

-UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended March 31, 2009

Commission file number 000-21783



8x8, Inc.

(Exact name of Registrant as Specified in its Charter)

Delaware

77-0142404

(State or Other Jurisdiction of Incorporation or Organization)

(I.R.S. Employer Identification Number)

3151 Jay Street

Santa Clara, CA 95054

(Address of Principal Executive Offices including Zip Code)

(408) 727-1885

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Name of each exchange on which registered

COMMON STOCK, PAR VALUE \$.001 PER SHARE

NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. YES NO

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K, or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act.) Yes No

Based on the closing sale price of the Registrant's common stock on the NASDAQ Capital Market System on September 30, 2008, the aggregate market value of the voting stock held by non-affiliates of the Registrant was \$53,481,192. For purposes of this disclosure, shares of common stock held by persons who hold more than 5% of the outstanding shares of common stock and shares held by officers and directors of the Registrant have been excluded because such persons may be deemed to be affiliates. The determination of affiliate status for this purpose is not necessarily a conclusive determination for any other purpose.

The number of shares of the Registrant's common stock outstanding as of May 21, 2009 was 62,694,039.

DOCUMENTS INCORPORATED BY REFERENCE

Items 10, 11, 12, 13 and 14 of Part III incorporate information by reference from the Proxy Statement to be filed within 120 days of March 31, 2009 for the 2009 Annual Meeting of Stockholders.

8X8, INC.

**INDEX TO
ANNUAL REPORT ON FORM 10-K
FOR THE YEAR ENDED MARCH 31, 2009**

	Page
Part I.	
<u>Item 1.</u> Business	1
<u>Item 1A.</u> Risk Factors	13
<u>Item 1B.</u> Unresolved Staff Comments	27
<u>Item 2.</u> Properties	27
<u>Item 3.</u> Legal Proceedings	27
<u>Item 4.</u> Submission of Matters to a Vote of Security Holders	27
Part II.	
<u>Item 5.</u> Market for Registrant's Common Stock and Related Security Holder Matters	27
<u>Item 6.</u> Selected Financial Data	30
<u>Item 7.</u> Management's Discussion and Analysis of Financial Condition and Results of Operations	30
<u>Item 7A.</u> Quantitative and Qualitative Disclosures About Market Risk	43
<u>Item 8.</u> Financial Statements and Supplementary Data	44
<u>Item 9.</u> Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	72
<u>Item 9A.</u> Controls and Procedures	72
<u>Item 9B.</u> Other Information	73
Part III.	
<u>Item 10.</u> Directors, Executive Officers and Corporate Governance	73
<u>Item 11.</u> Executive Compensation	73
<u>Item 12.</u> Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	73
<u>Item 13.</u> Certain Relationships and Related Transactions, and Director Independence	74
<u>Item 14.</u> Principal Accountant Fees and Services	74
Part IV.	
<u>Item 15.</u> Exhibits and Financial Statement Schedules	74
<u>Signatures</u>	75

PART I

ITEM 1. BUSINESS

Forward-Looking Statements and Risk Factors

Statements contained in this annual report on Form 10-K, or Annual Report, regarding our expectations, beliefs, estimates, intentions or strategies are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, words such as “may,” “will,” “should,” “estimates,” “predicts,” “potential,” “continue,” “strategy,” “believes,” “anticipates,” “plans,” “expects,” “intends,” and similar expressions are intended to identify forward-looking statements. You should not place undue reliance on these forward-looking statements. Actual results and trends may differ materially from historical results or those projected in any such forward-looking statements depending on a variety of factors. These factors include, but are not limited to, customer acceptance and demand for our voice over Internet protocol, or VoIP, telephony products and services, the reliability of our services, the prices for our services, customer renewal rates, customer acquisition costs, actions by our competitors, including price reductions for their telephone services, potential federal and state regulatory actions, compliance costs, potential warranty claims and product defects, our needs for and the availability of adequate working capital, our ability to innovate technologically, the timely supply of products by our contract manufacturers, potential future intellectual property infringement claims that could adversely affect our business and operating results, and our ability to retain our listing on the NASDAQ Capital Market. The forward-looking statements may also be impacted by the additional risks faced by us as described in this Report, including those set forth under the section entitled “Factors that May Affect Future Results.” All forward-looking statements included in this Annual Report are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Readers are urged to carefully review and consider the various disclosures made in this Annual Report, which attempt to advise interested parties of the risks and factors that may affect our business, financial condition, results of operations and prospects.

Our fiscal year ends on March 31 of each calendar year. Each reference to a fiscal year in this Annual Report, refers to the fiscal year ending March 31 of the calendar year indicated (for example, fiscal 2009 refers to the fiscal year ended March 31, 2009). Unless the context requires otherwise, references to “we,” “us,” “our,” “8x8” and the “Company” refer to 8x8, Inc. and its consolidated subsidiaries.

Overview

We develop, market and sell telecommunication services and technology for Internet protocol, or IP, telephony and video applications. We offer the 8x8 broadband digital phone service, 8x8 Virtual Office hosted PBX service, 8x8 Trunking service, 8x8 Hosted Key System service, 8x8 videophone equipment and service, and 8x8 MobileTalk service. We shipped our first IP product in 1998, launched our 8x8 digital phone service in November 2002, the 8x8 Virtual Office hosted PBX business service in March 2004, the 8x8 videophone service in June 2004, the 8x8 MobileTalk service in November 2007, the 8x8 Trunking service in June 2008 and the 8x8 Hosted Key System service in July 2008. Between November 2002 and April 2009, we marketed our services under the Packet8 brand. In May 2009, we began marketing our services under the 8x8 brand. As of March 31, 2009, we had more than 80,000 8x8 residential and videophone lines and more than 16,000 business customers in service.

