

8x8 CPAAS SERVICE TERMS

Last Updated: September 3, 2020

THESE TERMS SHOULD BE READ CAREFULLY, AS THEY AFFECT THE PARTIES' LEGAL RIGHTS BY, AMONG OTHER THINGS, LIMITING 8x8'S LIABILITY UNDER THE AGREEMENT AND REQUIRING ARBITRATION OF CERTAIN DISPUTES.

1. AGREEMENT. On the first occasion that the legal entity in whose name 8x8 agrees to provide Services ("**Customer**") performs any of the following acts, such entity thereby enters into a legally-binding contract with 8x8, Inc. (or the other entity specified in Customer's initial Order, if applicable) ("**8x8**"), a Delaware corporation, that applies to and governs all sale, provision, acquisition, and/or use of Ordered CPaaS Services (the "**Agreement**"): (a) entering into an agreement, order, or other document that incorporates these 8x8 CPaaS Service Terms or otherwise agreeing to or accepting these 8x8 CPaaS Center Service Terms or (b) accessing or using any CPaaS Services after being notified that these 8x8 CPaaS Service Terms apply to such CPaaS Services or to such accessing or use thereof. The date of such first occasion shall be the "**Effective Date**" of the Agreement. The "**Agreement**" shall consist of (i) these 8x8 CPaaS Service Terms and all content expressly incorporated herein (these "**Terms**"), (ii) all 8x8-prepared written or electronic documents or forms providing for Customer's order of CPaaS Services and/or related products from 8x8 or its Affiliate (each an "**Order**") entered into by Customer, (iii) all 8x8 CPaaS Service Modules entered into under the Agreement (each a "**Service Module**"), and (iv) all other documents entered into by or on behalf of Customer and 8x8 or its Affiliate in respect of Customer's acquisition and/or use of Ordered CPaaS Services.

The individual who agrees to or accepts these Terms represents and warrants to 8x8 that he or she has the authority to bind Customer to the Agreement and enter into the Agreement on Customer's behalf. IF SUCH INDIVIDUAL DOES NOT HAVE SUCH AUTHORITY OR DOES NOT AGREE TO THESE TERMS, THEN HE/SHE SHOULD NOT ACCEPT THESE TERMS, ENTER INTO ANY ORDER, OR ORDER, ACCESS, OR USE THE CPaaS SERVICES OR AUTHORIZE OR PERMIT ANY OTHER PERSON TO DO SO.

The documents comprising the Agreement constitute the entire agreement between the Parties in respect of the Ordered CPaaS Services and other subject matter thereof, and, as of the Effective Date, the Agreement expressly supersedes and replaces any prior or contemporaneous agreements, "Terms of Use", and/or other service terms – written, electronic, oral, or otherwise – in respect thereof that Customer has accepted or entered into, including without limitation any such agreement and/or terms with 8x8 International Pte Ltd. or any Wavecell entity.

Orders shall be deemed entered into by, and effective and legally binding on, the Parties upon execution or completion of the applicable electronic process of 8x8 or its Affiliate by Customer (as applicable).

2. APPLICABILITY AND CONFLICT. These Terms shall apply with respect to all CPaaS Services ordered, accessed, or used by, or provided to, Customer ("**Ordered CPaaS Services**") and all Service Modules and Orders. In addition, any terms set forth in an Order shall apply with respect to the CPaaS Services ordered under that Order, and each Service Module shall apply with respect to any Ordered CPaaS Services within such Service Module's scope. In the event of any conflict among the documents that comprise the Agreement, the following order of precedence shall apply: (a) an Order (solely as to type, quantity, and pricing of the CPaaS Services ordered thereunder); (b) a Service Module (solely as to any Ordered CPaaS Services within its scope), (c) these Terms; and (d) an Order (as to all other matters). In the event of any conflict among the components of these Terms, the following order of precedence shall apply: (1) the 8x8 CPaaS Regional Terms included at the end hereof (the "**Regional Terms**") (which are incorporated in these Terms), (2) the 8x8 CPaaS Use Policy (available at www.8x8.com/terms-and-conditions/cpaas-use-policy) (the "**Use Policy**") (which is incorporated in these Terms), and (3) the other elements of these Terms.

3. CONTENT AND DATA PROTECTION. 8x8 shall implement and maintain commercially reasonable administrative, physical, and technical safeguards to protect the content of all communications transmitted, received, and/or stored through any Ordered CPaaS Services (Customer's "**Content**") from unauthorized access and use. The Parties acknowledge and agree that (a) 8x8's and its Affiliates' role with respect to Customer's Content, if any, shall be that of a passive conduit and (b) neither 8x8 nor any of its Affiliates or Partners shall be responsible for or have any involvement in determining or creating such Content or determining the recipients, destinations, or formatting of any communications through Ordered CPaaS Services.

