010	COMPANY: UNITED KINGDOM				
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<table border="1"> <thead> <tr> <th>Property Type</th> <th>Number</th> <th>Word Mark</th> </tr> </thead> <tbody> <tr> <td>Registration Number:</td> <td>2244359</td> <td>UBIQUITY</td> </tr> <tr> <td>Registration Number:</td> <td>2932741</td> <td>UBIQUITY</td> </tr> </tbody> </table>				Property Type	Number	Word Mark	Registration Number:	2244359	UBIQUITY	Registration Number:	2932741	UBIQUITY			
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Registration Number:	2244359	UBIQUITY													
Registration Number:	2932741	UBIQUITY													
CORRESPONDENCE DATA															
<p>Fax Number: 3172371000  <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i></p> <p>Phone: (317) 237-1089        Email: tmfrtw@faegrebd.com        Correspondent Name: Louis T. Perry        Address Line 1: 300 N. Meridian Street, Suite 2700        Address Line 2: Faegre Baker Daniels LLP        Address Line 4: Indianapolis, INDIANA 46204</p>															
ATTORNEY DOCKET NUMBER:	LTP 481962-4 NO 2														
DOMESTIC REPRESENTATIVE															

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Name:  
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Address Line 2:  
Address Line 3:  
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NAME OF SUBMITTER:	Louis T. Perry
Signature:	/Louis T. Perry/
Date:	01/16/2013

Total Attachments: 13  
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EXECUTION VERSION

# Ubiquity Trade Mark Assignment and Licence- Back

between

Ubiquity Software Corporation Limited  
as Assignor

and

ThruPoint Limited  
as Assignee

and

Avaya UK  
as Avaya UK

and

Avaya Inc.  
as Avaya inc.

relating to

the assignment and licence-back of the Ubiquity Trade  
Marks described in the schedule to this Agreement

Simmons & Simmons

CityPoint One Ropemaker Street London EC2Y 9SS  
T +44 (0)20 7628 2020 F +44 (0)20 7628 2070 DX Box No 12

**TRADEMARK**  
**REEL: 004944 FRAME: 0182**

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**THIS AGREEMENT** is dated 31 March 2010 and made

**BETWEEN:**

- (1) **UBIQUITY SOFTWARE CORPORATION LIMITED**, (the "Assignor"), registered in England and Wales under company number 2719723 and having its registered office at c/o Smith & Williamson, 25 Moorgate, London, United Kingdom; and
- (2) **THRUPOINT LIMITED**, (the "Assignee"), registered in England and Wales under company number 03740335 and having its registered office Unit 5, The Grand Union Office Park, Packet Boat Lane, Uxbridge, Middlesex UB8 2GH, United Kingdom; and
- (3) **AVAYA UK**, ("Avaya UK"), registered in England and Wales under company number 3049861 and having its registered office at Avaya House, Cathedral Hill, Guildford, Surrey, GU2 7YL; and
- (4) **AVAYA INC.**, ("Avaya Inc"), a company incorporated in Delaware and having its principal place of business at 211 Mount Airy Road, Basking Ridge, NJ 07920, United States of America.

**Background:**

- (A) The Assignor is the proprietor of the trade marks registered in the countries listed in Schedule 1 ("the Marks").
- (B) The Assignor has agreed to assign all its rights in and to the Marks to the Assignee on the terms set out below.
- (C) The Assignee has agreed to grant a licence-back of the Marks to the Assignor, Avaya UK and Avaya Inc. also on the terms set out below.

**The parties agree that:**

1. **Interpretation**

1.1 In this Agreement, the following expressions shall have the following meanings:

"Affiliate" means, in relation to a body corporate, any subsidiary or holding company of the Assignor or the Assignee (as applicable) and any subsidiary of any such holding company.

"Completion" has the meaning ascribed thereto in the Asset Purchase Agreement entered into by and among Assignor, Assignee, Avaya UK, Avaya Inc. and ThruPoint Inc., on the date hereof.

"LDSA" means the Licence, Development and Support Agreement entered into between certain of the parties (and others).

"Licensees" means Avaya UK, Avaya Inc., the Assignor and any Affiliates thereof.

"Marks" means the registered trade marks described in Schedule 1 including any goodwill or common law rights which are connected with or attached to the same.