The 8x8 voice and video broadband phone service enables broadband Internet users to add digital voice and video communications services to their high-speed Internet connections. Customers can choose a direct-dial phone number from any of the rate centers offered by the service, and then use an 8x8 supplied IP phone or terminal adapter, which enables the customer to use an existing telephone to connect to a broadband Internet connection and make or receive calls from a regular telephone number. All 8x8 telephone accounts come with voice mail, caller ID, call waiting, call waiting caller ID, call forwarding, hold, line-alternate, 3-way conferencing, web and voice-prompt access to account controls, and online billing. In addition, we offer videophones and video telephony software in conjunction with our service plans that connect to a customer’s high-speed Internet network to deliver all of the voice features above, as well as unlimited video calls to any other 8x8 videophone customer in the world. We have developed a suite of business services called 8x8 Virtual Office that offer feature-

rich communications services to small and medium-sized businesses, eliminating the need for traditional telecommunications services and business phone systems. Our primary focus with the Virtual Office service is on replacing private branch exchange, or PBX, telephone systems in the small business marketplace with a hosted, Internet-based business phone service solution. 8x8 Virtual Office completely replaces a company's PBX infrastructure by delivering all telecom services over a managed or unmanaged Internet connection. We also sell pre-programmed IP and analog telephones with speakerphones and a display screen, in conjunction with our Virtual Office service plans, which enable our business customers to access additional Virtual Office features through on-screen phone menus. 8x8 MobileTalk enables mobile phone users to make international calls from their mobile phones over the 8x8 international network. The current 8x8 international per minute rate charged to the mobile phone user is much less expensive than the current rates typically charged by the provider of the mobile phone service.

Available Information

We maintain a corporate Internet website at the address <http://www.8x8.com>. The contents of this website are not incorporated in or otherwise to be regarded as part of this Annual Report. We file reports with the Securities and Exchange Commission, or SEC, which are available on our website free of charge. These reports include annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to such reports, each of which is provided on our website as soon as reasonably practical after we electronically file such materials with or furnish them to the SEC. You can also read and copy any materials we file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. You can obtain additional information about the operation of the Public Reference Room by calling the SEC at 1.800.SEC.0330. In addition, the SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including 8x8.

Industry Background

The technology we employ to deliver our service, known as Voice over Internet Protocol (VoIP), enables communications over the Internet through the compression of voice, video and/or other media into data packets that can be efficiently transmitted over data networks and then converted back into the original media at the other end. Data networks, such as the Internet or local area networks, or LANs, have always utilized packet-switched technology to transmit information between two communicating terminals (for example, a PC downloading a page from a web server, or one computer sending an e-mail message to another computer). IP is the most commonly used protocol for communicating on these packet switched networks. VoIP allows for the transmission of voice and data over these same packet-switched networks, providing an alternative to traditional telephone networks which use a fixed electrical path to carry voice signals through a series of switches to a destination.

As a result of the potential cost savings and added features of VoIP, consumers, enterprises, traditional telecommunication service providers and cable television providers view VoIP as the future of telecommunications. VoIP has experienced significant growth in recent years due to:

- Demand for lower cost telephone service;
- Improved quality and reliability of VoIP calls due to technological advances, increased network development and greater bandwidth capacity; and
- New product innovations that allow VoIP providers to offer services not currently offered by traditional telephone companies.

In 2009, In-Stat, a market research firm, published data suggesting that revenue in the United States, from business services such as ours, will grow from \$485 million in 2007 to \$1.4 billion in 2009.

The traditional telephone networks maintained by many local and long distance telephone companies, known as the public-switched telephone networks, or PSTN, were designed solely to carry low-fidelity audio signals with a high level of reliability. Although these traditional telephone networks are very reliable for voice communications, we believe these networks are not well-suited to service the explosive growth of digital communication applications for the following reasons:

- They are expensive to build because each subscriber's telephone must be individually connected to the central office switch, which is usually several miles away from a typical subscriber's location;

- They transmit data at very low rates and resolutions, making them poorly suited for delivering high-fidelity audio, entertainment-quality video or other rich multimedia content;
- They use dedicated circuits for each telephone call which allot fixed bandwidth throughout the duration of each call, whether or not voice is actually being transmitted which is an inefficient use of the investment in the network; and
- They may experience difficulty in providing new or differentiated services or functions, such as video communications, that the network was not originally designed to accommodate.

Until recently, traditional telephone companies have avoided the use of packet-switched networks for transmitting voice calls due to the potential for poor sound quality attributable to latency issues (delays) and lost packets which can prevent real-time transmission. Recent improvements in packet-switching technology, compression and broadband access technologies, as well as improved hardware and provisioning techniques, have significantly improved the quality and usability of packet-switched voice calls.

Historically, packet-switched networks were built mainly for carrying non real-time data, although they are now fully capable of transmitting real time data. The advantages of such networks are their efficiency, flexibility and scalability. Bandwidth is only consumed when needed. Networks can be built in a variety of configurations to suit the number of users, client/server application requirements and desired availability of bandwidth, and many terminals can share the same connection to the network. As a result, significantly more traffic can be transmitted over a packet-switched network, such as a home network or the Internet, than a circuit-switched telephony network. Packet-switching technology allows service providers to converge their traditionally separate voice and data networks and more efficiently utilize their networks by carrying voice, video, facsimile and data traffic over the same network. The improved efficiency of packet switching technology creates network cost savings that can be passed on to the consumer in the form of lower telephony rates.

The growth of the Internet in recent years has proven the scalability of these underlying packet-switched networks. As broadband connectivity, including cable modem and digital subscriber line (or DSL) has become more available and less expensive, it is now possible for service providers like us to offer voice and video services that run over these IP networks to businesses and residential consumers. Providing such services has the potential to both substantially lower the cost of telephone service and equipment to these customers and increase the breadth of features available to our subscribers. Services like full-motion, two-way video are now supported by the bandwidth spectrum commonly available to broadband customers, whether business or residential.

Our Strategy

Our objective is to provide reliable, scalable, and profitable worldwide Internet communication services with unmatched quality by delivering innovative technologies and services. We foster an environment that empowers our employees to provide the best service to our customers and partners at every point of interaction. We intend to bring the best possible voice and video products and services, at an affordable price, to businesses and residential consumers and enhance the ways in which these customers communicate with each other and the world.

