

# 8x8 UCaaS/CCaaS SERVICE TERMS

## (ALSO REFERRED TO AS THE “8x8 VIRTUAL OFFICE AND VIRTUAL CONTACT CENTER SERVICE TERMS”)

Last Updated: October 16, 2020

### 1. AGREEMENT AND CONFLICT

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.

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 Products (the “**Agreement**”): (a) entering into an agreement, order, or other document that incorporates these 8x8 UCaaS/CCaaS Service Terms or otherwise agreeing to or accepting these 8x8 UCaaS/CCaaS Service Terms or (b) accessing or using any SaaS Services after being notified that these 8x8 UCaaS/CCaaS Service Terms apply to such SaaS Services or to such accessing or use thereof.

The Agreement shall consist of these 8x8 UCaaS/CCaaS Service Terms and all content expressly incorporated herein (these “**Terms**”) and all Orders, SOWs, and 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 Products.

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 SaaS SERVICES OR AUTHORIZE OR PERMIT ANY OTHER PERSON TO DO SO.

These Terms apply with respect to all Orders, all SaaS and Project Services (“**Services**”), and all equipment ordered or provided under the Agreement (such equipment, “**Ordered Equipment**”; such Services and equipment together, “**Ordered Products**”). In the event of any conflict among the documents that comprise the Agreement, the following order of precedence shall apply: (i) an Order (solely as to type, quantity, billing, and pricing of the Services or equipment ordered thereunder); (ii) an SOW (solely as to the performance of the Project Services ordered thereunder and the billing of amounts related thereto); (iii) these Terms; and (iv) Orders and SOWs (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 UCaaS/CCaaS Regional Terms included at the end hereof (the “**Regional Terms**”) (which are incorporated herein), (2) the 8x8 UCaaS/CCaaS Use Policy (available at [www.8x8.com/terms-and-conditions/use-policy](http://www.8x8.com/terms-and-conditions/use-policy)) (the “**Use Policy**”) (which is incorporated herein), and (3) the other components of these Terms.

For the avoidance of doubt, any reference in an Order or other document or content to the “8x8 Virtual Office and Virtual Contact Center Service Terms” or the “8x8 Virtual Office and Virtual Contact Center Regional Terms” shall be deemed to refer to these Terms or the Regional Terms, respectively, which were formerly titled as such.

### 2. SaaS SERVICES

**2.1. Ordering SaaS Services.** Customer may order SaaS Services under the Agreement or make changes to previously-ordered Ordered Products or the terms related thereto, in each case by entering into an 8x8-prepared written or electronic order for the same with 8x8 or its Affiliate pursuant to the Agreement (such orders, “**Orders**”; such SaaS Services, the “**Ordered SaaS Services**”). Orders shall be (a) deemed entered into by, and shall become effective and legally binding on, the Parties upon execution or completion of an electronic 8x8 process by Customer and (b) coterminous with the Agreement (i.e., shall terminate, renew, and/or expire at the same time as the Agreement, in accordance with Sections 11 (Term and Renewal) and 12 (Termination)). Upon placement of an Order, the applicable Ordered SaaS Services shall be provisioned, a tenant and account shall be automatically created for Customer, and Customer’s designated administrator shall receive access such Ordered SaaS Services (“**Provisioning**”).

#### 2.2. 8x8 Responsibilities With Respect to SaaS Services

**2.2.1. SaaS Services Availability.** 8x8 shall, itself or through one or more of its vendors, subcontractors, or other service providers (each, a “**Partner**” of 8x8) or Affiliates, (a) make the Ordered SaaS Services (which shall substantially conform to the applicable Documentation) available to Customer during the Effective Period as set forth in, and subject to the terms and

conditions of, the Agreement and (b) provide standard support for Ordered SaaS Services via telephone and web chat during 8x8's regular business hours.

