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S. Miscellaneous: These Software License Terms and any Dispute, including any issue regarding whether a Dispute is subject to arbitration under these Software 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.

In the event of any dispute, the disputing party shall give the other party written notice of the Dispute. The parties will attempt in good faith to resolve each controversy or claim within thirty (30) days, (or other mutually agreed period), following the delivery of notice, by referral to designated representatives of the parties authorized to negotiate resolution thereof.

Any Dispute not based upon non-payment of undisputed invoices and arising out of the United States or based upon an alleged breach committed anywhere outside of the United States will be conclusively resolved by a final and binding arbitration proceeding 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 the parties, by an arbitrator appointed by the President of the International Chamber of Commerce. Notwithstanding the foregoing, if either party seeks damages and other remedies in an amount exceeding $1,000,000.00 in the initial claims or any cross claims

or counterclaims filed within 90 days of the initial claim, The Dispute shall be resolved by a panel of 3 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 by the parties, (i) in London, with respect to any Dispute that arises in Europe or is based upon an alleged breach committed in Europe, (ii) in Hong Kong, with respect to any Dispute that arises in Asia or is based upon an alleged breach committed in Asia, or (iii) New York, with respect to any Dispute arising anywhere outside the United States, Europe or Asia or is based upon an alleged breach committed outside of the United States, Europe or Asia. The arbitrator(s) will have authority only to award compensatory damages within the scope of the Limitation of Liability section. The arbitrator(s) will not have the authority to limit, expand or otherwise modify the terms of these Software 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 will each bear their own attorney's 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 will 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.

For any Dispute arising in the United States or based upon an alleged breach committed in the United States, 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. Each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to these Software License Terms.

Nothing in this Section will preclude Avaya from seeking monetary damages and remedies from any court of competent jurisdiction for monies owing under these Software License Terms or any order. If Avaya chooses to commence legal action in a court of competent jurisdiction for the aforesaid purposes, each party hereby irrevocably (i) waives any objection which it may have to the laying of venue of any legal action brought in such courts or that such legal action has been brought in an inconvenient forum, and (ii) further waives the right to object with respect to such legal action that any such court does not have jurisdiction over such party.

Nothing in these Software License Terms will be construed to preclude either party from seeking provisional remedies, including 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. 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.

Except for actions for non-payment or breach of Avaya's proprietary rights, actions on Disputes between the parties must be brought in accordance with this Section within 2 years after the cause of action arises.

The parties will cause their Affiliates to comply with the dispute resolution procedures described in this Section.

If any provision of these Software License Terms is determined to be unenforceable or invalid, these Software 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 License Terms,

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T. Agreement in English: The parties confirm that it is their wish that these Software 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 anglais.

EXHIBIT A - Definitions

Defined terms are identified by capitalized letters and have the meaning given in this Exhibit or elsewhere in these Software License Terms. This Exhibit A is incorporated into and part of the Software License Terms.

- **"Affiliate"** means any entity that is directly or indirectly controlling, controlled by, or under common control with Avaya LLC or End User. For purposes of this definition, "control" means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

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- **"EAR"** means Export Administration Regulations.

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- **"OSS"** means Open-Source Software.

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In case the End User has a valid agreement in place with Avaya or an Avaya Channel Partner that can be used to purchase Software, the following sections from these Software License Terms will not apply and the existing agreement will take precedent (as long as they are included in the existing agreement):

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