Specific strategies to accomplish this objective include:

- *Focus on our 8x8 Virtual Office product line.* Toward the end of fiscal 2006, we began to shift the focus of our sales and marketing efforts to growing the 8x8 Virtual Office services and applications. 8x8 Virtual Office currently generates higher margins for us than our residential consumer service offerings. The businesses that subscribe to this service pay for the premise equipment and generate higher monthly service revenues. In addition, they are more likely to subscribe to our add-on services and are less likely to leave the service.
- *Capitalize on our technological expertise to introduce new products and features.* Over the past 10 years, we have developed or acquired several core technologies that form the backbone of our video and VoIP service which we intend to use to develop product enhancements and future products. We developed the core software associated with the Virtual Office product line including the call control engine, protocol stacks and network address translation (NAT) traversal firmware for the customer premise equipment. As a result, we are able to update the software functionality of our services without third party assistance and limit the distribution of our unique customer premise equipment features such as NAT traversal to customer premise equipment that is sold in conjunction with our services. We were the first VoIP service provider to ship two-way video-enabled hardware,

and our 8x8 Virtual Office services are among the most feature-rich hosted VoIP business services in the industry.

- *Offer the best possible service and support to our customers with a world class customer support organization.* We have an established call center and customer support group at our headquarters in Santa Clara, California and outsourced call center operation located in Santa Maria, California. We also have invested in significant upgrades to our existing back office infrastructure to enhance the support we can provide to new and existing subscribers, as well as our distribution partners. Our strengths include customer service from technically sophisticated customer service agents providing support from onshore facilities located in California. In fiscal 2009, our call center statistics were better than the industry averages with abandoned call rates averaging less than 4.3% and wait times averaging less than one minute.

Our 8x8 Services

Our services work over virtually any high-speed Internet connection in the world, and allow calls to or from any phone in the world, whether that phone is an IP phone or a PSTN phone. 8x8 utilizes IP communication customer premise equipment (i.e., an IP Phone or a broadband phone adapter) which, when used in conjunction with the 8x8 network software, enables plug and play installation and a familiar dial tone user interface. The 8x8 service also uses web-based technologies to enable account setup, account management, billing and customer support. We have developed proprietary implementation of standards-based technologies underlying our 8x8 service, which works with third party carriers to terminate VoIP calls on the PSTN network. As part of the 8x8 service, we currently resell private-branded telephone IP terminal adapters that allow a regular analog telephone to be connected to an IP network, IP telephones and videophones, and pre-programmed business telephones. These devices utilize derivatives of our licensed semiconductor technology and unique software modifications to the protocol and application code that enable them to connect to the 8x8 IP services platform. We continue to enhance and develop new functionality in the software code that is embedded in these devices.

Products and Services

8x8 VoIP and Video Telephone Service

We introduced our 8x8 VoIP telephone service in November 2002. To obtain the service, the customer must enter into a service agreement with us and select a calling plan based on the anticipated use of the service. Service plans provide alternatives for minutes of usage, up to an unlimited amount, at varying rates for calls in the United States and Canada that are made to non-8x8 customers. Subscribers are charged at a per-minute rate for international calls to non-8x8 customers and, depending on the level of plan selected, may be charged for calls to the PSTN if they exceed the minutes allowed under the chosen plan. All of our plans allow for unlimited calling between 8x8 customers, regardless of their location. Depending on the service plan selected, 8x8 will either sell or provide at no cost to the customer the 8x8 broadband phone adapter, IP phone or desktop videophone to use with the 8x8 service. Each subscriber is assigned a telephone number in any of the area codes and underlying rate centers currently offered by the service. We currently offer area codes in 46 U.S. states along with free number porting from the customer's previous service provider to 8x8. All 8x8 customers receive access to a variety of telephone features, including voice mail, caller ID, call forwarding, call waiting, 3-way calling, online account management and billing, international call blocking and caller ID blocking. We currently offer enhanced 9-1-1, or E-911, service on all 8x8 calling plans with a United States service address. An 8x8 E-911 call is routed as 9-1-1 emergency traffic and is accompanied by caller information which enables emergency personnel to ensure that callers receive the exact same response that they receive from 9-1-1 services provided by landline incumbent telephone carriers. Subscribers may also have toll-free numbers (e.g., 800 numbers) or virtual numbers. A virtual number is an additional phone number which will ring through to an existing subscriber line. We offer virtual numbers in all of our U.S. rate centers, as well as in certain international countries. We also are offering video over IP service using the 8x8 Tango videophone product, which includes all of the voice service plans and features described above plus unlimited video calls to any other 8x8 videophone subscriber anywhere in the world.

8x8 Virtual Office Business Telephone Service

Our 8x8 Virtual Office business telephone service was launched in March 2004 and is targeted at the small and medium-sized business market. 8x8 Virtual Office is an easy-to-use alternative to traditional PBX systems or Centrex class services from legacy telecommunications providers that offers features and services neither provide. 8x8 Virtual Office allows users with a high-speed Internet connection anywhere in the world to be part of a virtual PBX that includes automated attendants to assist callers, conference bridges, extension-to-extension dialing and ring groups, in addition to a rich variety of other business class

PBX features normally found on dedicated PBX equipment. 8x8 Virtual Office extensions do not require a dedicated communications infrastructure. The service is received through an office's existing Internet connection, thus eliminating the need for additional phone lines or digital subscriber lines for extensions, in contrast to traditional Centrex or PBX products. The service is provided by 8x8 software that runs on computing platforms located in our data centers.