2. **Assignment**

2.1 Upon Completion, the Assignor assigns all its right, title and interest in the Marks to the Assignee, including, without limitation:

- (A) all rights to bring any proceedings and obtain any remedy in respect of any infringement of the Marks which has occurred prior to the date of this Agreement;
- (B) all rights to claim priority from the Marks;
- (C) all rights to any extensions, renewals or amendments of the Marks; and
- (D) all goodwill in and associated with the Marks;

to hold the same to the Assignee, its successors and assigns absolutely.

3. **Consideration**

3.1 In consideration for the assignment in clause 2.1, the Assignee shall pay to the Assignor the sum of £1 (+ VAT, if applicable), receipt of which is acknowledged by the Assignor.

4. **Further Assurance**

4.1 Following Completion, the Assignor shall promptly do all such things as may be reasonably required by the Assignee in order:

- (A) to perfect or confirm the Assignee's ownership of the Marks;
- (B) to ensure that the Assignee is registered as the registered proprietor of the Marks with the relevant trade marks registries; or
- (C) to give the Assignee the full benefit of this Agreement.

4.2 The Assignee shall reimburse the Assignor for any reasonable disbursements incurred by the Assignor in complying with the requirements of the Assignee under clause 4.1.

5. **Licence-Back ("the Licence")**

5.1 Effective upon Completion, the Assignee hereby grants the Licensees a non-exclusive, royalty-free, perpetual, terminable (but only in the circumstances specified in clause 6) and worldwide licence to use the Marks on the terms of and subject to the provisions of this Agreement.

5.2 Following Completion, the Licensees are authorised to continue to use the Marks in the course of their business as they were using the Marks prior to Completion but the Licensees shall not enter into any new agreements or arrangements with new or existing customers which involve use of the Marks (including branding any of their new products, software, manuals or other materials under the Marks, except to the extent that they incorporate products, software, manuals or other materials which existed prior to Completion) without the Assignee's prior written consent. For the avoidance of doubt:

- (A) the Assignor and each other subsidiary of Avaya Inc that uses the Marks as part of such entity's company name as of the date hereof shall be entitled to continue to use the Ubiquity name as part of its company name;

(B) nothing in this Agreement shall prevent the Licensees' continued use of the Marks in the way in which they were used by the Licensees prior to Completion, including, without limitation, any such use in the Base Atlantis Products, the Ancillary Atlantis Products, the Atlantis Application Products, any future versions thereof and any Deliverables and Improvements (to the extent that the Marks were already included prior to Completion or the Marks are not included by the Assignor), as each of those terms is defined in the LDSA, and in any related documentation.

- 5.3 Save that the Licensees shall not be required to make any changes in their use of the Marks as they were being used by the Licensees prior to Completion, the Licensees undertake and agree that at all times during the term of this Agreement they shall make any new use of the Marks in accordance with any reasonable brand guidelines and such other reasonable instructions which are, in each case, notified in advance to the Licensees in relation to the appearance and use of the Marks.
- 5.4 For the avoidance of doubt, the Assignee undertakes that it shall not object to the use by any past or present customers of the Licensees of any products, software, manuals or other materials bearing the Marks as are in existence at the date of Completion or of the Base Atlantis Products, the Ancillary Atlantis Products, the Atlantis Application Products, any future versions thereof and any Deliverables and Improvements (to the extent that the Marks were already included prior to Completion or the Marks are not included by the Assignor), as each of those terms is defined in the LDSA,.
- 5.5 The Licensees shall not dispute or challenge the validity of the Marks, or the rights of the Assignee to the Marks, or knowingly do or permit to be done any act which would jeopardise or invalidate any registration of the Marks or which gives rise to an application to remove any such registration.
- 5.6 The Licensees shall seek to use the Marks at all times in such a manner that their distinctiveness and reputation are maintained and shall do nothing which will lessen the distinctiveness of the Marks.
- 5.7 The Licensees shall if so requested by the Assignee in writing and where possible indicate that the Marks are the property of the Assignee by the use of any reasonable notice provided in advance by the Assignee.
- 5.8 The Licensees shall not, without the prior written consent of the Assignee, make any use of any mark or name confusingly similar to the Marks in respect of any goods or services, other than such use of the Marks as is permitted by this Agreement.
- 5.9 The Licensees' use of the Marks under this Agreement shall not be such as to bring the Marks or the Assignee (or its Affiliates) into disrepute.
- 5.10 Any goodwill derived from the use by the Licensees of the Marks after the date of this Agreement accrues to the Assignee.
- 5.11 The Licensees shall promptly notify the Assignee of (a) any actual or suspected infringement of the Marks that comes to its attention or (b) any allegation by any third party that the Marks or the use thereof is invalid or an infringement of the rights of any party ("Infringement").
- 5.12 The Licensees shall upon the written request (save in respect of immaterial assistance) of the Assignee provide reasonable assistance and reasonable co-operation at the Assignee's expense (save in respect of immaterial costs) in taking steps required by the Assignee in connection with any Infringement, including, without limitation, legal

