

8x8 CPaaS SERVICE MODULE

SMS

Last Updated: September 22, 2020

SMS-1. SCOPE OF SMS MODULE. This 8x8 CPaaS Service Module – SMS (this “**SMS Module**”) shall apply with respect to all 8x8 CPaaS SMS services (the “**SMS Services**”) ordered, accessed, or used by, or provided to, Customer (“**Ordered SMS Services**”). Capitalized terms used and not defined in this SMS Module shall have the meanings assigned to them in the 8x8 CPaaS Service Terms (available at <https://www.8x8.com/cpaas-order-terms/cpaas-service-terms>) (the “**Service Terms**”).

SMS-2. SMS USAGE. Fees for usage of Ordered SMS Services shall (a) be incurred by Customer at the time that the usage occurs, (b) accrue at the applicable rate(s) set forth within Customer’s account in the Customer Portal at the time of the applicable usage (notwithstanding any rates set forth in any Order or other document), (c) be billed to Customer in arrears, and (d) be paid by Customer in accordance with Section 6 (Payment) of the Service Terms. SMS-MT message usage shall be deemed to have occurred as of 8x8’s or its Affiliate’s or Partner’s submission of the message to the carrier using any delivery method and shall be billed based on the destination recorded by 8x8. Messages with more than 140 bytes of payload data may be split and/or combined by 8x8, which may result in charges for multiple messages.

SMS-3. PRE-PAID SMS USAGE BUNDLES. All fees and taxes for any pre-paid SMS Services usage bundle ordered or purchased by Customer shall be incurred by Customer upon order/purchase (or, for recurring bundles, on the first day of each applicable recurring period) and shall be non-refundable and non-creditable, except that in the event of an 8x8-Caused Termination of this SMS Module, 8x8 shall pay a pro-rata refund to Customer for any unused, non-expired bundled units for which Customer has paid. Where such a bundle is for a period of time, any bundled units not used as of the end of such period shall expire and be forfeited at the end of such period. Any such bundle that is recurring may be terminated by either Party via notice to the other Party, in which case such bundle shall terminate at the end of the then-current recurring period for such bundle (in the case of termination by Customer) or upon the first end of a recurring period for such bundle that occurs on or after the thirtieth (30th) day after 8x8 provides notice of such termination (in the case of termination by 8x8).

SMS-4. VIRTUAL NUMBER LEASES.

SMS-4.1. Structure of Virtual Number Lease. Customer may lease virtual numbers for use with Ordered SMS Services from 8x8 (each a “**VN Lease**”) in each case by entering into an Order for such a virtual number with 8x8 or its Affiliate. The initial term of each VN Lease shall commence on the effective date of the applicable Order and continue for the lease term specified for such VN Lease in such Order or elsewhere in the Agreement (or for ninety (90) days if no such lease term is so specified). Following each VN Lease’s initial term, such VN Lease shall automatically renew for successive renewal terms of the same length as such VN Lease’s initial term (each of the initial term and the renewal term(s) of a VN Lease, a “**VN Lease Term**”) until such VN Lease expires, which shall occur upon the first end of a VN Lease Term that occurs on or after the thirtieth (30th) (in the case of non-renewal by Customer) or sixtieth (60th) (in the case of non-renewal by 8x8) day after one Party provides notice to the other Party of the noticing Party’s election not to renew such VN Lease.