8x8 Virtual Office subscribers have the ability to choose any phone number available to 8x8 subscribers regardless of a user's geographic location. Subscribers also can port numbers, including toll-free numbers, from other service providers at no additional cost. Each extension in the virtual PBX can be located anywhere in the world with high-speed Internet access. 8x8 Virtual Office extension-to-extension calls and transfers are accomplished over the Internet, anywhere in the world, free of extra charges to third party telecommunications carriers. 8x8 Virtual Office offers the following essential services for small and medium-sized businesses:

- Auto-attendant providing dial by extension, name or group;
- Unlimited calling to the US, Canada, eight additional countries and other 8x8 subscribers, as well as low international rates;
- Unlimited 8x8 extension-to-extension dialing anywhere in the world;
- Direct Inward Dial (DID) phone number with any desired area code for each extension;
- Conference bridge, 3-way calling, music on hold, call park/pick-up, call transfer, hunt groups, and do not disturb;
- Business-class voice mail including email alerts and direct transfer to mailbox;
- Call waiting / Caller-ID;
- Distinctive tone ringing, and
- Optional receptionist console application offering:
 - Multiple call viewing and handling;
 - Direct transfer to extension's voicemail;
 - Supervised transfers, and
 - View of extension status

As of March 31, 2009, each 8x8 Virtual Office customer subscribed to an average of between six and seven of our business services.

8x8 Trunking Services

In June 2008, we launched the 8x8 Trunking service. The 8x8 Virtual Trunking service provides companies that have already made a substantial or recent investment in phone system hardware with an opportunity to reduce recurring monthly service and toll charges by delivering digital quality dial tone service to their phone system hardware over their broadband connection rather than a separate voice circuit from an incumbent or local exchange carrier. The customer's existing phone system equipment continues to provide the user feature set while the 8x8 Trunking services provide dial tone together with local, long distance and international call routing services to that equipment from the 8x8 network.

8x8 Hosted Key System Services

In July 2008, we launched the 8x8 Hosted Key System service. The 8x8 Hosted Key System service is designed to replace traditional premise-based telephone "key systems" typically used by companies whose size or structure dictates the sharing of multiple, common phone lines among employees, regardless of where the employees are located. The 8x8 Hosted Key System

expands our addressable market to include businesses that require shared line appearance services rather than the PBX functionality offered with our 8x8 Virtual Office hosted PBX solution.

8x8 IP Telephones

In the second quarter of fiscal 2009, we launched the 8x8 675xi series of IP phones that incorporate 8x8's advanced NAT traversal technologies to facilitate the network-independent operational advantages of the 8x8 service. These advantages include the ability to simply plug the phone into any public or private Internet connection and immediately make or receive calls without performing any network configuration or firewall manipulation. The 8x8 675xi IP phones also deliver enhanced equipment and service features including corporate directory display and lookup, intercom paging, shared line appearance and Power over Ethernet capability.

8x8 Broadband Phone Adapter

Our broadband phone adapter, or BPA, product line is a set of telephone handset-to-Ethernet adapters that interface regular analog phones with IP-based telephony networks. We use the BPA-410 or BPA-430 for our Virtual Office service and the broadband phone gateway, or BPG-510, for our residential service. The BPA or BPG device is installed by the subscriber and supports up to two voice ports with its own direct dial phone number. These adapters run a variety of communication and network protocols, including SIP and MGCP.

8x8 Video Terminal Adapter

In the fourth fiscal quarter of 2007, we launched the 8x8 Tango video terminal adapter. Like our broadband phone adapters, the 8x8 Tango interfaces regular analog phones with IP-based telephony networks and contains all of the voice features of a regular 8x8 service account. The 8x8 Tango also contains a built-in camera and liquid crystal display screen. When an 8x8 videophone subscriber calls another 8x8 videophone subscriber, the videophones connect with instant-on high-speed video sent over the Internet, in addition to the audio that is transmitted in the form of a telephone call. The videophones can be configured by the user to use a maximum total data bandwidth between 84 kilobits per second and 640 kilobits per second. The video quality of the call varies with the data bandwidth selected and other network conditions. The 8x8 Tango videophone is designed to be compatible with other SIP protocol devices and software.

8x8 Enabled Handsets

Uniden America Corporation, or Uniden, has built three 8x8 service-ready whole house VoIP phone systems: the UIP1868, the UIP160P and the UIP165P. These products are 8x8-enabled 5.8GHz digital expandable corded/cordless phones that are expandable to multiple handsets, deploying VoIP capability to each handset through a single high-speed Internet connection. Incorporating 8x8's Internet telephony software, these Uniden phones offer plug-and-play access to 8x8's feature-rich broadband telephone service, and include a built-in one-port router. The Uniden 8x8-enabled phones also include one phone port to interface external analog phone devices, such as an answering machine or facsimile machine, to the base station.

8x8 Softalk

In the second quarter of fiscal 2007, we launched 8x8 Softalk. 8x8 Softalk is a video-enabled SIP softphone for use with 8x8 voice and video Internet phone services. With Softalk, subscribers can make and receive voice and video phone calls directly from their personal computers using any microphone, speaker and/or web camera attached to the computer. Along with traditional landlines and cell phones, Softalk users can also call 8x8 videophone subscribers to enjoy high quality video communications when traveling without carrying along an 8x8 Tango videophone.

8x8 MobileTalk

In the third quarter of fiscal 2008, we launched 8x8 MobileTalk. 8x8 MobileTalk enables mobile phone users to make international calls from their mobile phones over the 8x8 international network. The 8x8 international rate per minute charged to the user is much less expensive than the rates typically charged by the provider of the mobile phone service.

We use third-party manufacturers to make the videophones, broadband phone adapters, business telephones and cordless handsets that we sell to our customers. We do not have long-term purchase agreements with any of our contract manufacturers. While we believe that we could replace our suppliers if necessary, our ability to provide service to our subscribers would be

impacted during this timeframe, and this could have an adverse effect on our business, financial condition and results of operations.

Sales, Marketing and Promotional Activities

We currently sell and market our 8x8 services to end users through our direct sales force, website, retail channels, online channels, network marketing firms and third party resellers. Our inside sales force primarily takes inbound telephone calls and website leads which are generated from third party lead generation sources and direct web advertising such as Google and Yahoo. We grew our quota carrying inside sales force from 31 sales representatives at the end of fiscal 2008 to 63 sales representatives at the end of fiscal 2009. Quota carrying sales representatives are paid a base salary and monthly commission for selling our products and services. The commission is based on new sales made by the sales representative. We launched the retail channel in fiscal 2005 and refocused this channel on our 8x8 Virtual service in 2006 with Office Depot and subsequently Office Max. Retail channels, online channels and third party resellers generated approximately 14% of our subscriber additions in fiscal 2009. Our retail channels and online retailers have unlimited return rights for this equipment. Consequently, we do not recognize any revenue from sales to these customers until end user customers purchase the equipment. We offer all of our end customers a 12-month warranty from the date of purchase for defective equipment.

