



**AVAYA GLOBAL SUPPORT AND DIAGNOSTIC SOFTWARE TOOLS AND DOCUMENTATION LICENSE TERMS**  
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**S. Miscellaneous.** These Software Tool License Terms and any dispute, claim or controversy arising out of or relating to these Software Tool License Terms ("**Dispute**"), including without limitation those relating to the formation, interpretation, breach or termination of these Software Tool License Terms, or any issue regarding whether a Dispute is subject to arbitration under these Software Tool License Terms, will be governed by New York State laws, excluding conflict of law principles, and the United Nations Convention on Contracts for the International Sale of Goods.

Any Dispute shall be resolved in accordance with the following provisions. The disputing party shall give the other party written notice of the Dispute. The parties will attempt in good faith to resolve each Dispute within thirty (30) days, or such other longer period as the parties may mutually agree, following the delivery of such notice, by negotiations between designated representatives of the parties who have dispute resolution authority. If a Dispute that arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States cannot be settled under these procedures and within these timeframes, it will be conclusively determined upon request of either party by a final and binding arbitration proceeding to be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce (from time to time), except that if the aggregate claims, cross claims and counterclaims by any one party against any or all other parties exceed One Million US Dollars at the time all claims, including cross claims and counterclaims are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of these Software Tool License Terms and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify the terms of these Software Tool License Terms. The ruling by the arbitrator(s) will be final and binding on the parties and may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator(s)' fees, but each party will bear its own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure of the existence, content and results of the arbitration shall be as limited and narrowed as required to comply with the applicable law. By way of illustration, if the applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed.

If a Dispute by one party against the other that arose in the United States or is based upon an alleged breach committed in the United States cannot be settled under the procedures and within the timeframe set forth above, then either party may bring an action or proceeding solely in either the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York. Except as otherwise stated above with regard to arbitration of Disputes that arise anywhere other than in the United States or are based upon an alleged breach committed anywhere other than in the United States, each party to these Software Tool License Terms consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings.

The parties agree that the arbitration provision in this Section may be enforced by injunction or other equitable order, and no bond or security of any kind will be required with respect to any such injunction or order. Nothing in this Section will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights, including its rights pending arbitration, at any time. In addition, and notwithstanding the foregoing, Avaya shall be entitled to take any necessary legal action at any time, including without limitation seeking immediate injunctive relief from a court of competent jurisdiction, in order to protect Avaya's intellectual property and its confidential or proprietary information (including but not limited to trade secrets).

If any provision of these Software Tool License Terms is determined to be unenforceable or invalid, these Software Tool License Terms will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure to assert any rights under the Software Tool License Terms, including, but not limited to, the right to terminate in the event of breach or default, will not be deemed to constitute a waiver of the right to enforce each and every provision of the Software Tool License Terms in accordance with their terms. If you move any Software, and as a result of such move, a jurisdiction imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Software), then you are solely liable for, and agree to pay, any such duty, taxes, levy or other fees.

**T. Agreement in English.** The parties confirm that it is their wish that these Software Tool License Terms, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.