**2.2.2. SaaS Services Pricing Commitment.** The Service Fee and Regulatory Fee rates for Ordered SaaS Services shall be as set forth in the applicable Order, and, during the Initial Term, 8x8 may not increase any such rates. 8x8 may, at the start of any renewal term, increase such rates by up to five percent (5%) above the rates in effect at the end of the immediately preceding Term, provided that 8x8 may increase Regulatory Fee rates up to then-current list price where 8x8's related costs have substantially increased. In addition, 8x8 may, by providing notification to Customer at least sixty (60) days prior to the commencement of such renewal term, increase Service Fee and/or Regulatory Fee rates for any renewal term up to as much as the then-current list price for the applicable Ordered SaaS Services. Finally, when Customer orders Ordered SaaS Services for the first time in a country, such order shall establish the Service Fee rates that 8x8 must offer for future Orders of the same Ordered SaaS Services in that country, provided that such established rates shall increase in parallel with any rate increases under the immediately preceding sentence.

**2.2.3. Changes to Ordered SaaS Services.** 8x8 may not change Ordered SaaS Services in any way that materially reduces their overall functionality or security (based on customary usage in the United States ("US"), the United Kingdom, Australia, and Canada (the "Primary Market")), except with Customer's written approval. 8x8 may, however, make other changes or perform upgrades to Ordered SaaS Services, provided that 8x8 shall provide advance notification to Customer of any such change or upgrade if reasonably practicable or otherwise promptly thereafter.

**2.2.4. 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 SaaS Services (Customer's "Content") from unauthorized access and use. Customer shall remain the owner of its Content. 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 or destinations of any communications through Ordered SaaS Services.

### **2.3. Customer Responsibilities With Respect to SaaS Services**

**2.3.1. Customer Subscription Commitment.** AS A MATERIAL COMMITMENT UPON WHICH PRICING AND OTHER TERMS OF THE AGREEMENT ARE BASED, CUSTOMER SHALL BE OBLIGATED TO PAY (IN ACCORDANCE WITH SECTION 7 (PAYMENT)) ALL SERVICE FEES, REGULATORY FEES, AND TAXES RELATED TO ORDERED SaaS SERVICES FOR THE ENTIRE PERIOD BEGINNING ON THE EFFECTIVE DATE OF CUSTOMER'S FIRST ORDER AND CONTINUING FOR THE NUMBER OF MONTHS IDENTIFIED THEREIN AS THE "TERM," "INITIAL TERM," OR SIMILAR PERIOD (OR, WHERE NO SUCH PERIOD IS SO IDENTIFIED, FOR THIRTY-SIX (36) MONTHS) THEREAFTER (THE "INITIAL TERM") AND EACH RENEWAL TERM (CUSTOMER'S "SUBSCRIPTION COMMITMENT"), provided that Customer may reduce in quantity or downgrade (e.g., to a tier with a lower Service Fee rate) Ordered SaaS Services for the next renewal term by providing notice of the same to 8x8 at least forty-five (45) days before the start of such renewal term ("Reduce" or a "Reduction").

**2.3.2. Usage.** Customer shall be responsible for, and shall pay in accordance with Section 7 (Payment), any applicable usage charges of the sort set forth at the time of such usage at [www.8x8.com/terms-and-conditions/usage](http://www.8x8.com/terms-and-conditions/usage).

**2.3.3. Use Policy Compliance.** Customer accepts and agrees to the Use Policy and shall fulfill all of its obligations, representations, warranties, and covenants thereunder.

**2.3.4. Registration Information.** Customer shall be responsible for the accuracy and legality of all account, Agent, and registration information (including without limitation Customer's legal name and payment information, Customer/Agent contact information, and any personal data included therein) ("Registration Information") and the means of its acquisition.

**2.3.5. Network Requirements.** Customer shall be responsible for ensuring that all aspects of the applicable network environment(s) adhere to the applicable standards and requirements specified in the Documentation and are configured appropriately to its proposed use of Ordered SaaS Services.