Competition

We face strong competition from incumbent telephone companies, cable companies and alternative voice and video communication providers. Because most of our target customers are already purchasing communications services from one or more of these providers, our success is dependent upon our ability to attract these customers away from their existing providers. This will potentially become more difficult as the early adopter market becomes saturated and mainstream customers make up more of our target market. We believe that the principal competitive factors affecting our ability to attract and retain customers are price, call quality, reliability, customer service, and enhanced services and features. For more information regarding the risks associated with such strong competition, please refer to Item 1A, [Risk Factors](#) “**Intense competition in the markets in which we compete could prevent us from increasing or sustaining our revenue and increasing or maintaining profitability.**”

Incumbent telephone companies

The incumbent telephone companies are our primary competitors and have historically dominated their regional markets. These competitors include AT&T, Qwest Communications and Verizon Communications as well as rural incumbents, such as Embarq Corporation and Windstream Corporation. These competitors are substantially larger and better capitalized than we are and have the advantage of a large existing customer base, and larger marketing budgets than we have. Moreover, they also provide the broadband services that are required to use our service, which is a significant competitive advantage.

Cable companies

These competitors include Cablevision, Comcast, Cox Communications and Time Warner Cable. Cable companies have made and are continuing to make substantial investments in delivering last mile broadband Internet access to their customers. As a result, they are offering bundled services inclusive of phone service. Cable companies are able to advertise on their local access channels with no significant out-of-pocket cost and through mailings in bills with little marginal cost. They also receive advertising time as part of their relationships with television networks, and are able to use this time to promote their telephone service offerings.

Alternative voice and video communication providers

There are many alternative competitors for the 8x8 residential service including Skype and Vonage. There are also many competitors for our videophone services and videoconferencing systems, including Cisco, Polycom and various software offerings that implement videophone functionality on a personal computer. Competitors for the 8x8 business service include traditional PBX and key system manufacturers and their resellers, including Avaya, Nortel, Mitel and Toshiba, Centrex services offered by incumbent telephone companies, and VoIP services offered by XO Communications, Cbeyond and other companies.

Operations

We have a centrally managed platform consisting of data management, monitoring, control and billing systems, that support all of our products and services. We have invested substantial resources to develop and implement our real-time call management

information system. Key elements of this system include customer provisioning, customer access, fraud control, network security, call routing, call monitoring, media processing and normalization, call reliability, and detailed call records. Our platform monitors our process of digitizing and compressing voice and video into packets and transmitting these packets over data networks around the world. We maintain a call switching platform which is a software-based product that manages call admission, call control, call rating and routes calls to an appropriate destination or customer premise equipment. Unless the recipient is using an Internet telephony device, the packets (representing a voice and/or video call initiated by an 8x8 subscriber) are sent to a gateway belonging to one of our partner telecommunications carriers where they are reassembled and the call is transferred to the PSTN and directed to a regular telephone anywhere in the world. Our billing and back office systems manage and enroll customers and bill calls as they originate and terminate on the service.

Network Operations Center

We maintain a network operations center at our headquarters in Santa Clara, California and employ a staff of 23 individuals with experience in voice and data operations to provide 24-hour operations support, 7 days per week. We use various tools to monitor and manage all elements of our network and our partners' networks in real-time. Additionally, our network operations center provides technical support to troubleshoot equipment and network problems. We also rely upon the network operations centers and resources of our telecommunications carrier partners to augment our monitoring and response efforts.

Customer and Technical Support

We maintain a call center at our headquarters in Santa Clara, California and have a staff of 72 employees and contractors that provide customer service and technical support to customers. In addition, we have outsourced certain customer support activities to third parties. Customers who access our services directly through our web site receive customer service and technical support through multilingual telephone communication, web-based and "chat" sessions and e-mail support.

Interconnection Agreements

We are a party to telecommunications interconnect and service agreements with VoIP providers and PSTN telecommunications carriers, such as Global Crossing and Level(3) Communications. Pursuant to these agreements, VoIP calls originating on our network can be terminated on other VoIP networks or the PSTN. Correspondingly, calls originating on other VoIP networks and the PSTN can be terminated on our network. While we believe that relations with these providers and carriers are good, we have no assurance that these partners will be able or willing to supply services to us in the future.

Research and Development

The VoIP market is characterized by rapid technological changes and advancements. Accordingly, we make substantial investments in the design and development of new products and services, as well as the development of enhancements and features to our existing 8x8 products and services. Future development also will focus on the use and interoperability of our products and services with emerging audio and video telephony standards and protocols, quality and performance enhancements to multimedia compression algorithms, support of new customer premise equipment, new unified communication service offerings, and wireless and mobile applications. We believe that the development of new products and services and the enhancement of existing products and services are essential to our success.

We currently employ 31 individuals in research, development and engineering activities in our facilities in Santa Clara, California and Sophia Antipolis, France. Research and development expenses in each of the fiscal years ended March 31, 2009, 2008 and 2007 were \$5.2 million, \$4.3 million and \$4.7 million, respectively. The increase in research and development expenses is primarily due to the acceleration of vesting of unvested employee stock options in 2009. We intend to grow research and development expenses in the future.

Regulatory

Although several regulatory proceedings are underway or are being contemplated by federal and state authorities, including the FCC and state regulatory agencies, VoIP communication services have remained largely unregulated in the United States when compared to traditional telephony services. To date, VoIP service providers have been treated mainly as information service providers, although the FCC has thus far avoided specifically ruling on this classification. Information service providers are largely exempt from most federal and state regulations governing traditional common carriers. The FCC is currently examining the status of VoIP service providers and the services they provide. The FCC initiated a notice of proposed rule-making

(NPRM) in early 2004 to gather public comment on the appropriate regulatory environment for IP telephony. In November 2004, the FCC ruled that the VoIP service of a competitor and "similar" services are jurisdictionally interstate and not subject to state certification, tariffing and most other state telecommunications regulations. The FCC ruling was appealed by several states and on March 21, 2007, the United States Court of Appeals for the Eighth Circuit affirmed the FCC ruling.