4. IP RIGHTS. To the maximum extent permitted by law, (a) all intellectual property and other rights, title, and interest ("**Rights**") in or to any Content or Customer IP shall remain with, and belong exclusively to, Customer and/or its licensors and (b) all Rights in or to the Documentation or the CPaaS Services and related software, applications, functionalities, APIs, tools, and interfaces (the "**8x8 Platform**") – and all configuration designs, code, deliverables, and other work product produced or developed by 8x8 or its Affiliates or Partners in the course of performing under the Agreement (except to the extent such work product embodies Customer IP) – shall remain with, and belong exclusively to, 8x8, its Affiliates, and/or their licensors. Customer hereby

assigns to 8x8 all Rights in or to any improvement, enhancement, recommendation, correction, or other feedback that Customer may provide to 8x8 or its Affiliates relating to their operations or their products or offerings, and agrees that 8x8 shall be free to use, license, assign, and exploit any ideas, concepts, know-how, or techniques contained therein for any purpose without restriction or compensation.

5. TAXES. Customer shall be liable and responsible for, and shall pay in accordance with Section 6 (Payment), all taxes, levies, imports, exports, customs, duties, charges, and fees or similar governmental assessments, including value-added tax, sales, use, or withholding taxes or fees, assessed or assessable by any governmental, fiscal, or other authority, or recoverable by 8x8, in respect of Ordered CPaaS Services, other than those assessable against 8x8 based solely on its income (collectively, “**Taxes**”). Any Taxes set forth in the Agreement shall be solely non-binding estimates. In order to assert an exemption from any Tax, Customer must deliver to 8x8 a valid tax exemption certificate authorized by the appropriate taxing authority, in which case Customer shall still be liable for any Taxes assessed prior to such delivery. To the extent required by law, Customer may deduct amounts from its payment of Billed Amounts for or on account of any Tax and/or withholding imposed by any governmental or fiscal authority, provided that Customer shall (a) provide notice of such requirement to 8x8 at least thirty (30) days prior to making the deduction, (b) furnish 8x8 with receipts evidencing remittance of the deducted amounts, and (c) pay such additional amounts to 8x8, as applicable, as are necessary to ensure receipt by 8x8 of the full amount that it would have received but for the deduction. Customer acknowledges and agrees that 8x8 may not charge value-added, goods and services, or similar Taxes in certain jurisdictions (such as Australia) that permit reverse charge of such Taxes. Customer shall account for and remit any such Taxes on Ordered CPaaS Services in such jurisdictions.

6. PAYMENT

6.1. Payment of Billed Amounts. Except as set forth in this Section 6.1 (Payment of Billed Amounts) and Section 5 (Taxes), Customer shall pay all amounts billed to Customer by or on behalf of 8x8 or its Affiliate in respect of Ordered CPaaS Services (“**Billed Amounts**”) without counter-claim, set-off, withholding, or deduction of any sort. If Customer believes in good faith that a Billed Amount was not actually incurred under the Agreement (i.e., was overbilled), then Customer may dispute such Billed Amount by providing notice to 8x8 by email to claims@8x8.com within thirty (30) days of the date of the first posting of the Billed Amount in the relevant account (where payment is not By Invoice) or the date of the first invoice in which the Billed Amount was invoiced (where payment is By Invoice), which notice must specify the particular Billed Amount(s) in dispute and the basis of the dispute in reasonable detail. Failure to so dispute a Billed Amount within such period shall constitute a complete and irrevocable waiver of Customer’s right to dispute such Billed Amount. If payment of a Billed Amount is By Invoice and Customer disputes such Billed Amount in good faith in accordance with this Section 6.1 (Payment of Billed Amounts), then Customer may, at its option, either (a) pay such Billed Amount expressly under protest or (b) withhold payment of such Billed Amount, in which case such Billed Amount, ***if (and only if) actually incurred under the Agreement (i.e., not actually overbilled)***, shall not become due until ten (10) days after 8x8’s determination of the same (if such due date is later than the original due date for such amount). Delinquent Billed Amounts shall, beginning upon delinquency, accrue interest at the rate of the lesser of one-point-five percent (1.5%) per month or the maximum rate permitted by applicable law. Except as expressly provided otherwise in the Agreement, all payments to 8x8 or its Affiliate shall be non-refundable and non-creditable.