**2.4. SaaS Services Limitations.** Customer acknowledges and agrees that (a) the Ordered SaaS 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 or without loss of data), (b) a single log-in is provided for each UCaaS Ordered SaaS Services extension, and, except with respect to conference and other extensions specifically designed for conference or multi-party use ("Conference Extensions"), such log-in and extension is provided solely for use by a single Agent, (c) data transmitted or stored through the SaaS Services may be exported therefrom by or on behalf of Customer, Agents, or other users in a variety of ways (including without limitation via

third-party integrations, other features that interoperate with third-party offerings, or local or external download), (d) the SaaS Services are not intended to and should not be used for back-up or long-term storage of data, and (e) 8x8 shall not be responsible for any such exported data or any loss of such stored data. Use of 8x8 mobile applications may utilize underlying third-party cellular and/or data services and thus may use such services' allotted units and/or result in usage or other charges associated with such third-party services.

**2.5. Third-Party Offerings and Integrations.** Customer's relationship and dealings (including without limitation any collection or use of data) with providers of non-8x8 offerings that interoperate with the SaaS Services (e.g., third-party applications for which SaaS Services integrations are available) or that are used in connection with the SaaS Services (e.g., broadband, MPLS, and equipment leasing services) ("**Providers**") shall in each case be governed by Customer's agreement with the applicable Provider and shall be outside the scope of the Agreement. In no event shall 8x8 be liable or responsible (a) under any such agreement or for any act or omission of any Provider or any operation of its offering (e.g., any accessing, modification, or deletion of data), regardless of whether 8x8 endorses, refers Customer to, approves of Customer's use of, or agrees to bill and/or collect behalf of such Provider or designates any such offering as "certified," "approved," "recommended," etc., (b) for supporting any such third-party offering, or (c) (except as expressly set forth in an SOW) for ensuring the continued availability or operation of any such offering or any SaaS Services integrations or other features designed to interoperate therewith, which integrations or features may be discontinued at any time.

**2.6. 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 SaaS 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) and Customer shall not be liable for any fees for such Ordered SaaS Services for the period of such suspension if not due to Customer's breach of the Agreement 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 and/or (b) place reasonable limitations or restrictions on the use of any Ordered SaaS Services that are being used in violation of the Use Policy. Except as set forth in the foregoing clause (a), no such action by 8x8 shall relieve Customer of any of its obligations under the Agreement.

### **3. EQUIPMENT**

**3.1. Ordering Equipment.** Customer may order equipment, in each case by entering into an Order. The pricing for Ordered Equipment shall be as set forth in the Order under which it was ordered. Equipment-related pricing, discounts, and promotions (e.g., free shipping) provided in an Order shall apply solely to the particular equipment ordered under that Order, and 8x8 makes no commitment and shall have no obligation with respect to future pricing for or availability of equipment.

**3.2. 8x8 Responsibilities With Respect to Equipment.** 8x8 shall, itself or through its Affiliates or Partners, provide the Ordered Equipment to Customer and pass through to Customer a twelve- (12-) month warranty (or an extended warranty if permitted by the manufacturer) therefor. Customer may return any defective Ordered Equipment covered by warranty by obtaining a return authorization number from 8x8 and thereafter returning the Ordered Equipment in its original packaging or equivalent to the address specified by 8x8, in which case 8x8 shall replace the Ordered Equipment at no charge and pay the reasonable associated shipping costs.

**3.3. Customer Responsibilities With Respect to Equipment.** Customer shall, in accordance with Section 7 (Payment), pay for all Ordered Equipment at the pricing set forth in the applicable Order and for all shipping and related charges. All shipments of Ordered Equipment shall be 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 Ordered Equipment for all purposes. Customer shall be responsible for all lost, stolen, or broken equipment (except to the extent covered by warranty), and for ensuring that any externally-acquired equipment used with Ordered SaaS Services is in reasonable working condition and configured in accordance with 8x8's technical requirements.