Interconnected VoIP providers like us are required by the FCC to offer 9-1-1 emergency calling capabilities similar to those available to subscribers of traditional switched phone lines. Moreover, interconnected VoIP providers were required to distribute stickers and labels warning customers of the limitations associated with accessing emergency services through an interconnected VoIP service, as well as notify and obtain affirmative acknowledgement from our customers that they were aware of the differences between the emergency calling capabilities offered by interconnected VoIP providers as compared to traditional, wireline providers of telephone service. The FCC's Enforcement Bureau released an order stating that the Enforcement Bureau will not pursue enforcement against interconnected VoIP providers that have received affirmative acknowledgement from at least 90% of their subscribers. We have received affirmative acknowledgement from substantially all of our customers and have substantially satisfied this requirement of the rule.

Like many interconnected VoIP providers, we rely on a third party to route emergency calls originated by our customers. For certain customers, the third party solution provider may route 911 calls to a national emergency call center in the event of a call routing issue, system outage or in other circumstances. The emergency dispatchers in this national call center may utilize the location information provided by the customer to route the call to the correct Public Safety Answering Point ("PSAP"), which is a local call center staffed by trained emergency operators, or first responder. The FCC could determine that calls routed in this manner do not satisfy its requirements should we be unable to connect our customers directly to a PSAP. We may be subject to enforcement actions including, but not limited to, fines, cease and desist orders, or other penalties for those customers, whose 911 calls are routed to a national emergency call center and not directly to a PSAP. As of March 31, 2009, we provided emergency calling services to 100% of our customers located in the United States.

On August 5, 2005, the FCC unanimously adopted an order requiring interconnected VoIP providers to comply with the Communications Assistance for Law Enforcement Act, or CALEA. CALEA requires covered providers to assist law enforcement agencies in conducting lawfully authorized electronic surveillance. Under the FCC order, interconnected VoIP providers were required to comply with CALEA obligations by May 14, 2007 and make certain filings prior to that date. We engaged a third party to help us develop a solution to be CALEA compliant. We completed formal CALEA compliance testing with this third party in March 2009 and currently, our CALEA solution is fully deployed in our network. However, we could be subject to an enforcement action by the FCC or law enforcement agencies for any delays related to meeting, or if we fail to comply with, any current or future CALEA obligations.

On June 21, 2006, the FCC expanded the base of Universal Service Fund, or USF, contributions to interconnected VoIP providers. The FCC established a safe harbor percentage of 64.9% of total VoIP service revenue to which federal USF contributions apply. We were allowed to calculate the contribution based on the safe harbor or by submitting a traffic study that would subsequently be approved by the FCC. For a period of at least two quarters beginning October 1, 2006, we were required to contribute to the USF for our subscribers' retail revenues as well as through our underlying carriers' wholesale charges. Beginning October 1, 2006, we began charging our subscribers a USF surcharge fee equal to the USF contribution amounts we are required to contribute. The FCC order applying USF contributions to interconnected VoIP providers was appealed and on June 1, 2007, the U.S. Court of Appeals for the District of Columbia ruled that the FCC was within its authority when it required interconnected VoIP service providers to contribute to the Universal Service Fund, though it struck down the provision of the order which required pre-approval of traffic studies by the FCC and the provision that required double contributions to the fund for two quarters from our underlying carriers' wholesale charges. As of July 1, 2007, we use the results of our traffic study to calculate the required contribution to the USF. Moreover, the FCC recently released an Order clarifying how providers that rely on traffic studies to calculate their USF contributions should assess certain revenues associated with minutes-of-use charges. We are still evaluating the impact of this Order on our USF contribution but it may require us to increase our contribution, resulting in higher pass-through charges to our customers. In the meantime, the FCC continues to evaluate alternative methods for assessing USF charges, including imposing an assessment on telephone numbers. The outcome of these proceedings cannot be determined at this time nor can we determine the potential financial impact as the details of an alternative method of USF contribution have not yet been determined. There is also a risk that state Universal Service Funds may attempt to impose state USF contribution obligations and other state and local charges. At this time, at least three states, including Nebraska, contend that providers of interconnected VoIP services, like us, should contribute to its USF fund. On March 3, 2008, the U.S. District Court for Nebraska issued a preliminary injunction and found that Nebraska's state Public Service Commission does not have jurisdiction to require Universal Service contributions from VoIP providers. On May 1, 2009, a panel of the U.S. Circuit Court of Appeals for the Eighth Circuit affirmed the U.S. District court ruling. But, on

May 14, 2009, the Nebraska Public Service Commission requested a rehearing or a rehearing *en banc* of the decision handed down by the three-judge panel. We cannot predict the outcome of this ongoing litigation. As of March 31, 2009, we were collecting and remitting state USF in one state. Effective June 1, 2009, we will cease collecting and remitting state USF.

On April 2, 2007, the FCC released an order extending the application of customer proprietary network information, or CPNI, rules to interconnected VoIP providers. CPNI includes information such as the phone numbers called by a consumer the frequency, duration, and timing of such calls and any services/features purchased by the consumer, such as call waiting, call forwarding, and caller ID, in addition to other information that may appear on a consumer's bill. Under the FCC's existing rules, carriers may not use CPNI without customer approval except in narrow circumstances related to their provision of existing services, and must comply with detailed customer approval processes when using CPNI outside of these narrow circumstances. The new CPNI requirements are aimed at establishing more stringent security measures for access to a customer's CPNI data in the form of required passwords for on-line access and call-in access to account information as well as customer notification of account or password changes. Currently, we do not utilize our customer's CPNI in a manner which would require us to obtain consent from our customers, but in the event that we do in the future, we will be required to adhere to specific CPNI rules aimed at how such information is utilized. Effective December 8, 2007, we implemented internal processes in order to be compliant with all of the FCC's other CPNI rules and we filed our second, annual certification of our compliance with CPNI rules with the FCC on February 20, 2009. These rules may impose additional compliance costs on our business and reduce our profitability or cause us to increase the retail price for our services.

