

# SUPPLEMENTAL 8x8 FLEX PROGRAM TERMS

Last Updated: November 13, 2020

**FP-1. Applicability and Conflict.** These Supplemental 8x8 Flex Program Terms (these “**Flex Terms**”) are a part of and incorporated into the Agreement and shall apply with respect to all rentals of equipment under the Agreement pursuant to the 8x8 Flex Program or successor 8x8 program (“**Equipment Rentals**”; equipment rented pursuant to an Equipment Rental, “**Rented Equipment**”). In addition to these Flex Terms, the 8x8 UCaaS/CCaaS Service Terms or similar set of service terms that applies to the Order or document incorporating these Flex Terms (the “**UCaaS/CCaaS Service Terms**”) shall apply with respect to all Equipment Rentals and Rented Equipment (and the Rented Equipment shall be considered “**Ordered Equipment**” and “**Ordered Products**” under the UCaaS/CCaaS Service Terms), provided that (a) Section 3 (Equipment) (or, if there is no such Section, the provisions that apply to purchased equipment) of the UCaaS/CCaaS Service Terms shall not apply to Equipment Rentals or Rented Equipment and (b) in the event of any conflict between the Flex Terms and the UCaaS/CCaaS Service Terms, the Flex Terms shall take precedence and control as to Equipment Rentals and Rented Equipment. Capitalized terms used and not defined herein shall have the meanings assigned to them in the UCaaS/CCaaS Service Terms.

**FP-2. Renting Equipment.** Customer may rent Rented Equipment from 8x8 or its Affiliate, in each case by entering into an Order for the same with 8x8 or its Affiliate. Each Equipment Rental is a net rental and a true lease, which is a “finance lease”, as that term is defined under Uniform Commercial Code (“**UCC**”) Article 2A-103. Title to Rented Equipment shall at all times remain with 8x8 or its Partner or assign.

## **FP-3. 8x8 Commitments With Respect to Equipment Rentals.**

**FP-3.1. Delivery of Rented Equipment; Warranty.** 8x8 shall, itself or through its Affiliates or Partners, deliver the Rented Equipment to Customer and provide to Customer a limited manufacturer’s and/or extended warranty (the terms of which 8x8 shall make available to Customer upon Customer’s request) for such Rented Equipment.

**FP-3.2. Rented Equipment Pricing Commitment.** The rates for the base monthly recurring fees for Rented Equipment shall be as set forth in the applicable Order, and 8x8 may not increase such rates, except with ninety (90) days’ advance notification to Customer and only up to – but not in excess of – the then-current Flex Program list price for the applicable Rented Equipment. Rented Equipment-related rates and other pricing, discounts, and promotions (e.g., free shipping) provided in an Order shall apply solely with respect to the applicable Rented Equipment under that Order, and 8x8 makes no commitment and shall have no obligation with respect to future pricing for or availability of equipment for rent.

**FP-3.3. Update of Rented Equipment.** In the event that Customer has maintained a single Equipment Rental for forty-eight (48) consecutive months and is current on its payment of all Billed Amounts, 8x8 shall, upon Customer’s request via notice to 8x8 and at 8x8’s expense, replace the Rented Equipment under that Equipment Rental with the then-current equivalent model of such Rented Equipment (as offered by 8x8 as part of the 8x8 Flex Program or successor 8x8 program, as applicable).

## **FP-4. Customer Commitments With Respect to Equipment Rentals.**

**FP-4.1. Payment of Rental Fees and Taxes.** Customer shall be liable for and shall pay to 8x8 (in accordance with the billing and payment terms of the UCaaS/CCaaS Service Terms) the rental fees, Taxes, shipping fees, and any other items agreed or provided in the Agreement for Rented Equipment (collectively, “**Rented Equipment Amounts**”) for the entire period from the effective date of the Order under which the Rented Equipment was ordered through the effective date of the applicable Equipment Rental’s termination (the Equipment Rental’s “**Rental Effective Period**”), as well as any other periods during which such obligations survive and/or continue to apply pursuant to the terms of the Agreement.