**3.4. Equipment Financing Plans.** Where Customer orders Ordered Equipment pursuant to an Extended Payment Plan or similar financing option (an "**EPP**"), Customer shall pay for such Ordered Equipment according to such EPP's schedule and for such EPP's entire term, which shall be as set forth in the applicable Order (or twenty-four (24) months if not set forth therein). Customer may terminate any EPP for convenience with thirty (30) days' advance notice to 8x8. In the event of termination of any EPP for any reason, all unpaid amounts owed thereunder shall become immediately due and payable.

### **4. PROJECT SERVICES**

8x8 may from time to time, in each case in its sole discretion, offer to perform work for Customer related to the configuration or customization of Ordered SaaS Services, network assessments, Agent training, or similar work or services (“**Project Services**”). Customer may order Project Services under the Agreement (“**Ordered Project Services**”), in each case by entering into an Order and/or written statement of work for the same with 8x8 or its Affiliate (an “**SOW**”). 8x8 shall, itself or through its Affiliates or Partners, perform the Ordered Project Services in a professional and workmanlike manner, with reasonable skill and care, and in accordance with the terms of the applicable SOW and/or Order (which shall set forth the other terms and pricing related to the Ordered Project Services ordered thereunder), *provided* that Customer’s sole and exclusive remedies for 8x8’s breach of this sentence shall be as set forth in such SOW and/or Order. Customer shall pay all fees and other amounts set forth in the applicable Order and/or SOW for Ordered Project Services, in accordance with Section 7 (Payment) and any other terms set forth in such SOW.

## 5. 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 or SOWs with Customer, in which case, with respect to such Orders or SOWs (unless otherwise agreed in writing by the Parties), the Agreement’s references to “8x8” shall include such 8x8 Affiliate (as well as 8x8) (provided that the 8x8 Affiliate shall be deemed to be the service provider under such Orders or SOWs) and/or (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.

## 6. TAXES

Customer shall be liable and responsible for, and shall pay in accordance with Section 7 (Payment), all taxes, levies, imports, exports, customs, duties, charges, fees or similar governmental assessments, including value-added tax, 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, or recoverable by 8x8, in respect of Ordered Products, other than those assessable against 8x8 based solely on its income (collectively, “**Taxes**”). Any Taxes set forth in the Agreement or any quote 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 where 8x8 is not required to collect and remit such Taxes. Customer shall account for and remit any such Taxes on Ordered Products in such jurisdictions.

## 7. PAYMENT

**7.1. Billing of Billed Amounts.** Service Fees and other recurring charges shall start to be billed as of the effective date of the applicable Order and shall thereafter be billed in accordance with the applicable Order. One-time Services charges, including Project Services fees, shall be incurred on the effective date of the applicable Order. Equipment-related charges shall be incurred upon shipment of the Equipment.

**7.2. Payment of Billed Amounts.** Except as set forth in this Section 7.2 (Payment of Billed Amounts) and Section 6 (Taxes), Customer shall pay all amounts billed to Customer by or on behalf of 8x8 or its Affiliate in respect of Ordered Products or otherwise under the Agreement (“**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](mailto: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 7.2 (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.

**7.3. 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.

**7.4. 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 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).

**7.5. 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. In no event shall promotional rates or pricing apply for a period longer than a single Term or extend beyond the Term for which they were provided.

## **8. CHANGE IN TERMS**

8x8 may not change these Terms 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' notification of such change and Customer fails to object (via notice to 8x8) to such change before the end of such notification period (in which case the change shall take effect at the end of such period). 8x8 may make other changes to these Terms (including without limitation adding Regional Terms for a new country or region) by posting such changes to [www.8x8.com/order-terms](http://www.8x8.com/order-terms) or this web page, which changes shall be effective upon such posting.

## **9. 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 neither its orders nor purchases are contingent on the delivery of any future functionality or feature. 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 SERVICES, EQUIPMENT, 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.

## **10. RIGHTS IN AND TO THE SERVICES AND FEEDBACK**

To the maximum extent permitted by law, all intellectual property and other rights, title, and interest in or to the Documentation or the 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's pre-existing intellectual property) – shall remain with, and belong exclusively to, 8x8, its Affiliates, and/or their licensors. Customer hereby assigns to 8x8 all intellectual property and other rights, title, and interest 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.

