

**8X8, INC. BUSINESS TERMS AND CONDITIONS**  
(Australia Service Only)

[Updated December 2, 2016]

**NOTE TO THIS VERSION**

*This updated version of the Business Terms and Conditions (dated December 2, 2016) will become effective for customers of 8x8, Inc. as follows:*

- **New Customers: January 1, 2017.** *Starting on January 1, 2017, this version will apply to all services ordered by 8x8 customers who first order services on or after that date.*
  
- **Existing Customers: Upon Renewal.** *A customer who has ordered services before January 1, 2017 will continue to be subject to the previous version of the Business Terms and Conditions (dated May 1, 2015) until the last day of the customer’s current term of service (i.e., current as of January 1, 2017). This updated version of the Business Terms and Conditions will then apply to all of the customer’s services starting on the first day of the customer’s next service term, if service is renewed. If an existing customer has entered into a service agreement that reflects negotiated changes to the prior version of the Business Terms and Conditions, those changes will continue to apply to the customer’s service agreement after this updated version takes effect, notwithstanding any conflict.*

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  - [United States Supplement](#) \*
  - [United Kingdom Supplement](#) \*
  - [Australia Supplement](#)
  - [Canada Supplement](#) \*

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\* Omitted from this version.

**1. GENERAL**

**1.1. ACCEPTANCE AND APPLICATION OF TERMS.**

These 8x8, Inc. Business Terms and Conditions (which, together with all annexes hereto and all other documents expressly incorporated by reference herein, are referred to throughout as the “**Terms**”) form part of a legally binding contract between 8x8, Inc., a Delaware corporation (“**8x8**”), and the individual or legal entity in whose name 8x8 agrees to provide Services (“**Customer**,” “**you**,” or “**your**”). These Terms, and the Customer Agreement generally, govern your acquisition and use of Services and Equipment from 8x8.

PLEASE READ THESE TERMS CAREFULLY BECAUSE THEY AFFECT THE LEGAL RIGHTS BETWEEN YOU AND 8X8 BY, AMONG OTHER THINGS, (1) LIMITING 8X8’S LIABILITY TO YOU, (2) REQUIRING ARBITRATION OF CERTAIN DISPUTES AND (3) REQUIRING PAYMENT OF EARLY TERMINATION CHARGES OR DISCONNECT FEES.

THESE TERMS ALSO INCLUDE (IN THE REGIONAL SUPPLEMENTS AND ELSEWHERE) IMPORTANT INFORMATION REGARDING YOUR ACCESS AND USE OF EMERGENCY SERVICES (i.e., 911 in the United States, 999 in the United Kingdom, etc.), INCLUDING LIMITATIONS RELATIVE TO TRADITIONAL, WIRELINE EMERGENCY SERVICES.

When you accept these Terms in conjunction with ordering Services (for example, by signing a Service Agreement or Service Order that references these Terms, or clicking a box adjacent to an acknowledgement), or when you access or use the Services after you are notified that these Terms apply to the Services, you agree to be bound by these Terms. If the individual who accepts these Terms is acting on behalf of a corporation, company, partnership, organization, association or other legal entity, then that individual hereby represents and warrants to 8x8 that he or she has the authority to bind such entity. IF YOU DO NOT HAVE SUCH AUTHORITY, OR YOU DO NOT AGREE WITH THESE TERMS, THEN YOU SHOULD NOT ACCEPT THESE TERMS AND YOU SHOULD NOT ACCESS OR USE, OR AUTHORIZE ANYONE TO ACCESS OR USE, THE SERVICES.

These Terms shall amend and restate, supersede and replace in their entirety any earlier versions of the 8x8, Inc. “Business Terms and Conditions” previously applicable to your Services, effective as of the date indicated in the introductory note above.

**1.2 SERVICE ORDERS AND SERVICE AGREEMENTS.**

Customer may order Services or Equipment from time to time by entering into Service Orders with 8x8. Each Service Order will be subject to these Terms and, if Customer enters into a Service Agreement with 8x8, any additional and/or modified terms as the Service Agreement may specify. When Customer enters into its first Service Order or Service Agreement with 8x8, Customer establishes a Customer Agreement with 8x8 that has the term (the “**Initial Term**”) specified in that first Service Order or in the Service Agreement, as applicable, or 36 months if no term is specified. All subsequent Service Orders shall be subject to and coterminous with (i.e., have the same expiration date as) the Customer Agreement. Upon their effectiveness, such Service Orders shall be deemed to amend and become part of the Customer Agreement.

### 1.3 REGIONAL SUPPLEMENTS; OTHER ANNEXES.

The numbered provisions of this document, together with [Annex 1 \(Use Restrictions\)](#), [Annex 2 \(Service-Specific Terms\)](#) and [Annex 3 \(Fees and Charges\)](#), are referred to collectively as the “**Global Terms.**” The Global Terms apply to all customers of 8x8, Inc., regardless of location. [Annex 4 \(Regional Supplements\)](#) consists of several sets of additional terms and conditions, each of which is referred to as a “**Regional Supplement.**” Each Regional Supplement applies only to Services (if any) provided to a Customer Location in the country or region indicated.

The Regional Supplements and each of the other Annexes are available at <https://www.8x8.com/terms-and-conditions> and, to the extent not included as attachments to these Global Terms, are incorporated by reference herein.

## 2. SERVICES.

### 2.1 GENERAL.

8x8 shall, itself or through one or more of its Affiliates, vendors, subcontractors or other service-providers (each, an “**8x8 Partner**”), provide the Services ordered by Customer from time to time in accordance with the terms and subject to the conditions of the Customer Agreement.

### 2.2 SUBSCRIPTION SERVICES.

**2.2.1 General.** 8x8 hereby grants Customer the non-exclusive, non-transferable (except as provided herein) right to access and use the Subscription Services ordered by Customer from time to time, together with all related components of the 8x8 Platform, during the term of the applicable Service Order, for Customer's own internal business purposes, subject to the terms and conditions of the Customer Agreement.

**2.2.2 User Limits.** Customer's use of Subscription Services is subject to limitations on the number of Agents authorized to use the Services. Unless the Customer Agreement provides otherwise: (a) a specified quantity of Subscription Services in a Service Order limits the number of Agents and corresponding account logins to the specified quantity; (b) an Agent's login credentials may be used only by the designated Agent until his or her account is reassigned; and (c) an Agent's account login may be reassigned to a new individual only when replacing a previously authorized Agent who will no longer use the Services. Customer may designate as Agents only individuals over whom Customer has sufficient control (contractual or otherwise) to ensure compliance with these Terms, such as employees and consultants.

**2.2.3 Customer Requirements.** Customer shall be responsible for ensuring that its Internet connection, any local network equipment, hardware and software used in connection with the Services, and all related configurations (collectively, “**Environment**”), adhere to the minimum standards and technical requirements specified in applicable Documentation. Customer agrees to: (a) grant 8x8 access to Customer's personnel, facilities and other resources under Customer's control as 8x8 may reasonably request in order to perform its obligations under the Customer Agreement; (b) allow 8x8, upon reasonable request and subject to compliance with Customer's security policies, to conduct an initial assessment of Customer's network; and (c) make any adjustments to Customer's Environment that 8x8 reasonably determines necessary to satisfy the minimum technical prerequisites specified in the applicable Documentation.

### 2.3 IMPLEMENTATION SERVICES.

8x8 shall use commercially reasonable efforts to perform the Implementation Services ordered by Customer as promptly as practicable following Customer's placement of an order or (if applicable) in accordance with the schedule specified in the Customer Agreement. Implementation Services shall be provided remotely unless Customer's Support Plan provides for on-site deployment.

## **2.4 PROFESSIONAL SERVICES.**

From time to time, Customer may request, and 8x8 may agree to perform, work beyond the scope of the Implementation Services and/or Support Services to be provided by 8x8 under the Customer Agreement. The fees for such additional services (“**Professional Services**”) shall be based on 8x8’s standard time, material and travel rates, unless the parties agree otherwise in writing. Professional Services shall be subject to these Terms and such other terms as the parties may agree in a Statement of Work (“**SOW**”). Customer acknowledges that Professional Services are performed on a reasonable efforts basis, and that 8x8 cannot guarantee a particular outcome or result.

## **2.5 TECHNICAL SUPPORT.**

8x8 provides technical support for Services to its customers via telephone, e-mail and web chat. Support shall be available during 8x8’s regular business hours, unless otherwise specified in the applicable Support Plan. Customer is entitled to basic Support Services for all Subscription Services free of charge. 8x8 may charge Customer (at Professional Service rates) for its time and expenses in investigating and attempting to remedy service issues that are (a) related to Unsupported Services or (b) reasonably diagnosed as problems with Customer’s Environment rather than the Services.

## **2.6 UNSUPPORTED SERVICES.**

Notwithstanding anything the contrary herein, neither 8x8 nor any of its designated Affiliates shall be required to provide technical support for, and 8x8 disclaims all service level commitments, representations and warranties as to the performance of, Services that are either (a) used for a purpose or in a manner inconsistent with the Documentation (for example, as part of an alarm or paging system), (b) used with Unsupported Devices or with supported equipment that does not comply with Section 6.5; or (c) accessed in an Environment for which the Customer has waived a network assessment or failed to make requested adjustments under Section 2.2.3 above (the Services described in clauses (a) through (c) are referred to collectively as “**Unsupported Services**”).

## **3. BILLING AND PAYMENT.**

### **3.1 GENERAL.**

8x8 or a designated Affiliate shall bill Customer, and Customer shall pay when invoiced, all fees, charges, Taxes and other amounts in respect to Services and Equipment in accordance with this Section 3.

### **3.2 BILLING.**

Unless the Customer Agreement provides otherwise: (a) monthly Service Fees shall be billed in advance of each month’s Service, and toll and other usage charges shall be billed in arrears; (b) billing of Service Fees and other monthly recurring charges shall commence on the date that is seven days after Customer’s order of Subscription Services, or on the date 8x8 provisions such Services, whichever is earlier; (c) fees for Implementation and Professional Services and other one-time Service charges shall be billed upon order of the Services; and (d) shipping and related charges shall be billed upon shipment of the Equipment. Service Fees for any additional Subscription Services added during a calendar month shall be pro-rated based on the number of days billed during that month.

FOR AVOIDANCE OF DOUBT, UNLESS THE SERVICE AGREEMENT EXPRESSLY STATES OTHERWISE, BILLING WILL COMMENCE WITHIN SEVEN DAYS OF ORDER. The initial provisioning process, which creates Customer’s unique account and enables Customer to log-in and access the Services, is generally completed within this seven-day period.

### **3.3 PAYMENT AND CREDIT TERMS.**

Unless the Customer Agreement provides otherwise, all amounts due and payable under the Customer Agreement shall be payable via charge to the credit card account provided by Customer, and payment is due 15 days from the invoice date (Net 15). All Services provided to Customer on credit shall be subject to 8x8's review and approval of Customer's credit, and 8x8, in its reasonable discretion, may discontinue or limit Customer's credit at any time, require a deposit or bank guarantee, or place a limit on the amount of charges that Customer can incur before making payment. By providing credit card account information to 8x8, Customer authorizes 8x8 to charge that account for all amounts due and payable hereunder in respect of the Services and Equipment ordered by Customer, and Customer agrees to notify 8x8 promptly of any change to such information. Unpaid balances are subject to a late payment charge that accrues from the due date at the rate of 1.5% per month or the maximum amount permitted by applicable law, whichever is less.