6.2. Up-Front Payment. At all times during the Effective Period other than those periods for which payment of all Billed Amounts is By Invoice, Customer shall maintain on file with 8x8 or the billing 8x8 Affiliate (as applicable) complete, accurate, and up-to-date information for at least one valid, working credit card or Customer account (sufficient to permit ACH withdrawals). Payment of all Billed Amounts – other than those for which 8x8 has agreed to payment By Invoice – shall be by charge to such credit card(s) or by ACH withdrawal from such account(s), at or near time of billing, and Customer hereby authorizes 8x8 to make such charges or withdrawals. Where payment is by such charge or withdrawal, (a) 8x8 shall post a statement of the Billed Amounts in the relevant account at or near the time of the first attempted charge or withdrawal and shall thereafter make commercially reasonable efforts to notify Customer by email and/or telephone if the charge or withdrawal is not successful and (b) Billed Amounts shall be due within fourteen (14) days of such posting.

6.3. Payment by Invoice. To the extent agreed by 8x8, Customer may pay Billed Amounts by invoice, in which case payment of those Billed Amounts shall be (a) made by credit card, check, ACH, or wire transfer and (b) due within thirty (30) days of invoice date (Net 30) (payment “**By Invoice**”). Each such agreement shall be within 8x8’s sole discretion, but, once entered into, may not be revoked by 8x8, except upon the occurrence of event(s) that, in 8x8’s reasonable discretion, put Customer’s creditworthiness or solvency into question (which such events shall include without limitation Customer’s default on any of its financial obligations or a Solvency Event with respect to Customer or any entity that owns or controls it).

6.4. Promotions. Promotion, discount, or related codes must be provided to 8x8 at the time of the relevant order(s), may not be used cumulatively or retroactively, and may be changed or discontinued by 8x8 at any time in its sole discretion.

7. 8x8 AFFILIATES AND SUBCONTRACTING. 8x8 may, in each case in its sole discretion, (a) designate an 8x8 Affiliate to enter into one or more Orders with Customer, in which case, with respect to such Orders (unless otherwise agreed in writing by the Parties), the Agreement's references to "8x8" shall include such 8x8 Affiliate and the 8x8 Affiliate shall be deemed to be the service provider under such Orders and (b) subcontract for the performance of 8x8's obligations under the Agreement, provided that 8x8 shall remain responsible for performance of such obligations and for such subcontractors' actions or omissions in performing such obligations.

8. GENERAL REPRESENTATIONS AND WARRANTIES; WARRANTY DISCLAIMER. Each Party represents and warrants that it is a bona fide business, has the power and authority to enter into and perform its obligations under the Agreement, and is not relying upon any statements, commitments, representations, or warranties other than those expressly set forth in the Agreement. Customer represents and warrants that its orders or purchases are not contingent on the delivery of any future functionality or feature. Customer acknowledges and agrees that: (a) the Ordered CPaaS Services will not be uninterrupted, error-free, or available one-hundred percent (100%) of the time (e.g., they may be unavailable during periods of planned or unplanned downtime and communications may not always be delivered to their intended destination), (b) the CPaaS Services are not intended to and should not be used for back-up or long-term storage of data, (c) Customer's or any User's integration of Ordered CPaaS Services with a third-party service, application, etc. may expose the Ordered CPaaS Services or the data transmitted or stored therethrough to third-party accessing, modification, deletion, or other processing, and (d) 8x8 shall not be responsible for any loss of such stored data or any such third-party processing. In providing the Ordered CPaaS Services, 8x8 shall utilize existing telecommunications facilities, without acting as a telecommunications provider. EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED BY 8x8 IN THE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, 8x8 MAKES NO WARRANTIES AND DISCLAIMS ALL WARRANTIES IN RELATION TO THE CPaaS SERVICES AND/OR THE AGREEMENT, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE.

9. CHANGE IN TERMS. 8x8 may not change these Terms or any Service Module in any manner that would materially reduce Customer's rights or benefits, or materially increase Customer's obligations or liability, under the Agreement (i.e., any such change shall not apply to the Agreement), except where 8x8 provides Customer with at least thirty (30) days' notice of such change and Customer fails to object (via notice to 8x8) to such change before the end of such notice period (in which case the change shall take effect at the end of such period). 8x8 may make other changes to these Terms and/or to a Service Module (including without limitation adding Regional Terms for a new country or region) by posting such changes to www.8x8.com/cpaas-order-terms or this web page, which changes shall be effective upon such posting.