On June 1, 2007, the FCC released a Notice of Proposed Rulemaking Proceeding to consider whether it should impose additional VoIP E-911 obligations on interconnected VoIP providers including consideration of a requirement that interconnected VoIP providers automatically determine the physical location of their customer rather than allow customers to manually register their location. The Notice includes a tentative conclusion that all interconnected VoIP service providers that allow customers to use their service in more than one location (nomadic VoIP service providers such as us) must utilize automatic location technology that meets the same accuracy standards applicable to providers of commercial mobile radio services (mobile phone service providers). We cannot predict the outcome of this proceeding nor its impact on our business at this time.

On June 8, 2007, the FCC released an order implementing various recommendations from its Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks Panel, including a requirement that certain interconnected VoIP providers submit reports regarding the reliability and resiliency of their 9-1-1 systems. At this time, we are not subject to these reporting requirements but may become subject in future years.

On June 15, 2007, the FCC extended the disability access requirements of Sections 225 and 255 of the Communications Act, which applied to traditional phone services, to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide those services. Section 255 of the Communications Act requires service providers to ensure that its equipment and service is accessible to and usable by individuals with disabilities, if readily achievable, including requiring service providers to ensure that information and documentation provided in connection with equipment or services be accessible to people with disabilities, where readily achievable and that employee training account for accessibility requirements. In addition, the FCC said that interconnected VoIP providers were subject to the requirements of Section 225, including contributing to the Telecommunications Relay Services, or TRS, fund and that they must offer 7-1-1 abbreviated dialing for access to relay services. At this time, we cannot predict the impact of these rules on our business or our ability to comply with these disability access obligations. We may be subject to enforcement actions including, but not limited to, fines, cease and desist orders, or other penalties if we are not able to comply with these new disability obligations. The rules established in the Disability Access Order were scheduled to become effective on October 5, 2007, and as of this date, we began to remit TRS fund contributions and have implemented 7-1-1 abbreviated dialing which connects all of our customers to California relay service operators. The FCC granted a limited waiver of the 7-1-1 call handling requirement. While still mandating that interconnected VoIP providers like us are required to transmit 7-1-1 calls to a relay center and to contribute to the TRS fund, the FCC waived the requirement, until March 31, 2009, insofar as it requires such providers to transmit the 7-1-1 call to an "appropriate relay center," meaning the relay center(s) serving the state in which the caller is geographically located or the relay center(s) corresponding to the caller's last registered address. As of April 5, 2008, we have implemented a 7-1-1 system which routes such calls to the appropriate relay center based upon the telephone number assigned to the telephone placing the 7-1-1 call.

On August 6, 2007, the FCC released a Report and Order concerning the collection of regulatory fees for Fiscal Year 2007 ("Regulatory Fees Order"), which, for the first time, mandates the collection of such fees from interconnected VoIP service providers like us. The Regulatory Fees Order requires that interconnected VoIP providers pay regulatory fees based on reported interstate and international revenues. The Regulatory Fees Order became effective in November 2007. The assessment of

regulatory fees on our service offering will increase our costs and reduce our profitability or cause us to increase the retail price of our service offerings.

On November 8, 2007, the FCC released a Report and Order concerning Local Number Portability ("LNP Order"). The obligations require interconnected VoIP providers to contribute to shared numbering administration costs on a competitively neutral basis. The assessment of local number portability fees to our service will increase our costs and reduce our profitability or cause us to increase the price of our retail service offerings. On May 13, 2009, the FCC released another order concerning LNP that reduces the timeframe for certain types of ports that interconnected VoIP providers, like us, have to process requests from our customers to port numbers out to other service providers. The new rules imposing reduced porting timeframes are not currently effective and we do not expect them to become effective for at least one year. We rely on third parties to comply with the existing porting timeframes and we will continue to rely on third parties to comply with the new porting timeframes. We could be subject to fines, forfeitures and other penalties by state public utilities commissions or the FCC if we are not able to process ports in the existing or future timeframes or we could face legal liability in state or federal court from customers or carriers. The FCC also released a Further Notice of Proposed Rulemaking to refresh the record on how to further improve the porting process, and how to potentially expand the new one business day porting timeframe to other kinds of ports. We cannot predict the outcome of this proceeding nor its potential impact on us at this time.

On October 5, 2007, the FCC granted Visit, Inc., a California corporation that is a wholly owned subsidiary of 8x8, an international telecommunications certificate with authority to provide global resale service in accordance with section 63.18(e)(2) of the Commission's rules.

On May 13, 2009, the FCC extended discontinuance rules that apply to non-dominant common carriers to interconnected VoIP providers, like us. The FCC's rules require non-dominant domestic carriers to provide notice to customers at least 30 days prior to discontinuing service to a telephone exchange, toll stations serving a community in whole or in part, and other similar activities that affect a community or part of a community. Additionally, carriers must inform certain state authorities of the discontinuation, and obtain prior FCC approval before undertaking the service disruption. The FCC's rules allow for streamlined treatment for FCC discontinuance approvals and interconnected VoIP providers will be able to take advantage of the same streamlined procedures afforded to non-dominant carriers. The applicability of these rules to interconnected VoIP providers, like us, are not entirely clear but would likely be applicable should we discontinue one of our service offerings in its entirety or if we were to exit the market in whole. The new discontinuance rules are not currently effective but we do not expect these new obligations to have a material impact on the business.

The effect of any future laws, regulations and the orders on our operations, including, but not limited to, the 8x8 service, cannot be determined. But as a general matter, increased regulation and the imposition of additional funding obligations increases service provision costs that may or may not be recoverable from our customers, which could result in 1) making our services less competitive with traditional telecommunications services if we increase our retail prices or 2) decrease our profit margins if we attempt to absorb such costs.