### **3.4 TAXES.**

Customer is responsible for paying all taxes, levies, imports, duties, charges, fees or similar governmental assessments, including value-added tax ("**VAT**"), sales, use, withholding, public utility or universal service taxes or fees, and emergency services surcharges (*i.e.*, 911, E911, 999, etc.) assessed or assessable by any governmental, fiscal or other authority relating to the sale and provision of Services to Customer and Customer's use of Services (collectively, "**Taxes**"), other than those assessable against 8x8 based solely on its income. 8x8 shall invoice Customer for all such Taxes that 8x8 reasonably believes it has a legal obligation to collect and remit (or in respect of any obligations that 8x8 is permitted to pass on to its customers, as in the case of universal service fund contributions and similar Taxes) under applicable Law, and Customer shall pay all Taxes so invoiced. Any Taxes set forth in a quote or Service Order shall be calculated by 8x8 in good faith based on the service address or addresses provided by Customer, but shall be non-binding estimates only. If Customer asserts an exemption from any Taxes, Customer shall deliver to 8x8 a valid tax exemption certificate authorized by the appropriate taxing authority, and Customer shall be liable for any Taxes assessed prior to such delivery. In no event shall Customer make any deduction to any amount payable under the Customer Agreement for or on account of any Taxes and withholdings of any nature imposed by any governmental, fiscal or other authority, except as required by law. If Customer is required by Law to make any such deduction, it will (a) first notify 8x8 of such obligation, (b) furnish 8x8 with receipts evidencing remittance of the money, and (c) pay such additional amounts as are necessary to ensure receipt by 8x8 of the full amount that 8x8 would have received but for the deduction. Customer acknowledges that 8x8 may not invoice or charge value-added, goods and services or similar Taxes in certain jurisdictions that permit reverse charge of such Taxes (including Australia, for example). Customer shall account for and remit any such Taxes on Services and Equipment in such jurisdictions.

### **3.5 DISPUTED CHARGES.**

Customer agrees to pay all charges due and payable under the Customer Agreement without counter-claim, set-off or deduction, other than amounts disputed in accordance with this Section 3.5. To dispute a charge, Customer shall provide notice by email to [claims@8x8.com](mailto:claims@8x8.com) within thirty (30) days of the charge, setting forth the amount in dispute and the basis of the dispute in reasonable detail. Failure to so dispute a charge within such 30-day period shall constitute an irrevocable waiver of Customer's right to dispute the charge. The parties shall attempt to resolve the dispute in good faith for a period of 30 days from the notice, in accordance with the procedures for Claims under Section 16.2. If any charges remain in dispute at the end of the 30-day period, Customer shall pay the full amount due within 10 days, otherwise 8x8 may exercise any available remedies for breach (without regard to any further notice requirement or opportunity for cure under these Terms, which shall be deemed waived).

### **3.6 THIRD-PARTY SERVICES.**

8x8 may offer to bill and collect payment for services (such as broadband, MPLS, etc.) provided to Customer by a third-party provider pursuant to a separate service contract between Customer and such third-party ("**Third-Party Services**"). Customer authorizes 8x8 to bill, collect and remit to the Third-Party Service provider any amounts chargeable for Third-Party Services in accordance with the procedures applicable to Services under this Section 3. Customer acknowledges that: (a) 8x8 makes no representations or warranties regarding, and shall have no

responsibility or liability whatsoever for, Third-Party Services; (b) 8x8 shall not be deemed a reseller of Third-Party Services; and (c) Customer shall look solely to the Third-Party Service provider for any remedies relating thereto.

### **3.7 SERVICE FEE RATES; PRICING CHANGES.**

When 8x8 and Customer enter into a Service Order for Customer's initial order of Subscription Services in a country, the Service Fee rates specified in that Service Order establish the pricing for those Subscription Services in that country, and those rates shall not be increased for the duration of the then-current Term. Subject to the foregoing, 8x8 may increase Service Fee rates during any Renewal Term, but no more than five percent (5%) above the rates in effect at the end of the preceding Term, unless (a) 8x8 gives Customer notice of such increase at least 60 days prior to the commencement of that Renewal Term or (b) Customer materially reduces its quantity of Subscription Services. 8x8 may increase Service Fees for a customer on Month-to-Month Service at any time, up to the then-applicable list prices. Except as provided in this Section 3.7, the rates and pricing for Services and Equipment ordered in a Service Order shall not constitute a commitment of 8x8 to offer such rates and pricing for future orders.

### **3.8 MISCELLANEOUS.**

Unless otherwise provided in the Customer Agreement or prohibited by applicable Law:

**3.8.1 Refund Policy.** All prepaid fees and other payments by Customer under these Terms are non-refundable and non-creditable.

**3.8.2 Reactivation Fee.** 8x8 may charge Customer a fee in order to reactivate Customer's account following Customer's termination of Services or 8x8's termination or suspension of Services due to Customer's breach.

**3.8.3 Promotions.** From time to time, 8x8 may offer promotional rates or discounts for Services. Any promotion or discount codes must be provided to 8x8 at the time Services are ordered. Promotions and discounts may not be used cumulatively or applied retroactively, and may be changed or discontinued by 8x8 at any time in its sole discretion. In no event shall promotional pricing be guaranteed for a term longer than the term for which Customer has ordered the Services. Any promotional shipping rates (e.g. free shipping) provided in a Service Order shall only apply to the units of Equipment ordered in that Service Order.

## **4. TERM AND RENEWAL**

### **4.1 INITIAL TERM.**

The Customer Agreement shall become effective upon effectiveness of the initial Service Order or Service Agreement, as applicable, and shall remain in effect through the last day of the Initial Term, subject to automatic renewal or continuation under Section 4.2, and unless terminated sooner under Section 5.1.

### **4.2 RENEWAL.**

At the end of the Initial Term and each Renewal Term (as defined below), the Customer Agreement (including all Service Orders then in effect) shall be renewed automatically and continue in effect for an additional term of twelve (12) months (each, a "**Renewal Term**"), unless (a) either party gives notice of its election to terminate the Customer Agreement or any of the Services thereunder or (b) Customer gives notice of its election to continue the Services on a month-to-month basis (i.e. for automatically renewing, successive, one-month terms) at the list price for such Services ("**Month-to-Month Service**"), with notice in each case given at least 30 days prior to the end of the Term. Service Fee rates are subject to increase after the Initial Term as provided in Section 3.7.

Notwithstanding the foregoing, if the parties have entered into non-coterminous Service Orders, the renewal provisions of this Section 4.2 shall be applied separately to each set of coterminous Service Orders.

## 5. TERMINATION AND SUSPENSION

### 5.1 TERMINATION.

Except as otherwise provided in the Customer Agreement or prohibited by law, a party may terminate the Customer Agreement or any or all Services thereunder by giving notice to the other party as follows:

**5.1.1 Month-To-Month Service.** If Customer is on Month-to-Month Service, either party may terminate the Customer Agreement or any Services thereunder at any time. The termination shall be effective on the last day of the next calendar month after the notice was given, or such later date as may be specified in the notice.

**5.1.2 Material Breach.** Either party may terminate the Customer Agreement and all Services thereunder in the event of a material breach by the other party, provided such breach (if capable of cure) is not cured within 30 days' notice thereof by the non-breaching party. For avoidance of doubt, a material breach hereunder shall include (a) Customer's failure to make timely payment hereunder (subject to Section 3.5 above) and (b) Customer's breach of any representation or covenant under Section 10.2 or 10.3.

**5.1.3 Bankruptcy, etc.** Either party may terminate immediately the Customer Agreement and all Services thereunder if (i) the other party dissolves or becomes insolvent or bankrupt, (ii) the other party makes any assignment for the benefit of creditors or (iii) any bankruptcy, reorganization, insolvency or similar proceedings is instituted by or against the other party and not dismissed within 30 days.

**5.1.4 Compliance with Law.** 8x8 may terminate Services provided to a Customer Location if 8x8 determines, in good faith, such termination is necessary to comply with a court order or other Law applicable to Services at that Customer Location, *provided* 8x8 shall refund any unused prepaid Service Fees in respect of the terminated Services.

**5.1.5 For Convenience.** Customer may terminate the Customer Agreement or any Services thereunder, for any reason or for no reason, at any time during the Initial Term or a Renewal Term by giving 30 days' written notice, *provided* Customer shall be liable for any early termination charges under Section 5.2 below.

### 5.2 EARLY TERMINATION AND RELATED CHARGES.

**5.2.1 General.** All payment obligations under the Customer Agreement are non-cancellable, and quantities ordered cannot be decreased during the relevant Term, except as expressly provided in this Section 5 or elsewhere in the Customer Agreement.

**5.2.2 Early Termination Charges.** If the Customer Agreement and/or any of the Services ordered thereunder are cancelled or terminated by Customer for convenience, or by 8x8 due to Customer's breach, before the end of the Initial Term or then-current Renewal Term (as applicable), Customer shall pay 8x8 immediately upon termination an early termination charge equal to the monthly recurring charges associated with the terminated Service(s) (including Service Fees and applicable Taxes, but excluding any Regulatory Fees), multiplied by the number of months then remaining in the terminated Term. Any reduction in the number of lines, seats or other units of Service or downgrading of Services (for example, to a Service Plan with a reduced monthly Service Fee base rate) shall be treated as a termination of Service for purposes of this paragraph, and the early termination charge shall be calculated based on the reduction in monthly recurring charges attributable to such reduction or downgrading. CUSTOMER ACKNOWLEDGES THAT THE SERVICE FEE RATES OFFERED TO CUSTOMER ARE BASED UPON CUSTOMER'S AGREEMENT TO PAY EARLY TERMINATION CHARGES HEREUNDER AND WOULD HAVE BEEN SUBSTANTIALLY HIGHER ABSENT SUCH AGREEMENT.

**5.2.3 Disconnect Fees and Other Charges.** The early termination charges in this Section 5.2 shall not apply to any Services that are subject to promotional terms that expressly waive, in writing, early termination charges or provide for disconnect fees to be paid in lieu of such charges. If such terms apply, Customer shall pay the disconnect fees set forth in [Annex 3 \(Fees and Charges\)](#) to these Terms in lieu of any early termination charges that would otherwise apply. Notwithstanding anything to the contrary herein, upon early termination of Services,

Customer shall also be liable for payment in full of the unpaid balance under an 8x8 Extended Payment Plan or similar financing arrangement as provided in [Annex 3 \(Fees and Charges\)](#).