## 11. TERM AND RENEWAL

The Agreement shall become effective on the date that the Parties enter into the Agreement and continue in full force and effect until the earlier of (a) the date terminated in accordance with Section 12.1 (Exclusive Termination Rights) and (b) the date of expiration as set forth in the next sentence (the “**Effective Period**”). At the end of the Initial Term and each renewal term (each a “**Term**”), the Agreement, if not earlier terminated in accordance with these Terms, shall:

- (i) expire if either Party has elected not to renew the Agreement via express election in an amendment, Order, or similar document entered into by the Parties or notice to the other Party at least thirty (30) days prior to the end of such Term;
- (ii) continue on a month-to-month basis (i.e., automatically renew for successive one- (1-) calendar month renewal terms) if Customer has so elected via express election in an amendment, Order, or similar document entered into by the Parties or notice to 8x8 at least thirty (30) days prior to the end of such Term; or
- (iii) automatically renew for a twelve- (12-) month renewal term if neither of the foregoing applies.

## 12. TERMINATION

**12.1. Exclusive Termination Rights.** The Agreement may be terminated:

- (a) by either Party with thirty (30) 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 payment delinquency or Customer breach of the Use Policy) 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;
- (b) immediately by either Party upon notice to the other Party where the other Party experiences a Solvency Event;
- (c) by 8x8 with thirty (30) days’ notice to Customer in the event that any SaaS Services become subject to an actual or threatened Claim of infringement (an “**Infringement Claim**”) and avoidance of the alleged infringement via procurement of a license or modification or replacement of the applicable SaaS Services (either or both of which may be exercised by 8x8, at its sole option and expense, in the event of any Infringement Claim) is not commercially feasible;
- (d) by 8x8 with thirty (30) days’ notice to Customer in the event that Customer objects to any change to these Terms proposed or made by 8x8 under Section 8 (Change in Terms);
- (e) by 8x8 with thirty (30) days’ notice to Customer in the event that 8x8 determines in good faith that such termination is necessary to comply with a law, regulation, or court or administrative order or ruling; or
- (f) by Customer through notice provided to 8x8 within the first thirty (30) days after the effective date of Customer’s initial Order, if the Ordered SaaS Services do not satisfy Customer’s requirements, in which case (i) Customer shall be relieved of its Subscription Commitment for any post-termination period and (ii) 8x8 shall refund any Service Fees paid to 8x8 for such post-termination period and any fees paid to 8x8 for the purchase of Ordered Equipment (less a \$25.00 (USD) per piece re-stocking fee) that is returned to 8x8 within thirty (30) days after Customer’s notice of termination (with Customer first obtaining a return authorization number from 8x8 and 8x8 providing pre-paid return shipping) in accordance with 8x8’s instructions, in its original packaging, and in an undamaged condition; provided that for avoidance of doubt, Customer shall remain liable for any other amounts incurred under the Agreement, including without limitation any Service Fees for any period prior to such termination, Taxes, Regulatory Fees, or amounts related to Usage (including without limitation any post-termination Usage).

THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION 12 (TERMINATION) STATES THE PARTIES’ SOLE AND EXCLUSIVE RIGHTS TO TERMINATE THE AGREEMENT, AND THE AGREEMENT MAY NOT OTHERWISE BE TERMINATED BY EITHER PARTY.

**12.2. Effect of Termination.** Upon any termination of the Agreement for any reason, subject to any continuing Customer financial obligations under the Agreement, all Orders, SOWs, and EPPs shall immediately terminate. In the event that the Agreement is terminated by Customer under and in accordance with clause (a) or (b) – or by 8x8 under clause (c), (d), or (e) – of Section 12.1 (Exclusive Termination Rights), Customer shall be relieved of its Subscription Commitment for any post-termination period, and 8x8 shall refund any amounts un-used and pre-paid for Ordered SaaS Services for any such period. For clarity, (a) no other termination of the Agreement shall relieve Customer of such commitment (which shall survive any such termination) or entitle Customer to any refund and (b) in no event shall termination or expiration of the Agreement relieve Customer of its obligation to pay any amount incurred thereunder prior to such termination or expiration.