proceedings in the name of the Assignee or in the joint name of the parties (as the context demands). The Assignee shall be responsible for the costs of any legal proceedings it requires and is entitled to any damages, account of profits and/or awards of costs recovered. The Assignee shall have the full conduct of all proceedings relating to the Marks and may at its own discretion decide what action (if any) to take in respect of any Infringement.

- 5.13 The Assignee shall take steps to maintain the existing registrations of the Marks and the Licensees shall provide, at the request and expense of the Assignee, necessary assistance in maintaining such registrations of the Marks.
- 5.14 The Licensees shall if so requested by the Assignee (or its Affiliates) give to the Assignee any information in the Licensees' power or control as to the Licensees' use of the Marks as the Assignee (or its Affiliates) may reasonably require to satisfy itself that the Licensees are complying with their obligations hereunder provided that the Assignee (or its Affiliates) shall keep any information so disclosed strictly confidential.

## 6. **Termination of the Licence**

- 6.1 The Licence shall remain in force until terminated under this clause 6 or the Licensees have no further use of the Marks.
- 6.2 The Assignee may terminate the Licence, without prejudice to its other remedies, in respect of any use of the Marks in new products or materials which commenced after Completion, forthwith by written notice given to the Licensees if the Licensees commit or permit another to commit a material breach of this Agreement and in the case of a breach capable of being remedied do not remedy the same within thirty (30) days (or longer if the Licensees so request and provided the Licensees use their best endeavours to remedy the breach) of having been given written notice specifying the breach and requiring it to be remedied. For the avoidance of doubt, the Assignee shall have no right to terminate the Licence in respect of the Licensees' continued use of the Marks in the way in which they were used by the Licensees prior to the date of this Agreement.
- 6.3 The Assignee may terminate this licence if any of the Licensees experiences any of the events set out in clauses 32.1(A)(1) – (6) (inclusive) of the LDSA.
- 6.4 The Licensees may terminate the Licence by giving thirty (30) days prior written notice to the Assignee.
- 6.5 Upon termination of the Licence the Licensees shall (and the Assignor shall procure each Licensee shall):
- (a) agree with the Assignee a reasonable transitional period during which the Licensees shall cease to use the Marks on any new products, software, manuals or other materials that bear the Marks and which were not in existence prior to Completion; and
  - (b) consult with the Assignee in relation to using up existing stocks of any manuals or other materials which do use the Marks and which were not in existence prior to Completion.

For the avoidance of doubt, this excludes, without limitation, any such use in the Base Atlantis Products, the Ancillary Atlantis Products, the Atlantis Application Products, any future versions thereof and any Deliverables and Improvements (to the extent that the Marks were already included prior to Completion or the Marks are not included by the



Assignor), as each of those terms is defined in the LDSA, and in any related documentation.

6.6 Clauses 5.2 and 7 survive termination of this Agreement.

7. **Law and Jurisdiction**

7.1 **Governing Law**

This Agreement shall be governed by, and construed in accordance with, English law.

7.2 **Jurisdiction**

In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement ("Proceedings") each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inappropriate forum.

7.3 **Contracts (Rights of Third Parties) Act 1999**

7.4 No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**IN WITNESS WHEREOF** the duly authorised representatives of the parties have signed this Agreement on the date first before written.