### **5.3 SUSPENSION OF SERVICE.**

Without limiting 8x8's rights or remedies hereunder, 8x8 may suspend some or all Services if 8x8 determines, in its reasonable judgement, that the Services are being used (a) in a fraudulent or illegal manner or (b) in a manner that is likely to (i) disrupt or compromise the integrity or security of the 8x8 Platform, the network of 8x8 or any 8x8 Partner, or the privacy of any 8x8 customers or (ii) cause imminent and material damage to 8x8 or any 8x8 Partner, but only for as long as reasonably necessary to mitigate the risk of such harm. 8x8 shall notify Customer in advance of such suspension, if practicable, and otherwise promptly thereafter. Suspension of Services shall not release Customer from its obligations under the Customer Agreement; *provided*, Customer shall receive credit for the full suspension period if Customer is determined not to have breached the Customer Agreement.

## **6. EQUIPMENT AND SHIPPING**

### **6.1 GENERAL; SHIPPING.**

Customer may order Equipment from 8x8 from time to time for use with the Services by entering into Service Orders with 8x8. Customer shall pay all shipping and related charges unless otherwise stated in a Service Agreement. All Equipment shipments are F.C.A. (free carrier), and title and risk of loss or damage shall pass to Customer upon delivery to the carrier. Customer shall be deemed the importer of Equipment for all purposes, and shall be liable for any applicable customs, import/export duties, clearance charges and other Taxes (including VAT), in connection with international shipments. 8x8 may refer Customer to a local or regional Equipment vendor for Customer Locations outside the Primary Market.

### **6.2 WARRANTY AND RETURNS.**

8x8 shall pass through to Customer a 12-month warranty on Equipment (or, if applicable any extended warranty procured by 8x8), if permitted by the manufacturer. 8x8 will replace defective Equipment covered by warranty at no charge and will pay the return shipping costs, *provided* Customer returns Equipment in its original packaging or equivalent and obtains a return authorization number from 8x8 prior to returning Equipment.

### **6.3 LOST, STOLEN, ALTERED OR BROKEN EQUIPMENT.**

During the Term, Customer shall not modify the Equipment in any manner without the express written consent of 8x8 and shall only use the Equipment in connection with the Services. Customer shall be responsible for all lost, stolen or broken equipment (except to the extent covered by warranty) and shall promptly notify 8x8 of any such loss or theft and cooperate with 8x8 as reasonably requested to prevent unauthorized use of lost or stolen Equipment.

### **6.4 EQUIPMENT LEASING COMPANIES.**

8x8 may refer Customer to one or more unaffiliated companies that have agreed to provide Equipment leasing options to 8x8 customers (a "**Leasing Company**"). The terms of any such leasing arrangement shall be governed solely by Customer's contract with the Leasing Company. 8x8 does not endorse, guarantee the services of, or have control over such Leasing Companies and disclaims all liability in connection with their services. The use of any financial information, Personal Data and other information disclosed to or collected by Leasing Companies is governed by such Leasing Company's own privacy policies and not by 8x8's Privacy Policy.

### **6.5 UNSUPPORTED DEVICES, ETC.**

Customer shall be responsible for ensuring that any Equipment acquired from a third-party vendor is in reasonable working condition and configured in accordance with 8x8's technical requirements. Customer shall not access or use the Services with any equipment or devices other than supported Equipment, without 8x8's consent. 8x8 shall

have no liability whatsoever for Customer's access or use of the Services with any equipment or device that is not supported by 8x8 (an "**Unsupported Device**"), even if 8x8 has consented to Customer's use of such device. See [www.8x8.com/CommunicationsSolutions/Equipment](http://www.8x8.com/CommunicationsSolutions/Equipment) for a list of supported equipment.

## **7. CONFIDENTIALITY**

### **7.1 DEFINITION.**

Either party may, directly or through an Affiliate, vendor, subcontractor or other 8x8 Partner or advisor, or any workforce member or agent of the foregoing (collectively, "**Representatives**"), disclose or otherwise make available to the other party or its Representatives (collectively, the "**Recipient**") information concerning the disclosing party or its Representatives (collectively, the "**Discloser**") which the Discloser indicates is confidential or proprietary, or which, by its nature, would reasonably be expected to be confidential or proprietary (collectively, "**Confidential Information**"), including, for example, trade secrets, technical information, pricing data and product plans, but excluding Customer Data (which is addressed in Section 8 below, applicable provisions of the Regional Supplements and the Privacy Policy). In addition, the pricing and other terms of the Customer Agreement shall be deemed the Confidential Information of each party. Notwithstanding the foregoing, Confidential Information shall not include any information that the Recipient can demonstrate (x) is already or later becomes disclosed to the general public other than through the fault or negligence of Recipient or (y) is lawfully obtained by Recipient from a third party which has the right to transfer or disclose it.

### **7.2 OBLIGATIONS.**

The Recipient agrees: (a) to keep the Discloser's Confidential Information confidential and disclose it only (i) to its Representatives to whom such disclosure is reasonably necessary to accomplish the purpose for which the Confidential Information was disclosed to the Recipient and who are bound to reasonable confidentiality obligations with respect to such Confidential Information, (ii) in response to a judicial order or other lawful process, as and to the extent required by such order or process or (iii) as approved in writing by the Discloser; (b) not to use Discloser's Confidential Information except for the purpose(s) for which the Confidential Information was disclosed or as approved in writing by the Discloser; and (c) to protect the confidentiality of the Discloser's Confidential Information with the same degree of care as Recipient uses to protect its own Confidential Information of like kind, but in no event less than reasonable care. Each party shall use reasonable efforts to ensure that its Representatives observe these obligations as if they were parties to the Customer Agreement.

### **7.3 SURVIVAL.**

Each party's obligations under this Section 7 shall survive any termination or expiration of the Customer Agreement and remain in effect for three (3) years thereafter or, in the case of trade secrets, as long as permitted by applicable Law. The parties agree that, in the event this Section 7 conflicts or is inconsistent with a non-disclosure or confidentiality agreement (an "**NDA**") previously entered into by the parties, this Section 7 shall govern as to disclosures from and after the effective date of the Customer Agreement.

## **8. DATA PROTECTION AND SECURITY**

### **8.1 PRIVACY POLICY.**

Customer acknowledges that it has read and understood 8x8's Privacy Policy Covering Customers (available at [www.8x8.com/terms-and-conditions/privacy-policy](http://www.8x8.com/terms-and-conditions/privacy-policy)) (the "**Privacy Policy**").

### **8.2 GENERAL.**

8x8 shall maintain commercially reasonable administrative, physical and technical safeguards designed to protect the confidentiality and integrity of Customer Data. To the extent any Customer Data includes Personal Data, 8x8 shall comply with any applicable data protection Laws and any other specific requirements set out in the relevant Regional Supplements.

### **8.3 CUSTOMER DATA.**

**8.3.1 Limited License.** Customer grants 8x8 a non-exclusive and non-transferable (except as provided herein) license and right to access Customer's account(s) and to collect, process, transfer, use, modify, reproduce, store, record, transmit, distribute, display, view, print, translate and disclose Customer Data (which may include Personal Data of Agents, other users of the Services and other third parties), subject to the limitations and conditions set forth in the Privacy Policy and solely for the purposes set forth therein.

**8.3.2 Permitted Uses.** Without limiting Section 8.3.1 above, Customer acknowledges and agrees that 8x8 may, subject to the terms and conditions of the Privacy Policy: (a) disclose and transfer Customer Data to an 8x8 Affiliate or other 8x8 Partner as and to the extent necessary to provide Services to Customer; (b) disclose Customer Data to courts, government agencies and other Third Parties as and to the extent required by Law, including in response to subpoenas, court orders and other legal process; (c) collect and aggregate Customer Data with data from other customers, and use and disclose Customer Data in anonymized form, including for the purpose of (i) compliance with reporting requirements under applicable Laws, (ii) quality control and assurance or (iii) improving the Services and developing new services; and (d) collect, use and disclose Customer Data to third parties when 8x8 determines, in its reasonable judgement, that such disclosure is necessary to protect the safety of an Agent or another individual, to investigate suspected fraud, or to trace debtors.

### **8.4 CUSTOMER RESPONSIBILITIES.**

Customer shall use all reasonable efforts to prevent unauthorized access to and use of Services and agrees to notify 8x8 promptly of any such unauthorized access or use or other breach of security relating to its account. Among other safeguards, 8x8 recommends that Customer instruct its Agents to (a) choose robust password combinations, change their passwords regularly and not disclose their passwords except to authorized 8x8 Support agents, and (b) perform a "log off" / exit of their accounts at the end of each session.

### **8.5 DATA STORAGE.**

Customer acknowledges that the Services are not intended and should not be used for long-term data storage. Customer is encouraged to back-up regularly any Customer Data that it wishes to retain and use other than in connection with the Services. 8x8 shall not be responsible for any Customer Data exported from the Services, including without limitation via third-party integrations, or storage on devices or external media or accounts. 8x8 reserves right to periodically purge Customer Data from its servers, subject to any data retention requirements under applicable Laws or the Customer Agreement.

### **8.6 INTERNET.**

Customer acknowledges that its use of the Services requires the transmission of electronic data over the Internet and various other networks that are not owned or operated by, or otherwise under the control of, 8x8, and that 8x8 cannot ensure that such transmissions will not be accessed by unauthorized parties. Except as expressly provided in the Customer Agreement, 8x8 shall not be not responsible or liable for any delay, loss, alteration or interception of Customer Data in the course of its transmission through and between networks not owned and/or operated by 8x8.

## **9. SERVICE LIMITATIONS**

### **9.1 AVAILABILITY.**

8x8 shall use commercially reasonable efforts to make the Services available continuously and without interruption at all times during the Term, other than during scheduled maintenance and repair, and to minimize the loss of data in Customer's communications. However, Customer acknowledges and agrees that the Services will not be uninterrupted, error-free or available 100% of the time. 8x8 shall have no obligation to provide credit allowances for interruption of the Services except as expressly provided in the Customer Agreement.

## **9.2 QUALITY OF SERVICE.**

IP-based communications have inherent limitations relative to analog and other traditional communications methods. While 8x8's Services have been engineered to address and manage these limitations, 8x8 cannot guarantee that all communications transmitted to or from the 8x8 Platform (including voice, facsimile and text messages) will be delivered without loss of data or at all. Customer acknowledges and understands that call quality depends not only on the specification and availability of the Broadband service to which Customer is connected but also on the telecommunications network to which the other parties are connected.

**9.3 ALARM SIGNALS; CRITICAL SAFETY APPLICATIONS.** CUSTOMER UNDERSTANDS THAT THE SERVICES ARE NOT AUTHORIZED OR INTENDED TO BE USED TO CARRY ALARM SIGNALS OR FOR USE IN ANY HIGH-RISK, CRITICAL SAFETY OR OTHER APPLICATIONS WHERE ANY FAILURE, INTERRUPTION OR MALFUNCTION MAY REASONABLY BE ANTICIPATED TO RESULT IN BODILY INJURY, LOSS OF LIFE OR CATASTROPHIC DAMAGE TO PROPERTY.