## 13. 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.

#### **14. 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.

#### **15. DISPUTE RESOLUTION**

**15.1. 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 15.1 (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.

**15.2. Mandatory Arbitration.** (IF CUSTOMER IS DOMICILED IN THE US, THIS SECTION 15.2 (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.

#### **16. MISCELLANEOUS**

**16.1. 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](mailto:claims@8x8.com) (for notices of Claims or termination) or [notice@8x8.com](mailto: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.

**16.2. 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.

**16.3. 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.

**16.4. Entire Agreement; Amendment.** The documents comprising the Agreement constitute the entire agreement between the Parties in respect of the Ordered Products and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to thereto. The Agreement may not be amended, except via both Parties’ execution of a written amendment thereto or as otherwise expressly provided in these Terms. In no event shall the terms of any purchase order or similar document delivered by or on behalf of Customer or its Affiliate 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.

**16.5. 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.

**16.6. 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.

**16.7. 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.

**16.8. 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 Agent or other end user of Ordered SaaS Services.

**16.9. 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.

**16.10. 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-labeled hyperlinks and (b) such successor sites as may be designated by the owner or controller of the web site.

**16.11. Survival.** Sections 2.3.1 (Customer Subscription Commitment), 13 (Indemnification), 14 (Exclusions and Limitations of Liability), and 15 (Dispute Resolution) shall survive termination or expiration of the Agreement, as shall any other provision that by its nature is intended to so survive.



**16.12. Definitions.** 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.

**“Agent”** – an individual authorized to use, administer, or perform actions with respect to Ordered SaaS Services through Customer’s account (as an agent, administrator, or otherwise), as identified through a unique log-in.

**“Covered Claim”** – a Claim that one Party intends to assert against the other Party, its Affiliates, or any of their personnel, other than (a) Claims seeking injunctive relief, (b) Claims of 8x8 or its Affiliate relating to Billed Amounts not disputed in accordance with Section 7.2 (Payment of Billed Amounts), and (c) Claims that the other Party is expressly required to defend under the Agreement.

**“Documentation”** – user manuals and technical documentation related to the SaaS Services posted to [www.8x8.com](http://www.8x8.com) or otherwise made available by 8x8 to its customers from time to time, but excluding marketing or promotional materials.

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

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

**“Regulatory Fees”** – recurring fees (which are not Service Fees, Taxes, or government-imposed charges), including Emergency Services Fees (or E911 Service Fee in the US) and Regulatory Recovery Fees (in the US), charged by 8x8 or its Affiliate for each number (including without limitation toll free and virtual numbers) associated with telephony Ordered SaaS Services, to offset costs incurred by 8x8 and its Affiliates in complying with inquiries from, and obligations imposed on them by, regulatory bodies and/or governmental agencies.

**“SaaS Services”** – 8x8 unified-communications-as-a-service (such as 8x8 Virtual Office and 8x8 Work) (**“UCaaS”**) and contact-center-as-a-service (such as 8x8 Virtual Contact Center and 8x8 Contact Center) (**“CCaaS”**) services (whether stand-alone, included in 8x8 Editions, 8x8 X Series, or otherwise bundled with other services), including all components thereof.