**SCHEDULE 1 : The Marks**

Country	Trade mark	Status	Application no.	Filing date	Registration no.	Registration date	Priority no.	Priority date
Brazil	UBIQUITY	Registered	825423724	26.03.07	825423724	29.05.07		
Brazil	UBIQUITY	Registered	825423716	26.03.07	825423716	29.05.07		
Brazil	UBIQUITY	Registered	825423708	26.03.07	825423708	29.05.07		
Brazil	UBIQUITY	Registered	825423694	26.03.07	825423694	29.05.07		
United States of America	UBIQUITY	Registered	78232122	31.03.03	2932741	15.03.05		
United States of America	UBIQUITY	Registered	75372288	14.10.97	2244359	11.05.99	2129982	17.04.97
United Kingdom	UBIQUITY	Registered	2129982	17.04.97	2129982	10.10.07		
Switzerland	UBIQUITY	Registered		10.02.03	512405	10.02.03		
Singapore	UBIQUITY	Registered	T0522098D	07.11.05	T0522098D	07.11.05		
Singapore	UBIQUITY	Registered	T0522095Z	07.11.05	T0522095Z	07.11.05		
Singapore	UBIQUITY	Registered	T0522094A	07.11.05	T0522094A	07.11.05		
Singapore	UBIQUITY	Registered	T0522093C	07.11.05	T05/22093C	15.05.07		
Canada	UBIQUITY	Registered	0846665	02.06.97	TMA655745	22.12.05	000427625	03.12.96
China	UBIQUITY	Registered	3543012	28.10.04	3543012	28.10.04		
China	UBIQUITY	Registered		07.03.05	3543011	07.03.05		
China	UBIQUITY	Registered		07.11.04	3543010	07.11.04		
China	UBIQUITY	Registered		14.05.05	354009	14.05.05		
European Community	UBIQUITY	Registered	4395174	19.04.05	4395174	14.06.06		
European Community	UBQUITY Stylized	Registered	0427625	03.12.96	0427625	07.03.03		
India	UBIQUITY	Registered	1396806	07.11.05	1396806	07.11.05		
Israel	UBIQUITY	Registered	186106	22.12.05	186106	07.08.07		
Israel	UBIQUITY	Registered	186107	22.12.05	186107	07.08.07		
Israel	UBIQUITY	Registered	186108	22.12.05	186108	07.08.07		
Israel	UBIQUITY	Registered	186109	22.12.05	186109	07.08.07		

Country	Trade mark	Status	Application no.	Filing date	Registration no.	Registration date	Priority no.	Priority date
Japan	UBIQUITY	Registered	2003-027528	07.04.03	4757464	19.03.04		
Japan	UBIQUITY	Registered	2002-051390	20.06.02	4659489	04.04.03		
Russian Federation	UBIQUITY	Registered	2005728746	10.11.05	336499	26.10.07		

Signed by A. SEGHATOLESAMI )

*A. Seghatolesami* ..

Duly authorised )  
for and on behalf of )  
**AVAYA, INC.** )

Signed by ..... )

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Duly authorised )  
for and on behalf of )  
**AVAYA, UK** )

Signed by ..... )

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Duly authorised )  
for and on behalf of )  
**UBIQUITY SOFTWARE CORPORATION** )  
**LIMITED** )

Signed by ..... )

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Duly authorised )  
for and on behalf of )  
**THRUPOINT LIMITED** )

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for and on behalf of )  
**AVAYA, INC.** )

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Signed by *TONY PHENAN* ..... )  
Duly authorised )  
for and on behalf of )  
**AVAYA, UK** )

*Tony Phenan* .....

Signed by ..... )  
Duly authorised )  
for and on behalf of )  
**UBIQUITY SOFTWARE CORPORATION** )  
**LIMITED** )

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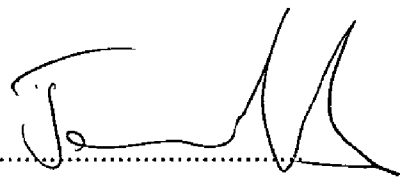
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**UBIQUITY SOFTWARE CORPORATION** )  
**LIMITED** )



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AVAYA, UK )

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UBIQUITY SOFTWARE CORPORATION  
LIMITED )



Signed by *RAMI MUJALLAM* ..... )  
Duly authorised  
for and on behalf of  
THRUPOINT LIMITED )