## **9.4 USE OUTSIDE THE PRIMARY MARKET.**

Although 8x8 sells Services primarily to customers domiciled in the Primary Market, 8x8's Services are nomadic by nature and may be accessible through an Internet connection virtually anywhere a broadband connection is available. Regulation of IP-based telephony services varies significantly from jurisdiction to jurisdiction. For example, some countries have prohibited IP-based telephony services that interconnect with the local PSTN, and others require the user to obtain a specific consent or license. In addition, internet service providers (ISPs) in some countries may impose contractual restrictions on the use of their services for IP-based telephony. Methods of enforcement range from number blocking and suspension of internet service to fines and criminal penalties. Before ordering Services for use in a jurisdiction outside the Primary Market, Customer is urged to consult with counsel for advice regarding its proposed use of the Services in that jurisdiction. Customer shall be solely responsible and liable for any violation of local Laws or breach of third-party contract terms resulting from Customer's use of the Services outside the Primary Market, regardless of whether 8x8 has consented to such use.

## **9.5 EMERGENCY SERVICES.**

8x8 supports access to emergency numbers for traditional fax and voice service plans in the United States, United Kingdom, Canada, Australia and other jurisdictions, as and to the extent provided in the Regional Supplements. The use of emergency numbers with 8x8's Services is subject to limitations when compared to traditional wireline services. PLEASE SEE THE REGIONAL SUPPLEMENTS FOR IMPORTANT INFORMATION CONCERNING ANY EMERGENCY SERVICES PROVIDED IN YOUR SERVICE PLAN, AS WELL AS PROVISIONS THAT LIMIT 8X8'S LIABILITY IN CONNECTION WITH THESE SERVICES. 8X8 RECOMMENDS THAT CUSTOMER AND ITS AGENTS ALWAYS HAVE AN ALTERNATIVE MEANS OF ACCESSING EMERGENCY SERVICES OTHER THAN THROUGH 8X8'S SERVICE.

## **9.6 NON-8X8 APPLICATIONS.**

**9.6.1 Continued Interoperability.** Certain Services may contain features designed to interoperate with Non-8x8 Applications. 8x8 cannot guarantee the continued availability of such Service features and may cease providing them without entitling Customer to any refund, credit or other compensation. Any custom work performed by 8x8 to enable interoperability with a Non-8x8 Application shall be charged as Professional Services and undertaken on a commercially reasonable efforts basis.

**9.6.2 No Warranty or Liability.** Unless the Customer Agreement provides otherwise: (a) 8x8 does not warrant and is not responsible for any aspect of Non-8x8 Applications, regardless of whether they are designated by 8x8 as "certified," "approved" or "recommended"; (b) Customer's procurement and use of Non-8x8 Applications is solely between Customer and the applicable third-party provider; and (c) 8x8 shall not be required to provide support for Non-8x8 Applications. If Customer installs or enables Non-8x8 Applications or services for use with a Subscription Service, Customer agrees that 8x8 may allow the third-party providers to access Customer Data as required for the interoperability of such Non-8x8 Applications with the Subscription Service, and 8x8 shall not be responsible for any disclosure, modification or deletion of Customer Data resulting therefrom.

## 9.7 CUSTOMIZATIONS.

8x8 may agree or refuse, in its sole discretion, any Customer requests for custom modifications or additions to the Services or other aspects of the 8x8 Platform (“**Customizations**”) for Customer’s benefit. Any Customization work performed by 8x8 shall be charged as Professional Services and shall be undertaken on a reasonable efforts basis. Customer acknowledges that (a) 8x8 does not provide support for Customizations under standard Support Plans; (b) a Customization may adversely impact other aspects of the Services, or their overall functionality or security; and (c) future upgrades and modifications to the 8x8 Platform may impair the functionality of a Customization.

## 9.8 BETA SERVICES.

From time to time, 8x8 may make available, to some or all of its customers, new or modified Services, or features or functionalities of existing Services, which are designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a similar description (“**Beta Services**”), prior to their general release. Beta Services are intended for evaluation purposes only and not for production use, are not supported by 8x8, and may be subject to additional terms. Beta Services are not considered “Services” under the Customer Agreement for purposes of any representations, warranties, commitments or agreements of 8x8; however, all restrictions and limitations applicable to Customer’s use of Services shall apply to Beta Services. 8x8 may discontinue Beta Services at any time in its sole discretion and may never make them generally available. 8x8 will have no liability for any harm or damage arising out Customer’s use of a Beta Service.

## 10. USE RESTRICTIONS AND CUSTOMER RESPONSIBILITIES

### 10.1 CUSTOMER ACCOUNTABILITY FOR USE OF SERVICES.

Customer shall be responsible and liable for all access and use of the Services by Customer’s Agents or otherwise through Customer’s account (“**Customer Use**”), other than unauthorized activities and charges resulting from the gross negligence or wilful misconduct of 8x8 or an 8x8 Partner. Customer understands and acknowledges that the right of its Agents to access and use the Services shall be subject to each Agent’s acceptance of 8x8’s standard Service Terms of Use (“**TOU**”), as amended from time to time (available at <https://www.8x8.com/terms-and-conditions/>).

### 10.2 COMPLIANCE WITH LAW.

Customer agrees to comply with all applicable United States and other international, national, state, provincial and local laws, regulations, codes, ordinances, treaties, conventions, and court and administrative orders and rulings (collectively, “**Laws**”) in relation to its access and use of the Services and the 8x8 Platform generally. Customer shall be solely responsible for familiarizing itself with such Laws and shall not treat or rely on any statements, communications or materials provided by 8x8 or its Representatives as legal advice.

Without limiting the foregoing:

**(a) Import and Export.** Customer shall comply with all export and import Laws of the United States and other jurisdictions applicable to its use of the 8x8 Platform and to its use and transport of Equipment. Customer shall not access or use any Service in a United States embargoed country. Customer represents and warrants that it is not named on any United States government denied-party list.

**(b) Telemarketing, Etc.** Many jurisdictions have Laws (such as the U.S. Telephone Consumer Protection Act of 1991, for example) that significantly restrict telephone solicitations (i.e., telemarketing) and the use of automatic dialing systems, artificial or pre-recorded voice messages, SMS text messages and facsimile communications. Customer agrees that Customer is solely responsible for (i) ensuring its use of the Services complies with all such Laws, (ii) obtaining any required consents from the parties to be contacted and for (iii) maintaining an internal “do not call” list to prevent contacting parties that do not wish to receive further communications from Customer. CUSTOMER IS URGED TO SEEK THE ADVICE OF COUNSEL PRIOR TO PURCHASING OR USING OF THE SERVICES FOR MARKETING OR SOLICITATION PURPOSES.

(c) **Voice Recording and Call Monitoring.** Many jurisdictions require advance notice or consent for electronic voice recording and/or third-party call monitoring (a feature of Barge-Monitor-Whisper, for example). Certain Services allow Customer to use pre-recorded call monitoring and recording notification messages (which are intended to comply with notice requirements under applicable United States state laws), although Customer remains solely responsible for compliance with all applicable Laws.

### 10.3 OTHER USE RESTRICTIONS.

Customer agrees to comply, and to cause its Agents and other users of the Services through its account, to comply with the provisions of [Annex 1 \(Use Restrictions\)](#) to these Terms

### 10.4 UNLIMITED PLANS.

8x8's Service Plans that offer unlimited minutes of PSTN calls, unlimited faxing or unlimited Text Messages are for reasonable business use only. Any use in violation of Section 10.3 above shall be presumed to be an unreasonable business use.

### 10.5 CUSTOMER CONTENT.

Customer acknowledges that 8x8's role with respect to the content of communications and data transmitted, received and/or stored by Customer through the 8x8 Platform ("**Content**") is that of a passive conduit. As such, Customer acknowledges that neither 8x8 nor any 8x8 Partner shall be responsible for Content and shall have no involvement in determining, drafting, editing, or creating Content or in determining the recipients of such communications or the numbers to which they are sent.

### 10.6 REGISTRATION INFORMATION.

Customer shall ensure that all of its account and registration information (collectively, "**Registration Information**") – including, for example, Customer's legal name, address, email address, telephone number and payment information, and the service address and other registration information of its Agents – is accurate, current and complete at all times during the Term. Customer agrees to promptly notify 8x8 of any changes in Registration Information and to verify such information upon reasonable request from 8x8. Without limiting the foregoing, Customer shall be responsible for the accuracy, quality and legality of all Personal Data included in the Registration Information and the means by which Customer acquired such Personal Data.

## 11. CHANGES TO SERVICES AND TERMS

### 11.1 SERVICE CHANGE.

8x8 shall be permitted to perform upgrades and make other modifications to the Subscription Services ordered by Customer (each, a "**Service Change**") from time to time, as long as such Service Changes do not materially reduce the overall functionality or security of the Service (determined based on customary usage in the Primary Market). 8x8 will use commercially reasonable efforts to notify Customer in advance any such Service Change.

### 11.2 CHANGE IN TERMS.

8x8 may amend or make modifications to these Terms from time to time by posting notice of such changes to [www.8x8.com/terms-and-conditions](http://www.8x8.com/terms-and-conditions), which changes shall be effective upon posting; *provided, however*, 8x8 shall give Customer at least 30 days' prior written notice of any change that would materially reduce Customer's rights or benefits, or materially increase Customer's obligations or liability, under the Customer Agreement (each, a "**Material Change**"). Customer shall have the right to opt out of any Material Change by sending notice of objection to [notice@8x8.com](mailto:notice@8x8.com) within 30 days of notice of the Material Change, in which case the Material Change shall not apply for the duration of Customer's then-current Term. However, if Customer delivers such an objection notice, 8x8 shall thereafter have the right to terminate the Customer Agreement by giving Customer 30 days' written notice of termination. Customer acknowledges that 8x8 may post additional Regional Supplements from

time to time and that the addition of such Regional Supplements to these Terms shall not itself constitute a Material Change.

## **12. INTELLECTUAL PROPERTY RIGHTS AND LICENSES.**

### **12.1 INTELLECTUAL PROPERTY RIGHTS.**

Subject only to limited rights to access and use the Service as expressly stated herein, all rights, title and interest in and to the 8x8 Platform, including intellectual property rights, will remain with 8x8 and/or its Affiliates and belong exclusively to 8x8 and/or its Affiliates. To the maximum extent permitted by Law, 8x8 shall own all intellectual property rights in and to all software code, Service configuration designs and other work product produced or developed by 8x8 in the course of providing Services hereunder to Customer (including Customizations and other deliverables under a SOW), except to the extent (a) such work product embodies Customer's pre-existing intellectual property or (b) the parties expressly agree otherwise in a Service Agreement.

### **12.2 SOFTWARE.**

8x8 may from time to time make available software applications for download and use by its customers in connection with the Subscription Services ("**Software**"). The Software may include open source and other software components distributed under third-party licenses that impose terms and conditions on its use ("**Third-Party License Terms**"). 8x8 agrees to make such Third-Party License Terms available to Customer in the manner required by the Third-Party License Terms, and Customer agrees to comply with such Third-Party License Terms. Subject to the foregoing, 8x8 grants Customer and its Agents a limited, non-exclusive, non-transferable license to use such Software during the term of the Customer Agreement solely in connection with Customer's use of the Services.

### **12.3 USE OF FEEDBACK.**

Customer hereby assigns to 8x8 all right, title and interest (including intellectual property rights) in and to any new feature improvement, suggestion, enhancement request, recommendation, correction, idea or other feedback that Customer may provide to 8x8 relating to the Services or 8x8's operations (collectively, "**Feedback**"), and Customer agrees that 8x8 shall be free to use any ideas, concepts, know-how or techniques contained in such Feedback for any purpose whatsoever without compensation to Customer.