SMS-4.2. Virtual Number Lease Fees. As a material commitment under the Agreement, Customer shall be obligated to pay (in accordance with Section 6 (Payment) of the Service Terms) all VN Lease fees and related Taxes for the entirety of each VN Lease Term, provided that (a) in the event of an 8x8-Caused Termination of this SMS Module, Customer shall be relieved of such obligation for any post-termination period, and 8x8 shall refund any such fees paid by Customer to 8x8 for any such period and (b) in the event of a Customer-Caused Termination of this SMS Module, all outstanding amounts for any VN Lease (including without limitation any such amounts for the remainder of the then-current VN Lease Term and the next VN Lease Term (which will be deemed to have been triggered) if such Customer-Caused Termination is noticed within the last thirty (30) days of the then-current VN Lease Term) shall become immediately due and payable in accordance with the terms of Section 6 (Payment) of the Service Terms, and 8x8 may bill such amounts as soon as such Customer-Caused Termination is noticed. Customer’s obligations under the immediately preceding sentence shall survive termination of this SMS Module and/or the Agreement. In the event of termination of this SMS Module for any reason, 8x8 shall be relieved of its obligations under any VN Lease.

SMS-4.3. Billing and Rates for Virtual Number Lease. VN Lease fees and related Taxes shall start to be billed as of the effective date of the applicable Order and shall thereafter be billed based on the billing period specified for the applicable VN Lease in such Order (or monthly if no such period is so specified). The rates for VN Lease fees shall be as set forth in the applicable Order and 8x8 may not increase any such rates, except for an upcoming VN Lease Term where (a) 8x8 has provided notice of such increase to Customer at least forty-five (45) days prior to the start of such upcoming VN Lease Term and (b) the increase is based on an increase in 8x8's or its Affiliate's underlying costs related to the VN Lease. Customer acknowledges and agrees that (i) its use of virtual numbers (including without limitation short code virtual numbers) may be subject to approvals, provisioning, etc. by carriers or other third parties and such approvals, provisioning, etc. may require the completion of certain steps or processes by Customer or other parties and (ii) Customer's financial and other obligations under the Agreement shall apply regardless of – and shall not be conditioned or contingent on – Customer's procurement of (or failure to procure) any such approval or completion of (or failure to complete) any such provisioning, even where 8x8 or its Affiliate or Partner sought to procure any such approval(s) or to complete any provisioning on Customer or its Affiliate's behalf or otherwise participated in or assisted Customer or its Affiliate in respect of such endeavors. Fees for activation of a virtual number shall be incurred on the date of order.

SMS-5. CUSTOMER USE OF SMS SERVICES. The Use Policy shall be deemed amended and supplemented to require that (a) Customer Use of the Ordered SMS Services be solely for operational, transactional, and marketing communications and (b) all message transmission over the Ordered SMS Services and related platforms utilize HTTPS protocol.

SMS-6. CHANGES TO ORDERED SMS SERVICES. 8x8 may change or update Ordered SMS Services, provided that 8x8 shall provide advance notification to Customer of any change that it makes to Ordered SMS Services that materially reduces their overall functionality or security if reasonably practicable or otherwise promptly thereafter.

SMS-7. TERM AND TERMINATION OF SMS MODULE. This SMS Module shall become effective on the date that it is entered into and continue in full force and effect until terminated:

- (a) by Customer for convenience with thirty (30) days' notice to 8x8;
- (b) by 8x8 for convenience with sixty (60) days' notice to Customer;
- (c) by either Party with twenty (20) days' notice to the other Party in the event of the other Party's material breach of the Agreement (which shall include without limitation any Customer breach of the Use Policy or Customer payment delinquency) and, if such breach is reasonably capable of cure, failure to cure such breach within such notice period, provided that such cure requirement shall not apply with respect to a Customer payment delinquency where there have been two or more such delinquencies;
- (d) immediately by either Party upon notice to the other Party where the other Party experiences a Solvency Event; or
- (e) by 8x8 with thirty (30) days' notice to Customer in the event that any SMS Services become subject to an actual or threatened Claim of infringement.

Termination of this SMS Module by Customer under and in accordance with clause (c) or (d) – or by 8x8 under clause (b) or (e) – of the immediately preceding sentence shall be herein referred to as an “**8x8-Caused Termination**”, and termination of this SMS Module by 8x8 under and in accordance with clause (c) or (d) – or by Customer under clause (a) – of the immediately preceding sentence shall be herein referred to as a “**Customer-Caused Termination**”.