10. SUSPENSION AND RESTRICTION. In addition to 8x8's other rights and remedies under the Agreement, 8x8 may (a) suspend some or all of the Ordered CPaaS Services where (i) 8x8 reasonably determines that such suspension is necessary to avoid actual or likely harm or damages to, or liability for, any party, provided that 8x8 shall promptly notify Customer of such suspension (in advance, if practicable) or (ii) Customer has materially breached the Agreement and, if such breach is reasonably capable of cure, has not cured such breach within thirty (30) days of 8x8's notification to Customer of such suspension, (b) suspend or block transmission of communications via the Ordered CPaaS Services in respect of any individual indicating the absence or withdrawal of consent, and/or (c) place reasonable limitations or restrictions on the use of any Ordered CPaaS Services that are being used in violation of the Use Policy. For avoidance of doubt, none of the foregoing actions by 8x8 shall relieve Customer of any of its obligations under the Agreement.

11. TERM OF AGREEMENT. The Agreement shall become effective on the Effective Date and continue in full force and effect until the expiration or termination of all Service Modules, upon which the Agreement shall terminate (the "Effective Period"). In no event shall termination of the Agreement relieve Customer of its obligation to pay any amount incurred thereunder prior to such termination or expiration.

12. INDEMNIFICATION. 8x8 shall (a) defend Customer, its Affiliates, and their personnel (collectively, the "Customer Parties") from and against any Indemnified IP Claim threatened or brought against any of them by any third party and (b) indemnify and hold harmless the Customer Parties against any damages, attorneys' fees, defense costs, and other losses (collectively, "Losses") payable by them pursuant to the adjudication or settlement of any Indemnified IP Claim. Customer shall (i) defend 8x8, its Affiliates, and their personnel (collectively, the "8x8 Parties") from and against any action, claim, demand, suit, investigation, inquiry, or proceeding (each a "Claim") threatened or brought against any of them by any third party that arises out of or results

from Customer's Content or any actual or alleged breach of the Agreement by Customer and (ii) indemnify and hold harmless the 8x8 Parties against any Losses payable by any of them pursuant to the adjudication or settlement of any such Claim. An indemnified party shall (1) provide the indemnifying Party prompt notice upon becoming aware of such a Claim, (2) permit the indemnifying Party to have sole and exclusive control over the defense and settlement of any such Claim, if it elects, and (3) provide reasonable assistance to the indemnifying Party in connection therewith; provided that 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.

13. EXCLUSIONS AND LIMITATIONS OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, (a) NONE OF THE 8x8 PARTIES SHALL BE LIABLE UNDER THE AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR COVER DAMAGES; LOSS OF PROFITS, REVENUES, OR GOODWILL; OR LOSS OR INTERRUPTION OF BUSINESS, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE AND (b) THE MAXIMUM LIABILITY OF THE 8x8 PARTIES UNDER THE AGREEMENT, WHETHER ARISING FROM A THEORY OR CLAIM OF BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CASE EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAYABLE UNDER THE AGREEMENT FOR THE TWELVE- (12-) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING EXCLUSION AND LIMITATION SHALL APPLY REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ON A CUMULATIVE (RATHER THAN PER-INCIDENT) BASIS. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PRICING AND OTHER TERMS UNDER THE AGREEMENT ARE BASED ON THE FOREGOING EXCLUSION AND LIMITATION.

14. DISPUTE RESOLUTION

14.1. Pre-Filing Notice. Each Party shall, before initiating an arbitration, court or other action, suit, or proceeding against the other Party, its Affiliate, or their personnel in respect of any Covered Claim (each a "**Proceeding**"), provide written notice to the other Party describing in reasonable detail its contentions and the specific provisions of the Agreement, if any, allegedly breached. The Parties shall work diligently and in good faith for thirty (30) days following such notice to attempt to resolve the dispute, including without limitation by ensuring that knowledgeable executives of each Party hold at least one meeting (in person or by video- or tele-conference) to such end. If the Parties fail to resolve the dispute by the end of such thirty- (30-) day period, either Party may thereafter initiate the Proceeding in accordance with these Terms (and without satisfying any further notice or cure period under the Agreement). FAILURE TO COMPLY WITH THIS SECTION 14.1 (PRE-FILING NOTICE) 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 CONTRAVENTION THEREOF.

14.2. Mandatory Arbitration. (IF CUSTOMER IS DOMICILED IN THE US, THIS SECTION 14.2 (MANDATORY ARBITRATION) SHALL APPLY TO ALL COVERED CLAIMS; OTHERWISE, IT SHALL APPLY TO ONLY COVERED CLAIMS RELATING TO SERVICES PROVIDED IN THE US.) COVERED CLAIMS 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 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. The language of the arbitration shall be English.