## **13. REPRESENTATIONS AND WARRANTIES**

### **13.1 8X8 REPRESENTATIONS AND WARRANTIES.**

8x8 (a) represents and warrants to Customer that 8x8 has the power and authority to enter into and perform its obligations under the Customer Agreement, (b) warrants that 8x8 shall perform Implementation Services and Professional Services in a professional and workmanlike manner and with reasonable skill and care and (c) warrants that the Subscription Services shall substantially conform to the Documentation and (d) warrants that the Subscription Services shall perform to any agreed upon service levels. For avoidance of doubt, the foregoing representations and warranties do not apply to any free trial Services, Beta Services or Unsupported Services.

### **13.2 EXCLUSIVE REMEDY.**

Unless other provided in the Customer Agreement, Customer's sole and exclusive remedy for breach of the warranties in clauses (c) and (d) of Section 13.1 is repair, replacement, credit or refund, to be determined at the election of 8x8.

**13.3 DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 13.1, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, 8X8 MAKES NO WARRANTIES AND DISCLAIMS ALL WARRANTIES IN RELATION TO THE SERVICES AND EQUIPMENT, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-

INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, 8x8 DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR AVAILABLE 100% OF THE TIME, OR THAT ALL ATTEMPTED VOICE, FAX, TEXT AND OTHER COMMUNICATIONS WILL BE DELIVERED.

#### **13.4 CUSTOMER REPRESENTATIONS AND WARRANTIES.**

Without limiting any other provision of these Terms, Customer represents and warrants to 8x8 that (a) Customer has the power and authority to enter into and perform its obligations under the Customer Agreement, (b) Customer is not relying upon any statements, commitments, representations or warranties other than those expressly set forth in the Customer Agreement and Documentation, (c) Customer is a bona fide business and is procuring the Services for its own internal business use only and not as agent or on behalf of any third party, (d) Customer has obtained all third-party consents, licenses, authorizations and/or permits required in connection with its proposed use of the Services; (e) Customer has not received or been offered any bribe, kickback or illegal or improper payment, gift or thing of value from any of 8x8's employees or agents in connection with the Customer Agreement or the Services and (f) Customer's purchases are not contingent on the delivery of any future functionality or features, except otherwise expressly provided in the Customer Agreement.

### **14. INDEMNIFICATION**

#### **14.1 BY CUSTOMER.**

Customer agrees to defend 8x8, its Affiliates and their respective Representatives from and against any action, claim, demand, suit, investigation, inquiry or proceeding (collectively, "**Claims**") threatened or brought against 8x8 or any of its Affiliates or their respective Representatives by any third party that arises out of or results from (a) Content transmitted on the 8x8 Platform or (b) any actual or alleged (i) Customer Use in violation of applicable Laws or breach of any third-party contract terms to which Customer is subject or (ii) actions or omissions that would constitute a material breach of the Customer Agreement (including any breach of Section 10 (Use Restrictions and Customer Responsibilities) of these Terms), without regard to any notice or cure right hereunder. Customer agrees to indemnify and hold harmless 8x8, its Affiliates and their Representatives against any damages, attorneys' fees, defense costs and other losses (collectively, "**Losses**") payable by 8x8 pursuant to the adjudication or settlement of, or otherwise incurred by 8x8 in connection with, any such Claims.

#### **14.2 BY 8X8.**

8x8 agrees to defend Customer, any Affiliate of Customer that has ordered Services under the Customer Agreement, and their respective Representatives from and against any Claims threatened or brought against Customer, such Affiliate or their Representatives by any third party alleging that the Services, when used in accordance with the Documentation, infringe or misappropriate any patent, trademark or copyright enforceable under the laws of the United States, Canada, Australia, United Kingdom or the European Community. 8x8 agrees to indemnify and hold harmless Customer, such Affiliate and/or such Representatives against any Losses payable by them pursuant to the adjudication or settlement of, or otherwise incurred by Customer in connection with, any such Claims.

Notwithstanding the foregoing, 8x8's obligations hereunder shall not apply to infringement Claims that are based upon: (a) the combination, operation or use of a Service with any third-party product, device, service or software not sold or provided to Customer by 8x8; (b) the alteration or modification of a Service by any person other than 8x8's agents and authorized subcontractors; or (c) 8x8's alteration or modification of a Service at Customer's request. If such a Claim of infringement is brought or threatened, 8x8 shall, at its sole option and expense, either: (i) to procure a license that will protect Customer against such Claim without cost to Customer; (ii) to modify or replace the portions of the Service as needed to avoid infringement without impairing functionality; or (iii) if neither (i) nor (ii) is commercially feasible, terminate the Customer Agreement and refund any prepaid Service Fees. The rights and remedies granted Customer under this Section 14.2 state 8x8's entire liability, and Customer's exclusive remedy, with respect to any infringement Claim.

### **14.3 PROCEDURE.**

An indemnified party shall (a) provide the indemnifying party prompt written notice of such Claim as soon as the indemnified party becomes aware of the Claim, (b) permit the indemnifying party to have sole and exclusive control over the defense and settlement of any such Claim, if it elects, and (c) provide reasonable assistance to the indemnifying party in connection therewith; provided, the indemnifying party shall not enter into any settlement agreement that would result in any payment or other obligation, or restriction on the business of, the indemnified party without its prior written consent.

## **15. LIMITATION OF LIABILITY**

**15.1 EXCLUSION OF CONSEQUENTIAL DAMAGES.** EXCEPT AS EXPRESSLY CONTEMPLATED BY SECTION 14, TO THE MAXIMUM EXTENT SUCH DAMAGES CAN BE EXCLUDED UNDER APPLICABLE LAW, NEITHER 8X8, ITS AFFILIATES OR ANY OTHER 8X8 PARTNERS, NOR ANY OF THEIR REPRESENTATIVES, SHALL BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR COVER DAMAGES, LOSS OF PROFITS, REVENUES OR GOODWILL, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, OR DELAY IN PERFORMANCE, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE, FROM OR IN CONNECTION WITH THE CUSTOMER AGREEMENT OR THE SERVICES PROVIDED THEREUNDER, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**15.2 LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF 8X8 AND ITS AFFILIATES UNDER THE CUSTOMER AGREEMENT, OR ARISING OUT OF THE SERVICES PROVIDED THEREUNDER, TO ANY AND ALL PERSONS, WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY OR OTHERWISE, SHALL IN NO CASE EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER AND ITS AFFILIATES TO 8X8 AND ITS AFFILIATES FOR THE SERVICES PROVIDED HEREUNDER (EXCLUDING EQUIPMENT PURCHASES) DURING THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY (A) ON A CUMULATIVE BASIS (RATHER THAN PER INCIDENT), (B) REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) REGARDLESS OF WHETHER THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

### **15.3 RELIANCE ON LIMITATIONS.**

Customer acknowledges and agrees that the essential purpose of Sections 15.1 and 15.2 is to allocate the risks under the Customer Agreement between the parties and to limit 8x8's potential liability in light of the agreed-upon pricing for the Services, which would have been substantially higher if 8x8 were to assume the risk of Customer's incidental or consequential damages, or other types of losses listed in Section 15.1, or the risk of liability in excess of the limit described above. 8x8 relied on these limitations when offering to provide the Services to Customer.

## **16. DISPUTES**

### **16.1 GENERAL.**

The provisions of this Section 16 shall apply to any and all Claims that either party may intend to assert against the other party, its Affiliates or any of their respective Representatives, other than (a) an injunction to prevent the disclosure or use of its Confidential Information, or a provisional remedy related to intellectual property infringement or misappropriation Claims, (b) disputes regarding Personal Data that are governed by procedures specified in the Privacy Policy, (c) Claims of 8x8 relating to Customer's non-payment of undisputed charges and (d) Claims that the other party is required to defend under Section 14 (all other Claims are referred to as "**Covered Claims**"). For the avoidance of doubt, 8x8 remains responsible for the actions and omissions of its Affiliates and Representatives.

## **16.2. PREFILING NOTICE OF CLAIM.**

Before either party initiates an arbitration, court or other action, suit or proceeding (a “**Proceeding**”) against the other party in respect of any Covered Claim, and subject to applicable procedures in any relevant Regional Supplement, such party agrees to send a written notice describing in sufficient detail the specific issues in dispute (and referencing the specific portions of the Customer Agreement which are allegedly being breached, if applicable) and to work with the other party diligently and in good faith to attempt to resolve the dispute. Any such notice directed to 8x8 shall be sent to [claims@8x8.com](mailto:claims@8x8.com). Within 30 days of such notice, the parties shall cooperate to ensure knowledgeable executives of each party hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the dispute. If the parties fail to resolve the dispute within 30 days of such notice, either party may thereafter initiate a Proceeding in accordance with these Terms (and without satisfying any further notice or cure period hereunder). NEITHER PARTY SHALL COMMENCE A PROCEEDING UNLESS AND UNTIL IT HAS COMPLIED WITH THIS SECTION 16.2, AND THIS SECTION 16.2 MAY BE PLEADED AS A FULL AND COMPLETE BAR AND DEFENSE TO, AND MAY BE USED AS A BASIS FOR AN INJUNCTION AGAINST, ANY PROCEEDING INSTITUTED IN BREACH OF THIS SECTION.

## **16.3 TIME LIMITATION.**

Customer agrees that regardless of any statute or law to the contrary, any litigation or arbitration arising out of or related to use of the Services or the Customer Agreement must be initiated through the filing of a complaint no later than one year after the earlier of (a) the date such claim or cause of action arose or (b) termination of the Customer Agreement, or be forever barred.

## **16.4 MANDATORY ARBITRATION (U.S. CLAIMS)**

**16.4.1 GENERAL.** IF CUSTOMER IS DOMICILED IN THE UNITED STATES, OR THE COVERED CLAIMS RELATE TO SERVICES PROVIDED IN THE UNITED STATES, CUSTOMER AND 8X8 AGREE TO ARBITRATE ANY AND ALL SUCH COVERED CLAIMS IN ACCORDANCE WITH THIS SECTION 16.4. PLEASE READ THIS PROVISION CAREFULLY. This Section 16.4 shall not apply if Customer is domiciled outside the United States and Services are provided outside of the United States.

**16.4.2 ADMINISTRATION; VENUE.** CLAIMS SUBJECT TO THIS SECTION 16.4 SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION ADMINISTERED BY AMERICAN ARBITRATION ASSOCIATION (“**AAA**”). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This agreement to arbitrate also requires Customer to arbitrate claims against other parties relating to Services provided or billed to Customer if Claims are asserted against 8x8 in the same proceeding. Arbitration will be conducted under the AAA’s published commercial arbitration rules. Customer and 8x8 agree to bear their own fees, costs, and expenses, including those for any attorneys, experts, and witnesses. The place of arbitration shall be Santa Clara County, California U.S.A. The language of the arbitration shall be English.