**FP-4.2. Protection of 8x8 Rights in Rented Equipment.** Customer acknowledges 8x8’s (or its Partner’s or assign’s) title to Rented Equipment and shall use commercially reasonable efforts to protect and defend such title and keep and maintain it free and clear of any and all claims, liens, charges, or encumbrances. Customer agrees that the Rented Equipment is – and shall make best efforts to ensure that it remains – removable from and is not essential to the premises upon which it is located (regardless of its attachment to realty).

**FP-4.3. Sublease, Order, and Use.** Customer shall not (a) sublease any Rented Equipment or use thereof, except with 8x8’s prior written consent. (b) order Rented Equipment or enter into any Equipment Rental for any purpose other than for use (in accordance with the Agreement) of the Rented Equipment with Customer’s Ordered SaaS Services, (c) remove Rented Equipment from the country for which it was provided or use it outside of such country, (d) make any alteration or

attachment thereto that might create a safety hazard, or (e) use Rented Equipment (i) for any purpose other than those for which it was designed or (ii) inconsistently with any the manufacturer's specifications.

**FP-4.4. Risk of Loss, Damage, Etc.** Subject to the warranty(ies) provided for the Rented Equipment, Customer assumes, and shall bear the entire risk of, and shall, at Customer's sole expense, be liable for, partial or complete loss, theft, damage, or destruction of Rented Equipment from any cause whatsoever during the period from delivery of the Rented Equipment to Customer through 8x8's receipt or recovery thereof.

**FP-4.5. Return of Rented Equipment.** Within thirty (30) days of termination of an Equipment Rental or any replacement of Rental Equipment, Customer shall contact 8x8 Support, obtain from them RMA number for the return, and thereafter pack the applicable Rented Equipment so as to reasonably protect it from damage while in transit and, at Customer's expense, return such Rented Equipment to 8x8 (via shipment to the 8x8-specified address, in accordance with 8x8's reasonable instructions and guidelines) in good condition and repair excepting only reasonable wear and tear. In the event that Customer fails to return Rented Equipment in accordance with the immediately preceding sentence (and 8x8 has not recovered the Rented Equipment in the aforementioned condition), Customer shall be liable for and shall pay to 8x8 (in accordance with the billing and payment terms of the UCaaS/CCaaS Service Terms) the Rented Equipment's replacement value.

**FP-5. Termination of Equipment Rentals.** An Equipment Rental may be terminated by either Party:

- (a) for convenience by providing at least thirty (30) (in the case of termination by Customer) or ninety (90) (in the case of termination by 8x8) days' notice to the other Party;
- (b) by providing at least thirty (30) days' notice to the other Party in the event of the other Party's material breach of any of its obligations under these Flex Terms (which shall include without limitation any Customer payment delinquency) and, if such breach is reasonably capable of cure, the other Party's 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 has already been such a delinquency (termination "**For Customer Breach**"); or
- (c) immediately upon notice to the other Party where it or its parent or controlling entity experiences a Solvency Event.

In addition, all Equipment Rentals shall automatically and immediately terminate upon termination or expiration of the Agreement for any reason.

**FP-6. 8x8 Right of Deactivation.** In the event of Customer's breach of any of its obligations under the Agreement with respect to an Equipment Rental or Rented Equipment that (if reasonably capable of cure) remains uncured after ten (10) days of notification of such breach from 8x8, 8x8 shall have the right to deactivate and render generally inoperable any or all Rented Equipment. 8x8 may also deactivate and render generally inoperable any Rented Equipment in the event of its non-return or actual or reported loss, theft, damage beyond repair at reasonable cost, or destruction.

**FP-7. 8x8 Right of Recovery.** Where Customer or its parent or controlling entity experiences a Solvency Event, 8x8 may recover and/or take possession of any or all Rented Equipment, wherever situated and for such purpose enter upon any premises, without liability. 8x8 shall also have such right for any Rental Equipment the return of which is more than twenty (20) days overdue, provided that 8x8 must notify Customer of the delinquency at least five (5) days prior to such recovery.