15. MISCELLANEOUS

15.1. Notices. Except as expressly provided otherwise in the Agreement, any notice to be provided thereunder shall be provided as follows: (a) **to Customer** – via email to the email address specified by Customer in connection with its initial order of Services or via personal service, overnight courier, or US certified mail (return receipt requested and postage prepaid) (collectively, "**Delivery**") to any postal address provided by Customer in connection with such order and (b) **to 8x8** – via email to claims@8x8.com (for notices of Claims or termination) or notice@8x8.com (for all other notices) or via Delivery to "8x8, Inc., Attn: Customer Service, 675 Creekside Way, Campbell, CA 95008". Either Party may change any of its designated notice addresses via notice to the other Party. Notices shall be deemed effective and received as follows: (i) **via Email** – the first business day after the date sent (without any undeliverable notification being returned), (ii) **via Personal Service** – the first business day after the date delivered to the noticed Party, (iii) **via Overnight Courier** – the first business day after the date delivered to the overnight courier, and (iv) **via US Certified Mail** – the fifth (5th) day after the date sent.

15.2. Governing Law; Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of California, without regard to its choice or conflicts of law rules. The Parties 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 US), and waive any objection as to venue or inconvenient forum in such courts.

15.3. Force Majeure. Neither Party shall be considered in breach of, or have any liability under, the Agreement as the result of any failure or delay in such Party's performance thereunder caused by events beyond such Party's reasonable control, including without limitation act of God; fire, flood, hurricane, earthquake, tsunami, or other natural disaster; riot; war; terrorism; government action or intervention; embargo; strike; destruction of facilities; late or failed delivery by suppliers; unavailability of power or Internet services; or network or carrier issues, *provided* that the foregoing shall not apply to either Party's payment obligations under the Agreement.

15.4. Amendment. The Agreement may not be amended, except via both Parties' execution of a written amendment thereto or as otherwise expressly provided in these Terms or a Service Module. In no event shall the terms of any purchase order or similar document delivered by or on behalf of Customer to 8x8 or its Affiliate in connection with the Agreement (to which 8x8 hereby objects) become part of, apply to, or modify or supersede the Agreement's terms.

15.5. Severability. If any provision of the Agreement is deemed illegal, invalid, or unenforceable, in whole or in part, under applicable law, the Agreement shall be deemed amended as and to the extent necessary to render its terms valid, enforceable under applicable law, and, to the greatest extent possible, consistent with the Parties' original intent.

15.6. Waiver. Except to the extent expressly otherwise provided in the Agreement, (a) either Party's failure to exercise or enforce any right or remedy under the Agreement shall not constitute a waiver of such right or remedy and (b) no waiver of any right or remedy shall be enforceable against a Party unless in writing and otherwise conforming with these Terms.

15.7. Assignment; Binding Effect. The Agreement shall be binding upon the Parties' heirs, successors, and permitted assigns. Customer may not assign the Agreement or assign its rights or delegate its obligations thereunder, in whole or in part, except (a) (to the extent in connection with a bona fide sale of Customer or substantially all of its assets to a third party) with ten (10) days' prior notice to 8x8 or (b) with 8x8's prior express written consent. In connection with any such proposed or actual assignment or delegation by Customer, Customer shall provide such information and documentation concerning the assignee or delegee as 8x8 might reasonably request. 8x8 may assign its rights and/or delegate its obligations under the Agreement, in part or in full, to one or more of its Affiliates.

15.8. No Third-Party Beneficiaries. Except as expressly stated in the Agreement, the Agreement is 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 User.

15.9. Document Execution/Acceptance. Use of DocuSign, or any other widely-used method of verifiable electronic signature and delivery, shall be a valid method of execution and/or delivery of all documents under the Agreement. Any document or other content related to or proposed for addition to the Agreement that is prepared by 8x8 and sent to Customer for acceptance via completion of an electronic 8x8 process shall be deemed accepted and entered into by Customer upon Customer's completion of such process.

15.10. Interpretation. The headings in the documents comprising the Agreement are solely for the convenience of reference and shall not be given any effect in the construction or interpretation of thereof. References in the Agreement to a 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 the owner or controller of the web site.

15.11. Survival. Sections 12 (Indemnification), 13 (Exclusions and Limitations of Liability), and 14 (Dispute Resolution) shall survive termination or expiration of the Agreement, as shall any other provision that by its nature is intended to so survive.

15.12. Definitions. The definitions set forth in any component of these Terms shall apply throughout this these Terms. When used in these Terms, the following capitalized terms shall have the following meanings:

"Affiliate" – an entity that directly/indirectly controls or is controlled by or under common control with the applicable person.

"Covered Claim" – a Claim that one Party intends to assert against the other Party, its Affiliates, or any of their personnel, other than Claims (a) seeking injunctive relief, (b) of 8x8 or its Affiliate relating to Billed Amounts not disputed in accordance with Section 6.1 (Payment of Billed Amounts), and/or (c) that the other Party is expressly required to defend under the Agreement.