## **17. MISCELLANEOUS**

### **17.1 NOTICE.**

Except as expressly stated otherwise in the Customer Agreement, any notice to be given under these Terms may be provided by e-mail, and each party hereby consents to receiving notice by e-mail. Either party may change its designated notice address by giving notice to the other party. 8x8 recommends that Customer’s designated email address for notice be a group address (such as [billing@customer.com](mailto:billing@customer.com)) so that notices are reviewed promptly and not missed due to the absence or departure of one individual. Notices shall be deemed effective (a) upon personal delivery, (b) on the fifth business day after it is sent by regular mail, or (c) on the day it is sent by e-mail, if delivered on a business day before 5 pm Pacific Time, and otherwise on the next business day.

Customer’s address for notice shall be the e-mail address specified by Customer in connection with its initial order of Services, unless otherwise stated in a Service Agreement.

8x8's e-mail address for notice is: (1) [claims@8x8.com](mailto:claims@8x8.com) for billing disputes under Section 3.5, notice of breach under Section 5.1 and notice of Claims under Section 16; and (2) [notice@8x8.com](mailto:notice@8x8.com) for all other notices under these Terms. 8x8's physical address for notice is 8x8, Inc., 2125 O'Nel Drive, San Jose, CA 95131, Attn: Customer Service.

## **17.2 GOVERNING LAW; EXCLUSIVE JURISDICTION.**

These Terms and the Customer Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its choice or conflicts of law rules. Subject to Section 16, Customer and 8x8 agree to submit to the jurisdiction of the state and federal courts within Santa Clara County, California (which jurisdiction shall be exclusive if Customer is domiciled in the United States), and waive any objection as to venue or inconvenient forum in such courts.

## **17.3 SURVIVAL.**

Sections 5, 7, 14, 16 and 17 shall survive the expiration or termination of the Customer Agreement, along with applicable provisions governing payment obligations and any other provision that by its terms would reasonably be expected to survive.

## **17.4 FORCE MAJEURE (EVENTS BEYOND OUR CONTROL).**

Except as otherwise expressly provided in the Customer Agreement, neither party shall be considered in breach of the Customer Agreement as the result of any failure or delay in the performance of such party's obligations hereunder that is caused by or results from events beyond such party's reasonable control, including, for example, acts of God (including fire, flood, hurricane, earthquake and tsunami), riot, war, terrorism, government actions and intervention, embargoes, strikes, destruction of facilities, late or failed delivery by suppliers, unavailability of power or Internet services, or network or carrier issues; provided, the foregoing shall not apply to either party's payment obligations hereunder.

## **17.5 ENTIRE AGREEMENT.**

These Terms (including all materials incorporated by reference herein) and the other documents comprising the Customer Agreement, together with any Documentation, toll rates and/or tariffs posted on [www.8x8.com](http://www.8x8.com) that apply to Customer's Service Plan, constitute the entire agreement between the parties with respect to the Services and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to the Services.

## **17.6 CONFLICTS.**

**17.6.1 Order of Precedence.** In the event of any conflict between (a) these Terms and the terms of a Service Order or Service Agreement, the terms of the Service Order or Service Agreement shall govern, except as otherwise expressly provided herein or (b) the Global Terms and any Regional Supplement, the Regional Supplement shall govern.

**17.6.2 Objection to Customer Terms.** These Terms shall not be modified or superseded by the terms of any purchase order or similar document delivered by Customer to 8x8 in connection with its order or use of Services unless the Service Agreement states otherwise. 8X8 HEREBY OBJECTS TO ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY PURCHASE ORDER OR SIMILAR DOCUMENT ISSUED BY CUSTOMER AT ANY TIME.

## **17.7 WAIVER.**

The failure of either party to exercise or enforce any right or remedy under the Customer Agreement shall not constitute a waiver of such right or remedy, except as expressly provided herein. Except as provided in Sections 3.5 and 11, no waiver or amendment to any provision of the Customer Agreement shall be enforceable against a party unless it is in writing and otherwise conforms to the requirements of these Terms.

#### **17.8 SEVERABILITY.**

If any provision of the Customer Agreement is deemed illegal, invalid or unenforceable in whole or in part under applicable Law, the Customer Agreement shall be deemed amended as and to the extent necessary to render its terms valid, enforceable under applicable Law, and, insofar as possible, consistent with the original intent of the parties.

#### **17.9 ASSIGNMENT; BINDING EFFECT.**

This Agreement shall be binding upon the heirs, successors, and permitted assigns of 8x8 and Customer. Customer shall not assign the Customer Agreement or delegate its obligations thereunder without 8x8's prior written consent, except that no such consent shall be required in connection with a bona fide sale of Customer or substantially all of its assets to a third party as long as 8x8 receives notice at least 10 days prior to such an assignment. If Customer proposes to assign its rights or delegate its obligations under the Customer Agreement to an Affiliate, Customer shall provide such information and documentation concerning the Affiliate as 8x8 may reasonably request, and Customer shall remain jointly liable for the obligations of such Affiliate. For avoidance of doubt, 8x8 may assign its rights and delegate its obligations under the Customer Agreement, in part or in full, to one or Affiliates, and/or subcontract with such Affiliates, for the performance or delivery of Services.

#### **17.10 AFFILIATES.**

If 8x8 permits an Affiliate of Customer to order Services under the Customer Agreement, references to "Customer" in these Terms shall be deemed to include such Customer Affiliate. Customer shall be jointly liable for the actions and omissions of such Affiliate under the Customer Agreement such Affiliate under the Customer Agreement.

To provide Services requested by Customer in certain jurisdictions, 8x8 may designate an Affiliate to enter into one or more Service Orders with Customer. Any such Service Order shall be subject to these Terms and the Customer Agreement generally, and references to "8x8" hereunder shall be deemed to include such 8x8 Affiliate. The 8x8 Affiliate shall be deemed the service-provider for all purposes under any such Service Order, but 8x8 shall remain jointly liable for the actions and omissions of such Affiliate under the Customer Agreement.

#### **17.11 NO THIRD-PARTY BENEFICIARIES.**

Except as expressly stated herein, these Terms are intended for the sole benefit of, and shall only be enforceable by, each party and its permitted assigns. Without limiting the foregoing, 8x8 shall have no obligation or liability hereunder to any Agent or other end user of the Services that is not a direct customer of 8x8.

#### **17.12 DOCUMENT ACCEPTANCE AND SIGNATURE.**

A Service Order, SOW or similar document setting forth a Service proposal that has been prepared by 8x8 and sent to Customer for acceptance shall be deemed accepted, and shall become effective and legally binding on both parties, when an authorized representative of Customer (or an individual that 8x8 reasonably believes to be such) manifests its assent in the manner indicated by the document (for example, by signature or "click to accept"). Notwithstanding the foregoing, a quotation or Service Order attached as an exhibit to a Service Agreement shall become effective as a Service Order when the parties enter into the Service Agreement, without further Customer acceptance. Use of DocuSign, or any other widely-used method of verifiable electronic signature and delivery, shall be a valid method for signature and delivery of all documents hereunder.

#### **17.13 INTERPRETATIONS.**

The headings in the Customer Agreement are solely for the convenience of reference and shall not be given any effect in the construction or interpretation of the Customer Agreement. The word "include" and its variants shall be interpreted as if followed by the words "without limitation." The word "person" shall mean an individual or a corporation, company, partnership, organization, association or other legal entity. References to an 8x8 web

address (URL) shall be deemed to include (a) any subpages that are accessible through one or a series of clearly-labelled hyperlinks and (b) such successor sites as may be designated by 8x8.

**18. DEFINED TERMS.**

**18.1 DEFINITIONS.**

The following capitalized terms, when used within these Terms, shall have the meanings indicated.

- “8x8 Platform”** means the Subscription Services and any software applications, functionalities, APIs, tools, interfaces and Documentation provided by 8x8 in connection therewith.
- “Affiliate”** means, with respect to a person, any entity that directly or indirectly controls, is controlled by, or is under common control with such person.
- "Agent"** means an individual authorized to use a Service through Customer’s account (as an agent, administrator or otherwise), as identified through a unique login.
- “Customer Agreement”** means the agreement between 8x8 and Customer in respect of Customer’s acquisition and use of Services and Equipment, which includes (for example) these Terms, the Service Agreement (if applicable), and all Service Orders and SOWs entered into by the parties.
- “Customer Data”** means any of the following data and information provided by Customer, or collected or obtained in connection with, Customer’s acquisition or use of the 8x8 Platform: (a) Content; (b) Registration Information; (c) information stored in customer relationship management (CRM), support, billing and similar records and databases used by 8x8 or its Affiliates or subcontractors; (d) call detail and similar records; or (e) other data concerning Customer’s usage of the 8x8 Platform.
- “Customer Location”** means a location for which Customer has ordered Services, as identified by a physical address specified in the Customer Agreement.
- "Documentation"** means user manuals and technical documentation relating to the Services or Equipment, which 8x8 makes available to its customers from time to time (whether by posting to [www.8x8.com](http://www.8x8.com), sending in electronic form or otherwise), but in all cases excluding marketing and promotional materials.
- “Equipment”** means equipment or hardware which Customer acquires from 8x8, an 8x8 Affiliate, an 8x8 authorized vendor or a Leasing Company, for use in connection with the Services.
- “Implementation Services”** means work performed and other services provided by 8x8 in the implementation of a Subscription Service (such as account creation, provisioning and deployment).
- “Non-8x8 Applications”** means online Web-based applications or services and offline software products that interoperate with a Subscription Service, but are not sold or provided by 8x8.
- “Personal Data”** means any information relating to an identified or identifiable natural person (the **“data subject”**), where an identifiable person is one who can be identified, directly or indirectly, in particular, by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity; and includes **“personal data”** within the meaning of any relevant Regional Supplement.
- “Primary Market”** means the United States, the United Kingdom, Australia and Canada.
- "Professional Services"** means work performed for Customer by 8x8 or an Affiliate or subcontractor of 8x8 that is outside the scope of a Service Plan or Support Plan ordered by Customer.
- “Regulatory Fee”** means, if applicable, the Emergency Service Fee, the Regulatory Recovery Fee or any

similar fee that 8x8 charges (as a separate line-item from the Service Fee) on Subscription Services, as described in [Annex 3 \(Fees and Charges\)](#).

<b>“Services”</b>	means products and services provided by 8x8 to customers, including (for example) Subscription Services, Implementation Services, Support Services, Professional Services and training, but excluding Third-Party Services and Equipment.
<b>“Service Agreement”</b>	means a written framework contract between Customer and 8x8 setting forth the terms and conditions pursuant to which Customer may order Services from time to time, which contract may also include the initial Service Order.
<b>“Service Fee”</b>	means the base recurring fee that 8x8 charges Customer for access to and use of a Subscription Service (exclusive of Taxes, usage charges and Regulatory Fees).
<b>“Service Order” or “Order Form”</b>	means a written order for Services agreed upon between 8x8 and Customer.
<b>"Service Plan"</b>	means the packaged service plan, including the functionality, services and billing terms associated therewith (as set forth in the Service Order and/or at <a href="http://www.8x8.com">www.8x8.com</a> ), applicable to the Subscription Services ordered by Customer.
<b>“Subscription Service”</b>	means any 8x8 communications, contact center or other cloud service that is hosted by or on behalf of 8x8 and accessed by customers over Internet Protocol (IP) networks.
<b>“Support Plan”</b>	means, as applicable, (a) the Support Services associated the Service Plan ordered by Customer or (b) the support plan ordered by Customer as a separately packaged item, including the Support Services and billing terms associated therewith (as set forth in an SOW and/or at <a href="http://www.8x8.com">www.8x8.com</a> ). All Support Plans include, at a minimum, the Support Services contemplated by these Terms.
<b>“Support Services”</b>	means the technical support services that 8x8 agrees to provide to Customer as set forth in these Terms and the applicable Support Plan.
<b>"Text Message"</b>	means a short message service text message consisting of text per the Global System for Mobile communications alphabet.
<b>“Term”</b>	means the Initial Term or a Renewal Term, as applicable.