**“Service Fees”** – the base recurring fees for Ordered SaaS Services.

**“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.

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## 8x8 UCaaS/CCaaS REGIONAL TERMS

**A. Applicability and Definitions.** These 8x8 UCaaS/CCaaS Regional Terms (these **“Regional Terms”**) shall apply solely with respect to Ordered Products provided to a Customer location (as identified by a physical address specified in the Agreement) (each a **“Customer Location”**) in the US, Australia, or Canada, except to the extent that one or more particular countries or regions are expressly referenced with respect to a provision of these Regional Terms, in which case such provision shall apply solely with respect to Ordered Products, if any, provided to a Customer Location in the referenced country(ies) or region(s). Capitalized terms used and not defined in these Regional Terms shall have the meanings assigned to them in the 8x8 UCaaS/CCaaS Service Terms into which they are incorporated (the **“Terms”**).

**B. Numbers and Porting.** Subject to the following requirements and limitations, 8x8 shall support number portability under applicable law for UCaaS Ordered SaaS Services that involve telephone numbers (including codes) that are provided to Customer by 8x8 or its Affiliate in connection with such Ordered SaaS Services (**“8x8 Numbers”**) or telephone numbers that are ported into 8x8 or its Affiliate by Customer in connection with such Ordered SaaS Services (**“Ported-In Numbers”**):

- **Availability of Porting** – In the US and Canada, portability is dependent upon the cooperation of third parties not under the control of 8x8 and applicable laws and regulations concerning the geographic relevance of local exchange area service, where applicable. Outside of the US and Canada, number portability may be unavailable (and thus Customer may not be able to port numbers into or out of 8x8 or its Affiliate when transferring service to or from 8x8 or its Affiliate) under certain circumstances (e.g., the absence of any porting agreement between 8x8 and the relevant carrier).
- **Number Port-Ins** – Where Customer wishes to port numbers in to 8x8 or its Affiliate from another provider (the **“Donor Provider”**), Customer authorizes 8x8 to have the numbers routed by 8x8 (instead of the Donor Provider) and to forward appropriate details of Customer’s porting application.

- **8x8 Numbers** – 8x8 shall use commercially reasonable efforts to facilitate Customer’s retention of numbers assigned to the Ordered SaaS Services during the Effective Period, provided that 8x8 Numbers (a) may be changed with reasonable notification to Customer where 8x8 or its Affiliate is so instructed by a regulator or determines in good faith that a third party has a valid claim to such 8x8 Number(s) or that such change is required under applicable law and (b) shall belong to 8x8, and not Customer, and Customer shall have no right to sell, dispose, transfer, or keep 8x8 Numbers.
- **Number Port-Outs** – Upon termination of the Agreement or a Reduction, 8x8 shall, at Customer's request, use commercially reasonable efforts to assist Customer to port out the relevant numbers (including both 8x8 Numbers and Ported-In Numbers), provided that (a) outside of the US and Canada, 8x8 shall have no obligation to port out any 8x8 Number where such port out would require the porting out of a larger block of numbers and (b) to the extent permitted by applicable law, 8x8 may charge, and if charged, Customer shall pay, a reasonable administrative fee for each number ported out or attempted to be ported out.

**C. Emergency Calling Labels.** For UCaaS telephony Ordered SaaS Services ordered for a Customer Location within the US or Canada, 8x8 will provide Customer with warning labels regarding the limitations or unavailability of 911 emergency dialing. Customer agrees to place a label on or near each non-mobile telephone or other equipment through which Ordered SaaS Services may be utilized or accessed. If additional labels are required, Customer shall request them from 8x8.

**D. Data Protection in California.** In providing Ordered SaaS 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.

**E. 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 SaaS 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 Services or Ordered Equipment or otherwise perform its obligations under the Agreement; as set forth in the Privacy Notice; or as otherwise permitted or required by law.

**F. 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 Products 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 Products are provided to Customer and not to a resident agent. In addition, 8x8 confirms that, in providing the Ordered Products, 8x8 does not have a permanent establishment, nor does it provide the Ordered Products through an enterprise that it carries on, in Australia.

**G. Data Protection in Canada.** To the extent that the Content, if any, that Customer sends, receives, or stores via Ordered SaaS 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 SaaS 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 SaaS Services provided to a Customer Location in Canada, 8x8 shall use and disclose such Canada Personal Information solely as set forth in the Privacy Notice.