"CPaaS Services" – communications-platform-as-a-service (CPaaS) services (e.g., SMS, Jitsi-as-a-Service, Chat Apps, and Voice) (whether stand-alone, bundled with other services, or otherwise) of or offered by 8x8 or its Affiliate (including without limitation any such "Wavecell" services), including all APIs and other components thereof.

“Customer IP” – any (a) original non-8x8 software application or service that Customer makes available, or creates, through use of the 8x8 Platform, or that interfaces with the 8x8 Platform, (b) content originally transmitted by Customer or its Users via such an application or service, or (c) pre-existing intellectual property of Customer.

“Documentation” – user manuals and technical documentation related to the CPaaS Services posted to www.8x8.com or www.wavecell.com or otherwise made available by 8x8 or its Affiliate to its customers, excluding marketing or promotional materials.

“Indemnified IP Claim” – a Claim alleging that the CPaaS Services, as used in accordance with the Agreement and the Documentation, infringe any patent, trademark, or copyright enforceable under the laws of the United States (the “US”), the United Kingdom, Australia, Canada, or the European Community, excluding any Claim based upon: (a) the combination, operation, or use of CPaaS Services with any non-8x8 product, device, service, or software; (b) the alteration or modification of CPaaS Services other than by 8x8 or its authorized subcontractors; or (c) 8x8’s or its Partner’s alteration or modification of CPaaS Services at Customer’s request.

“Partner” – a vendor, subcontractor, or other service provider.

“Party” – each of 8x8 and Customer (together, the “Parties”).

“Solvency Event” – a bankruptcy, reorganization, insolvency, or similar proceeding not dismissed within thirty (30) days; dissolution; becoming insolvent or bankrupt; or the making of an assignment for the benefit of creditors.

“User” – a party provided with access to Ordered CPaaS Services by or at the direction or request of Customer or its Affiliate.

8x8 CPAAS REGIONAL TERMS

A. Applicability. Where the heading of a section of these 8x8 CPaaS Regional Terms (these “Regional Terms”) refers to one or more particular country(ies) or region(s), the provisions of such section shall apply solely with respect to Ordered CPaaS Services, if any, provided to a Customer location (as identified by a physical address specified in the Agreement) (each a “Customer Location”) in such country(ies) or region(s).

B. CCPA “Personal Information”. In providing Ordered CPaaS Services, 8x8 will not collect, retain, use, sell, or otherwise disclose any “personal information” as defined in the California Consumer Privacy Act of 2018 for any purpose other than performing the services specified in the Agreement or as otherwise permitted or required by applicable law.

C. Data Protection in Australia. Subject to the terms of the Agreement, 8x8 will handle any “personal information”, as defined in the *Privacy Act 1988* (Cth) as amended from time to time, that Customer submits to 8x8 via any Ordered CPaaS Services provided to a Customer Location in Australia (“Australia Personal Information”) only in accordance with 8x8’s Privacy Notice (available at <https://www.8x8.com/terms-and-conditions/privacy-policy>) (the “Privacy Notice”), or as otherwise permitted or required by law. 8x8 shall (a) take reasonable steps to protect Personal Information from misuse, interference, unauthorized access, modification, or disclosure and (b) not use Personal Information, except to provide the Ordered CPaaS Services or otherwise perform its obligations under the Agreement; as set forth in the Privacy Notice; or as otherwise permitted or required by law.

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

E. Data Protection in Canada. To the extent that the Content, if any, that Customer sends, receives, or stores via Ordered CPaaS Services provided to a Customer Location in Canada includes “personal information” as defined under the Personal Information Protection and Electronic Documents Act (2000, c. 5) (PIPEDA) (“Canada Personal Information”), 8x8 shall use and disclose such Canada Personal Information solely (a) for the purpose of fulfilling 8x8’s obligations or exercising 8x8’s rights under the Agreement (which shall, for clarity, include providing, supporting, or enhancing (e.g., performing quality control functions) the CPaaS Services), (b) as approved in advance in writing by Customer, (c) in accordance with Customer’s instructions, or (d) for the purpose of complying with laws or regulations, including without limitation in response to legal process or court or administrative order or ruling. To the extent that Customer otherwise submits Canada Personal Information to 8x8 via any Ordered CPaaS Services provided to a Customer Location in Canada, 8x8 shall use and disclose such Canada Personal Information solely as set forth in 8x8’s Privacy Notice.