## 18.2 INDEX OF ADDITIONAL DEFINED TERMS.

The table below shows where other capitalized terms are defined in these Terms.

<b>Term</b>	<b>Section</b>	<b>Term</b>	<b>Section</b>
8x8	1.1	NDA	7.3
8x8 Partner	2.1	Privacy Policy	8.1
AAA	16.4.2	Proceeding	16.2
Beta Services	9.8	Professional Services	2.4
Claims	14.2	Recipient	7.1
Confidential Information	7.1	Regional Supplement	1.3
Content	10.5	Registration Information	10.6
Covered Claims	16.1	Renewal Term	4.2
Customer	1.1	Representatives	7.1
Customer Use	10.1	Service Change	11.1
Customizations	9.7	Software	12.2
Discloser	7.1	SOW	2.4
Environment	2.2.3	Taxes	3.4

Feedback	12.3	Terms	1.1
Global Terms	1.3	Third-Party License Terms	12.2
Initial Term	1.2	Third-Party Services	3.6
Laws	10.2.1	TOU	10.1
Leasing Company	6.4	Unsupported Device	6.5
Losses	14.1	Unsupported Services	2.6
Material Change	11.2	VAT	3.4
Month-to-Month Service	4.2	You	1.1

**ANNEX 1**  
**USE RESTRICTIONS**

*[Updated December 2, 2016]*

This Annex is part of the 8x8 Business Terms and Conditions.

Without limiting any other provision of these Terms, in connection with Your use of the Services and the 8x8 Platform, You represent, warrant and covenant as follows:

- (a) You shall use the Services solely for your own internal business use only and not as agent or on behalf of any third party;
- (b) You shall promptly install all upgrades, bug fixes, patches and other corrections relating to the Services that 8x8 makes available from time to time;
- (c) You shall comply with the Mobile Marketing Association Guidelines and any applicable network/wireless carrier requirements, conditions or codes of practice in connection with Your use of text and SMS services;
- (d) You shall not take any action or omission that would reasonably be expected to (i) disrupt or compromise the integrity or security of the 8x8 Platform, any network of an 8x8 partners or vendor, or the privacy of any other 8x8 customer or (ii) cause imminent and material damage to 8x8 or any of 8x8's partners, vendors or other customers;
- (e) You shall not use or access the Services or any portion of the 8x8 Platform under your control:
  - (i) for any fraudulent, criminal, defamatory, harassing or tortious purpose, or to participate in or promote any illegal activity;
  - (ii) to breach, violate or infringe intellectual property, privacy or other rights, or misappropriate the property of, any third party;
  - (iii) to transmit or store any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware or similar programs or materials;
  - (iv) to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value; or
  - (v) to transmit or broadcast unsolicited, or "junk" or "spam," marketing or promotional materials or messages through pre-recorded voice messages, SMS, facsimile or other means, in breach of any applicable Laws;
- (f) You shall not inspect, possess, use, copy, reverse engineer, or attempt to discover the source code of or used to create any program or other component of the 8x8 Platform, except as expressly permitted by applicable Laws;
- (g) You shall not attempt to hack or gain unauthorized access to any network, environment, or system of 8x8 or any of 8x8's partners, vendors or other customers;
- (h) You shall not sell, resell, license, sublicense, distribute, offer, rent or lease any Service, or otherwise make any Service available to any third party;

- (i) You shall not access any Service in order to build a competitive product or for the primary purpose of monitoring its availability, performance or functionality, or for benchmarking or competitive purposes; or
- (j) You shall not trunk or forward extensions or numbers associated with the Services to a private branch exchange or key system or to other numbers that can process multiple calls simultaneously.

## ANNEX 2

### SERVICE-SPECIFIC TERMS

*Updated August 3, 2017*

This Annex sets forth additional terms and conditions that apply to specific Services. This Annex is part of the 8x8 Business Terms and Conditions.

**1. TEXTING.** The Text Message Services support transmission of Text Messages from a single device to another single device, and do not support group messaging. In the event that a transmitted Text Message is destined for an address connected to a third-party network and that network is unreachable at the time delivery is attempted, the Text Message will be stored and queued for future delivery attempts (which will be performed with a reasonable number of attempts). 8x8 has designed its Services with the intent of minimizing lost data from the bodies of Text Messages but cannot guarantee no loss of data. 8x8 reserves the right to (a) implement procedures that segment, truncate, or otherwise reduce the length of any Text Message or (b) refuse to transmit and/or deliver a Text Message that does not comply with 8x8 or any third-party network operator's policies or conditions. Text Messages addressed to destinations outside of the United States and Canada may not be supported.

**2. MOBILE.** Calls or texts made using an 8x8 mobile application ("**Mobile Services**") may use the cellular and/or data network of an Agent's existing mobile service provider and will be subject to the air time, toll charges, roaming fees and data usage fees of such provider, as well as any mobile network limitations. In addition, 8x8's mobile voice recording service requires Customer's mobile handset to make a separate call to access the recording service, which may be chargeable by the Agent's mobile service provider. Customer acknowledges and understands that emergency service calls placed using Mobile Services may be routed by the Agent's existing mobile provider.

**3. INTERNET FAX.** IP-based faxing has inherent limitations and is generally subject to higher rates of failure and data loss than analog-based facsimiles. 8x8 cannot guarantee that facsimiles sent on the 8x8 Platform will be delivered successfully or without loss of data. If Customer's business involves the regular faxing of large, multi-page documents, 8x8 recommends that Customer maintain an analog line and a traditional fax machine for reliable and consistent performance.

**4. QUALITY MANAGEMENT.** 8x8's Quality Management service helps managers and supervisors to monitor and review agent interactions with customers and other parties for quality management purposes. Managers, supervisors and other users of 8x8's Quality Management service may be able to view the computer desktop activity of the Agents they are monitoring (including, for example, internet browsing and use of other applications that are not part of the 8x8 Platform). Applicable privacy and/or employment Laws in some jurisdictions may prohibit or otherwise restrict such monitoring (for example, by requiring advance notice or consent of the employee). Customer shall be solely responsible for ensuring its use of the Quality Management complies with applicable Laws of each jurisdiction where Customer proposes to use such Services.

**5. UNLIMITED FEATURES FOR "EDITIONS" SERVICES.** "Editions" Services that offer Unlimited Features are for reasonable business use, and any use in excess of three times (3x) the average monthly usage of all 8x8 customers using the same Editions Services shall be presumed to be unreasonable. In the event of Customer's unreasonable business use of such Unlimited Features, 8x8 may in its sole discretion (a) place reasonable limitations or restrictions on Customer's use of such Unlimited Features; and/or (b) suspend or terminate the Services provided to Customer. "Unlimited Features" means unlimited plans, features or functionality, including without limitation unlimited minutes, calling destinations, text messages, call queues and data storage, included in an applicable Edition.



**ANNEX 3**  
**FEES AND CHARGES**

[Updated December 2, 2016]

This Annex sets forth a description and/or terms and conditions of certain fees and charges related to the Services. This Annex is part of the 8x8 Business Terms and Conditions.

**1. OVERAGE CHARGES.** 8x8 reserves the right to charge reasonable overage fees when Customer exceeds the usage limits on Services that have such limits (including, for example, recording services on Virtual Meeting licenses and Virtual Office Pro extensions).

**2. TOLL AND OTHER USAGE CHARGES.**

**(a)** "Usage charges" refer to toll charges and other charges that we bill based on Customer's usage of our Services, as a separate charge from our base monthly Service Fees. Every outbound toll call and inbound toll free call that originates or terminates on the Public Switched Telephone Network ("PSTN") or a non-8x8 VoIP network (including calls to or from a Virtual Contact Center ("VCC") tenant, and calls to or from a VCC agent) will be subject to charges at the rates that we publish on our website, unless Customer has subscribed to one of our "unlimited" Service Plans and the call is free of charge under the terms of that Service Plan. We publish all of our toll calling rates on our website and we update our international toll calling rates monthly on the first day of each month.

**(b)** Unless the Customer Agreement provides otherwise, and subject to applicable Laws, the following rules apply to all toll charges:

- The duration of each call is to be calculated in one-minute increments and rounded up to the nearest one-minute increment for any fraction of minutes used. If the computed charge for a call includes a fraction of a single unit of the smallest denomination of currency, the fraction is rounded up to the nearest whole cent.
- When Customer attempts to make an outbound call, charges may apply regardless of whether the party on the other line answers the call.
- Calls made by Customer to mobile, rather than landline, or premium rate telephone number, may result in higher toll charges.
- Charges to Customer for inbound toll free numbers are subject to the geographic restrictions and location of the person calling into the toll-free number.
- All call charges payable under the Customer Agreement will be calculated by reference to data recorded or logged by 8x8 and not by reference to data recorded or logged by Customer.

**3. REGULATORY FEES.** Except where prohibited by applicable law, 8x8 may charge Regulatory Fees, including an Emergency Services Fee (or E911 Service Fee in the United States) and a Regulatory Recovery Fee in the United States, in connection with any telephony services provided to Customer. The Regulatory Fees are charged monthly to offset costs incurred by 8x8 in complying with inquiries and obligations imposed on 8x8, as an interconnected voice-over-IP service provider, by national, state, provincial, municipal and/or other regulatory bodies and government agencies. These fees are not taxes or charges required or assessed by any government. Regulatory Fees are charged for each number for which Customer has ordered Subscription Services, including toll free and virtual numbers. The Regulatory Fees are presented as separate line-items in invoices, and the initial rates will be set forth in any quote for Subscription Services.

**4. DISCONNECT FEES.** If Customer purchases Services pursuant to a Service Plan, Service Order or Service Agreement that expressly provides for Disconnect Fees to be charged in lieu of early termination charges, then the following terms shall apply:

- If a Customer terminates a Service Plan (excluding a Plus Extension) associated with Equipment within twelve (12) months of the initial purchase of the Services, 8x8 shall charge a service disconnection fee of fifty-nine dollars and ninety-nine cents (\$59.99) for each item of Equipment.
- If a Customer terminates a Plus Extension Service Plan within twenty-four (24) months of the initial purchase of the Services, 8x8 shall charge a disconnection fee of two hundred dollars (\$200.00) for each Plus Extension.

**5. EXTENDED PAYMENT PLAN – EARLY TERMINATION PAYMENT.** If Customer terminates an Extended Payment Plan within twenty-four (24) months of the initial shipment date of the applicable Equipment (or such other period as may be specified in the Service Order), Customer shall pay 8x8, in addition to any other fees and charges that may be due, an amount equal to the product of (a) the monthly payment (including applicable Taxes) for such Equipment, multiplied by (b) the number of months remaining in the terminated Extended Payment Plan term as of the date of termination.

## **AUSTRALIA SUPPLEMENT**

[Updated December 2, 2016]

This Supplement is an attachment to, and part of, the [8x8 Business Terms and Conditions](#). The provisions in this Supplement apply to only to Services provided to Customer Locations in Australia.

### **1. 000 SERVICE.**

**1.1** The national emergency access number in Australia is 000 ("**Emergency Number**"). 112 Dialing is not supported by 8x8. The Emergency Number can be accessed, free of charge, if the Service is fully operational and if accessed within Australia. There is no registration process to establish Emergency Number dialing. However, You understand and acknowledge that there may be some limitations as set out in the following paragraphs.

**1.2** If You use the Service outside Australia You will not be able to call the Emergency Numbers in the country where You are located, or such calls may be routed to an incorrect answering point.

**1.3** If there is a Service outage for any reason, such outage may prevent access to Emergency Number dialing, such as, but not limited to, electrical outages and broadband service outages.

**1.4** You must register with 8x8 the primary physical location where the Service will be used. Your location will be registered as a part of subscribing to the Service. It is Your responsibility to maintain the accuracy of Your location address if there are any changes. You can do this for most Services by updating the information recorded under "Settings" in the relevant Service application or in Your account management portal. If You do not update 8x8 with changes to the location of where the Service is being provided, it may or may not be possible for emergency operators and authorities to identify Your location and phone number when You dial the Emergency Number. Location information of Your primary office as notified to 8x8 will only be provided to emergency services; extension information may not be provided to emergency services.

**1.5** When You dial the Emergency Number You will need to state Your location and phone number promptly and clearly, as emergency operators and authorities may not have this information. The emergency operator may ask for specific information to correctly transfer Your call to a local emergency services department such as police, fire brigade, rescue, coastguard, etc.

**1.6** Emergency operators and authorities may or may not be able to identify Your phone number in order to call You back if the call is unable to be completed, is dropped or disconnected, or if You are unable to speak to tell them Your phone number and/or if the Service is not operational for any reason. Emergency operators and authorities may also not be able to hold Your line open in the event You hang up.

**1.7** You agree to inform users of the Service of the above limitations and You understand and accept that You should always have an alternative means of accessing emergency services than through 8x8's Service.

### **2. NUMBER USAGE AND PORTING.**

**2.1** Number portability may be unavailable with the Service. If You move Your Service to or from 8x8 or to or from another provider You may not be able to keep Your telephone number. Where number portability is available with the Service, 8x8 will take all reasonable steps to ensure that the transfer of Your number and subsequent activation is completed within one business day provided all necessary activation processes have been completed, the network connection is ready for Your use and (where You wish to port Your telephone number to 8x8) Your donor provider has received a request to activate the transfer of Your number from us and agreed a transfer date ("**the Porting Activation Requirements**"). Where access to the Service is facilitated through Telstra number porting, Customer authorises 8x8 to have the numbers from the Telstra lines listed in the Order Form

routed by 8x8 instead of Telstra and to forward appropriate details of Customer's porting application for the Service to 8x8. Customer will receive advance notification of the change of service from Telstra to 8x8. 8x8's ability to provide the Service is subject to Telstra porting the numbers.

**2.2** For the avoidance of doubt, the one business day time period does not commence from the date You submit a number transfer request; it commences from the agreed date of port and once an agreement to port has been concluded between 8x8 and (where You wish to port Your telephone number to 8x8) Your donor provider following completion of all the Porting Activation Requirements. Following completion of the Porting Activation Requirements, 8x8 will send a notification informing You of the date when Your number will be transferred. If having notified You of the date when Your number will be transferred there is a subsequent delay in the Porting Activation Requirements, 8x8 will notify You of the new date when Your number will be transferred.

**2.3** Any change to the date of Your number transfer due to the Porting Activation Requirements not being completed shall not constitute a delay or abuse in porting and shall not give rise to a claim for compensation.

**2.4** In the case of analogue lines being utilized for facsimile machines, the standard Services are not compatible, and an alternative internet fax service is offered under some Service Plans for numbers that are required to be ported to 8x8. This may result in loss of Service for a period of up to 15 days.

**2.5** Where Customer is provided with a telephone number (including a code) as part of the Service, then that code and number belongs to 8x8 and Customer will have no right to keep that number nor to sell, dispose or transfer that number at any time. 8x8 will use its best efforts to ensure that Customer is able to keep the number during the term of the Customer Agreement, but 8x8 reserves the right to change the number on reasonable notice if 8x8 determines, in good faith and in its reasonable discretion, that a third party has a valid claim to such number, or that the change is otherwise required by or advisable under applicable law.

**2.6** Customer acknowledges that 8x8 may provide details of the numbers issued to Customer and/or end users by 8x8 to organizations that wish to compile directories or directory enquiry services, and Customer consents to such disclosure.

### **3. DATA PROTECTION.**

**3.1** With respect to any Personal Data processed on Your behalf under the Customer Agreement, 8x8 and Customer both agree that Customer is the APP entity under the Privacy Act, and that 8x8 processes such data at the instruction of Customer for purposes of the Privacy Act. 8x8 shall process the Personal Data only in accordance with the terms of the Customer Agreement, 8x8's Privacy Policy, and lawful instructions reasonably given by You to us from time to time. Both parties will employ appropriate technical and organizational measures to protect such Personal Data. As data processor, 8x8 may appoint sub-processors for parts of its processing of Personal Data, *provided*, that the sub-processor assumes the same obligations as are imposed on 8x8 as data processor. In respect of Customer Data that constitutes Personal Data, 8x8 shall: (i) take appropriate technical and organizational measures against unlawful and unauthorised processing of the Personal Data and against accidental loss, destruction of and damage to the Personal Data, alteration or disclosure of the Personal Data to any third party; (ii) take reasonable steps to ensure the reliability of all of its personnel (whether employees or contractors) that may have access to the Personal Data and to ensure that they are adequately trained in the good handling of Personal Data; (iii) act only in accordance with the Customer's instructions in relation to processing the Personal Data and not use the Personal Data for any purpose other than to provide the Service under the Customer Agreement, 8x8's Privacy Policy, or as may be required by law.

**3.2** You acknowledge that 8x8 relies on Customer for direction as to the extent to which we are entitled to use and process the Personal Data You provide us with. Consequently, we will not be liable for any claim brought by a data subject arising from any action or omission by us, to the extent that such action or omission resulted from Your instructions.

**3.3** In order to provide the Services, 8x8 may transfer Personal Data to its Affiliates to store and process such Personal Data on servers located in the United States or other jurisdictions outside of Australia. Customer specifically and expressly consents to such transfers upon acceptance of the Customer Agreement, and acknowledges that Australian Privacy Principle 8.1 will not apply to such disclosure. Customer further agrees and consents to 8x8 and the service providers that 8x8 utilizes to assist in providing the Services to Customer having the right to access Customer's account and to use, modify, reproduce, distribute, display and disclose Customer Data, including any Personal Data, to the extent necessary to provide the Services, including, without limitation, in response to Customer support requests. Any third-party service providers 8x8 utilize will only be given access to Customer's account and Customer Data as is reasonably necessary, in 8x8's discretion, to provide the Service and will be subject to: (i) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in the Customer Agreement and (ii) their agreement to comply with the Personal Data restrictions, including transfer restrictions, set forth in this Clause 3.

**3.4** 8x8 will promptly notify Customer if 8x8 receives a request from a person to access to that person's Personal Data; a complaint or request relating to Customer's obligations under applicable data protection legislation; or any other communication relating directly to the processing of any Personal Data in connection with the Customer Agreement. 8x8 will provide You with reasonable co-operation and assistance in relation to any complaint or request made in respect of any Personal Data processed by 8x8 on Your behalf, including by providing You with details of the complaint or request, complying with any data subject access, rectification or deletion requests (within the relevant timescales set out in applicable data protection legislation) and providing You with any Personal Data we hold in relation to a person making a complaint or request (again, within a reasonable timescale).

**3.5** You represent to 8x8 that You are in compliance with all applicable privacy and/or data protection laws, You have obtained all necessary rights and consents under applicable law to disclose to 8x8, or allow 8x8 to collect, use, retain and disclose any Personal Data that You provide to 8x8, or authorise 8x8 to collect, including information that we may collect directly from Your end users via cookies or other means, and that 8x8 will not be in breach of any such laws by collecting, receiving, using, transferring and disclosing such information in connection with the Service. As between Customer and 8x8, Customer is solely responsible for disclosing to Customer's end users that 8x8 is processing Personal Data for You and obtaining data from such customers. It is Customer's obligation to disclose to its end users that such data may be transferred, processed and stored outside of Australia and, as set forth in 8x8's Privacy Policy, may be subject to disclosure as required by applicable law.

**3.6** You agree to notify 8x8 of: (i) any limitations in Your privacy notice to data subjects; (ii) any changes in, or revocation of, consent by a data subject to use or disclose Personal Data; and (iii) any restrictions on the use of Personal Data to which You have agreed in accordance with its agreements with data subjects; in each case, to the extent that such limitations, changes or restrictions may affect 8x8's uses or disclosures of Personal Data.

**3.7** If You receive Personal Data through the use of the Service, You must keep such information confidential and only use it in connection with the Service. You may not disclose or distribute any such information to a third party or use any such information for marketing purposes unless You receive the express consent of the user to do so. You may not disclose any acquired Personal Data to any third party, other than in connection with processing of transactions or the provision of Services requested by end users of the Service.

**3.8** 8x8 will delete all other Customer Data and any Personal Data it may hold within a reasonable period of closure of Customer's account, or upon 8x8's reasonable determination that the information is no longer necessary for the purposes for which such information was collected or retained, in 8x8's sole discretion. You acknowledge that 8x8 may archive Customer Data and Personal Data rather than delete such data while You remain a customer of 8x8 or an 8x8 Affiliate.

**3.9** For purposes of this Clause 3, "**Personal Data**" includes "personal information" as defined in Australia's 1988 Privacy Act.

#### **4. SERVICE INFORMATION.**

**4.1** The following additional information is provided with respect to Services offered or provided in the Australia:

8x8 adheres to the Telecommunications (Customer Service Guarantee) Standard 2011, as may be amended from time to time.

8x8 will provide operator and directory assistance services.

#### **5. REVERSE CHARGE OF GST**

**5.1** The prices set forth in the Customer Agreement are exclusive of any goods and services tax (GST) payable by Customer. The parties agree to account for Australian GST on Services and Equipment provided by 8x8 pursuant to the Customer Agreement in accordance with the reverse charge provisions of Division 83 of the A New Tax System (Goods and Services Tax) Act 1999. The parties confirm that the Equipment and Services provided to Customer are provided to Customer and not to a resident agent. In addition, 8x8 confirms that, in providing the Services and Equipment, 8x8 does not have a permanent establishment, nor does it provide the Services or Equipment through an enterprise that it carries on, in Australia.