8x8 CPAAS USE POLICY

Last Updated: September 3, 2020

- I. Scope of Responsibility.** Customer shall be responsible for ensuring compliance with this 8x8 CPaaS Use Policy (this “**Policy**”) by the parties specified herein, and any violation of this Policy by any such party shall constitute and be considered a breach hereof by Customer itself. Without limiting the foregoing, Customer shall be responsible and liable for all direct and indirect accessing and/or use of the Ordered CPaaS Services or the 8x8 Platform by or on behalf of it, the Users, other users of Ordered CPaaS Services, or parties with which Customer communicates therethrough, other than unauthorized activities resulting from the gross negligence or willful misconduct of 8x8 or its Affiliate (“**Customer Use**”) and all content, numbers, email addresses, and data transmitted or stored via the Ordered CPaaS Services or provided by or on behalf of Customer, its Affiliates, or the Users.
- II. Determination of Requirements.** Customer shall be solely responsible for determining and familiarizing itself with – and seeking its own legal counsel regarding – all United States, foreign, international, national, state, provincial, territorial, municipal, local, or other laws, regulations, codes, ordinances, treaties, conventions, writs, decrees, resolutions, promulgations, or court or administrative orders or rulings (collectively, “**Laws**”); contractual obligations; and rules, standards, policies, and guidelines imposed or published by telecommunications carriers or providers, network providers, ISPs, the Cellular Telecommunications Industry Association (“**CTIA**”) (including without limitation the CTIA Short Code Monitoring Handbook and addenda thereto and the CTIA Messaging Principles and Best Practices), the Canadian Wireless Telecommunications Association (including without limitation the Canadian Common Short Code Application Guidelines), the Mobile Marketing Association (including without limitation the Mobile Marketing Association Guidelines), or other generally-recognized industry organizations or bodies (Laws and all of the foregoing, collectively, “**Requirements**”) that might apply to Customer Use, which Requirements might include without limitation domestic and/or foreign Laws relating to:
- (i) marketing, solicitation, business practices, or telecommunications or electronic communications (collectively, “**Marketing Laws**”), such as the US Telephone Consumer Protection Act of 1991 (the TCPA) (which significantly restricts telephone solicitations (i.e., telemarketing) and the use of automatic dialing systems, artificial or pre-recorded voice messages, SMS / text messages, and facsimile communications) and Canada’s Anti-Spam Legislation (CASL);
 - (ii) privacy, or the security or protection of personal data or other categories of data (“**Data Protection Laws**”); and
 - (iii) surveillance; the monitoring or recording of conversations, communications, or other activities; or wiretapping (“**Monitoring Laws**”), which Laws may prohibit or require advance notice or consent for such activities.

8x8 shall have no obligation to provide legal advice of any kind to the Customer Parties, and the Customer Parties shall not treat or rely on any statements, communications, or materials of the 8x8 Parties as such.

- III. Policy Requirements.** Customer agrees, represents, warrants, and covenants the following:

- (a) **Legal and Other Compliance** – All Customer Use and related content shall comply with all applicable Requirements, including without limitation those within the applicable recipients’ jurisdiction(s) that apply to the acts, activities, and conduct at issue.
- (b) **Consents, Etc.** – Customer has obtained all consents, licenses, rights, authorizations, and/or permits and has provided all disclosures and notices/notifications required (including without limitation under Marketing, Data Protection, or Monitoring Laws) for or in connection with Customer Use or any personal data related thereto and shall not transmit any communication via the CPaaS Services (i) to a recipient that has not explicitly requested the message (or that is otherwise unsolicited) or (ii) in such a manner that the sender of the message may not be reasonably identified.
- (c) **Do-Not-Call List** – To the extent that Customer Use might involve telemarketing, solicitation, or substantial outbound activities, Customer shall maintain and enforce an accurate, comprehensive, and up-to-date internal “do not call/text” list to prevent contacting parties that do not wish to receive further communications.
- (d) **No Resale; Reasonable Business Use** – Ordered CPaaS Services shall not be sold/resold, leased/subleased, licensed/sublicensed, or otherwise made available to any other third party (other than a Customer Affiliate), and all orders under the Agreement and all Customer Use shall be for Customer’s or its Affiliate’s own internal reasonable business use.
- (e) **Documentation** – All Customer Use shall be consistent with the applicable Documentation.
- (f) **No Bribery** – Neither the Customer Parties nor any User has received or been offered any bribe, kickback, or illegal/improper payment, gift, or thing of value from any 8x8 Party in connection with the Agreement or Ordered CPaaS Services.
- (g) **Other Prohibited Uses and Activities** – In no event shall Customer Use consist of, involve, solicit, promote, or facilitate any:
 - (i) content, material, conduct, or activity that is criminal, unlawful, defamatory, harassing, fraudulent, dishonest, obscene, offensive, discriminatory, abusive, threatening, harmful, tortious, or intended to cause distress;

- (ii) transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value;
 - (iii) transmission, storage, or distribution of any virus; time bomb; Trojan horse; worm; malware; spyware; cancel bot; computer programming routine intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate information; or similar programs, or files, code, or other materials containing any of the foregoing;
 - (iv) breach, violation, or infringement of any intellectual property, privacy, or other right – or misappropriation of the property – of any party (or contain any material that may result in or cause any of the foregoing);
 - (v) accessing or use of CPaaS Services in or from a US-embargoed country;
 - (vi) any conduct or activity that might cause 8x8 or any of its Affiliates or Partners to violate any Law;
 - (vii) the targeting of specific wireless carriers for the purpose of obtaining below-market telephony rates or the exploitation of undocumented features of the CPaaS Services; or
 - (viii) any information, content, or material that has been generated or obtained through the use of a dictionary attack or address-harvesting software.
- (h) Export Control** – At no point during the Effective Period or any subsequent period during which Customer, its Affiliates, and/or any User continues to have access to Ordered CPaaS Services (the “**Access Period**”) will Customer, any of its Affiliates, and/or any User be named on any US government denied-party list.
- (i) Security of Ordered CPaaS Services** – Customer shall, during the entire Access Period, (i) implement and maintain reasonable and appropriate measures and safeguards to prevent unauthorized access to and/or use of the Ordered CPaaS Services and/or the related account(s); data transmitted, received, or stored therein or therethrough; and any equipment used to access any of the foregoing and (ii) promptly provide notice to 8x8 of any such unauthorized access or use or other breach of any of the foregoing (including without limitation any loss or theft of such equipment) and provide such cooperation as 8x8 might reasonably request to address or prevent any such incident. Without limiting the foregoing, Customer shall instruct, train, and oversee all Users as necessary to ensure that they (1) choose robust password combinations, change their passwords regularly, and not disclose their passwords except to authorized 8x8 support agents and (2) perform a “log off” / exit from such accounts at the end of each session of access thereto.
- (j) CPaaS Services Updates and Security** – Throughout the Access Period, Customer, its Affiliates accessing or using Ordered CPaaS Services, and the Users shall (i) promptly install all upgrades, bug fixes, patches, and other corrections relating to the CPaaS Services made available by or on behalf of 8x8 or its Affiliates or Partners and (ii) not take any action or omission that might reasonably be expected to (A) disrupt or compromise the integrity or security of any services, platforms, or networks of 8x8 or its Affiliates or Partners, (B) cause material damage to 8x8, its Affiliates or Partners, or any customer of 8x8, its Affiliates, or any their Partners, or (C) compromise the privacy of any such customer.
- (k) Emergency Services and High-Risk Applications** – THE ORDERED CPaaS SERVICES SHALL NOT – AND CUSTOMER UNDERSTANDS THAT THE CPaaS SERVICES ARE NOT DESIGNED OR INTENDED TO – BE USED FOR, ANY APPLICATION (SUCH AS SUPPORTING EMERGENCY COMMUNICATIONS) WHERE FAILURE, INTERRUPTION, OR MALFUNCTION MAY REASONABLY RESULT IN BODILY INJURY, LOSS OF LIFE, OR SUBSTANTIAL DAMAGE TO PROPERTY. Customer shall inform all Users and keep them apprised of the foregoing and any similar limitation of which 8x8 or its Affiliates notify Customer.
- (l) Prohibited Acts** – During the Access Period, neither the Customer Parties nor the Users shall:
- (i) inspect, possess, use, copy, reverse engineer or attempt to discover the source code of any program or other component of the CPaaS Services or 8x8 Platform or any source code used to create any such program or other component, except as expressly permitted by applicable law;
 - (ii) attempt to scan for penetration or third-party security assessment purposes, hack, or gain unauthorized access to any network, environment, or system of 8x8, its Affiliates or Partners, or any customer of 8x8, its Affiliates, or their Partners; or
 - (iii) access or use any CPaaS Services 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.
- (m) Oversight of Users** – Customer shall (i) ensure that each log-in associated with Ordered CPaaS Services is assigned solely to and usable solely by a single duly authorized individual User, (ii) not provide, or direct or request any party to provide, access to Ordered CPaaS Services to any individual over whom Customer lacks sufficient control (contractual or otherwise) to ensure compliance with this Policy, or allow any such individual to access or use Ordered CPaaS Services, and (iii) during the Access Period, instruct, oversee, and train the Users and its workforce and Partners as necessary to ensure Customer’s compliance with this Policy.