Regulation of the Internet

In addition to regulations addressing Internet telephony and broadband services, other regulatory issues relating to the Internet, in general could affect our ability to provide our services. Congress has adopted legislation that regulates certain aspects of the Internet, including online content, user privacy, taxation, liability for third-party activities and jurisdiction. In addition, a number of initiatives pending in Congress and state legislatures would prohibit or restrict advertising or sale of certain products and services on the Internet, which may have the effect of raising the cost of doing business on the Internet generally.

Federal, state, local and foreign governmental organizations are considering other legislative and regulatory proposals that would regulate and/or tax applications running over the Internet. We cannot predict whether new taxes will be imposed on our services, and depending on the type of taxes imposed, whether and how our services would be affected thereafter. Increased regulation of the Internet may decrease its growth and hinder technological development, which may negatively impact the cost of doing business via the Internet or otherwise materially adversely affect our business, financial condition and results of operations.

Intellectual Property and Proprietary Rights

Our ability to compete depends, in part, on our ability to obtain and enforce intellectual property protection for our technology in the United States and internationally. We currently rely primarily on a combination of trade secrets, patents, copyrights,

trademarks and licenses to protect our intellectual property. As of March 31, 2009, we had 73 United States patents that have been issued and additional United States and foreign patent applications pending. Our patents expire on dates ranging from 2012 to 2024. We cannot predict whether our pending patent applications will result in issued patents.

To protect our trade secrets and other proprietary information, we require our employees to sign agreements providing for the maintenance of confidentiality and also the assignment of rights to inventions made by them while in our employ. There can be no assurance that our means of protecting our proprietary rights in the United States or abroad will be adequate or that competition will not independently develop technologies that are similar or superior to our technology, duplicate our technology or design around any of our patents. In addition, the laws of foreign countries in which our products are or may be sold do not protect our intellectual property rights to the same extent as do the laws of the United States. Our failure to protect our proprietary information could cause our business and operating results to suffer.

We are also subject to the risks of adverse claims and litigation alleging infringement of the intellectual property rights of others. Such claims and litigation could require us to expend substantial resources and distract key employees from their normal duties, which could have a material adverse effect on our operating results, cash flows and financial condition. The communications and software industries are subject to frequent litigation regarding patent and other intellectual property rights. Moreover, the VoIP service provider community is increasingly becoming a target of patent holders. There is a risk that we will be a target of assertions of patent rights and that we may be required to expend significant resources to investigate and defend against such assertions of patent rights. For example, on April 22, 2009, 8x8 was named as a defendant, along with Comcast, Microsoft, Avaya, Embarq, and Qwest, in a complaint filed by Web Telephony, LLC in the Eastern District of Texas. On April 29, 2009, we entered into a settlement agreement with Web Telephony, which filed a motion to dismiss the lawsuit on May 8, 2009. Also, on May 2, 2008, we received a letter from AT&T Intellectual Property, L.L.C. (“AT&T IP”) expressing the belief that we must license a specified patent for use in our 8x8 broadband telephone service, as well as suggesting that we obtain a license to its portfolio of MPEG-4 patents for use with our video telephone products and services. At the same time, we began an evaluation of whether AT&T IP’s affiliated entities may need to license any of our patents or other intellectual property. We have continued to engage in discussions with AT&T IP to explore a mutually agreeable resolution of the parties’ respective assertions regarding these intellectual property issues. We are unable at this time to state whether we will enter into any license or cross-license agreements with AT&T IP or whether we ultimately anticipate any material effects on our operating results or financial condition as a consequence of these matters.

We rely upon certain technology, including hardware and software, licensed from third parties. There can be no assurance that the technology licensed by us will continue to provide competitive features and functionality or that licenses for technology currently utilized by us or other technology which we may seek to license in the future will be available to us on commercially reasonable terms or at all. The loss of, or inability to maintain, existing licenses could result in shipment delays or reductions until equivalent technology or suitable alternative products could be developed, identified, licensed and integrated, and could harm our business. These licenses are on standard commercial terms made generally available by the companies providing the licenses. To date, the cost and terms of these licenses individually has not been material to our business.

Information about Segments and Geographic Areas

We have only one reportable segment. Financial information relating to our product lines and information on revenues generated in different geographic areas are set forth in Note 6 to our consolidated financial statements contained in Part II, Item 8 of this Report.

Employees

As of March 31, 2009, our workforce consisted of 244 employees. None of our employees are represented by a labor union or are subject to a collective bargaining arrangement.

Executive Officers of the Registrant

Our executive officers as of the date of this report are listed below.

Bryan R. Martin, Chairman and Chief Executive Officer. Bryan R. Martin, age 41, has served as our Chairman since December 2003. Mr. Martin has served as Chief Executive Officer and as a director of the Company since February 2002. From March 2007 to November 2008, he served as President of the Company. From February 2001 to February 2002, he served as President and Chief Operating Officer and a director of the Company. He served as Senior Vice President, Engineering Operations from July 2000 to February 2001 and as the Company’s Chief Technical Officer from August 1995 to August 2000. He also served as a director of the Company from January 1998 through July 1999. In addition, Mr. Martin

served in various technical roles for the Company from April 1990 to August 1995. He received a B.S. and an M.S. in Electrical Engineering from Stanford University.

Dan Weirich, President and Chief Financial Officer. Dan Weirich, age 35, has served as our President since November 2008 and as our Chief Financial Officer since July 2006. From June 2006 to July 2006, Mr. Weirich served as our Acting Chief Financial Officer. Mr. Weirich served as Vice President of Operations of the Company from April 2006 to June 2006 and Director of Strategic Sales from March 2004 to April 2006. From September 2001 to March 2004, Mr. Weirich served as independent consultant in Asia and the United States. From October 1998 to September 2001, Mr. Weirich served as Vice President of Business Development for iAsiaWorks. From March 1998 to October 1998, Mr. Weirich served as Manager of Acquisition Integration at Qwest Communications and from August 1996 to March 1998, Mr. Weirich served as a Financial Analyst and Product Manager for Phoenix Network. He received a B.S. in International Business from the University of Colorado at Boulder.

Huw Rees, Vice President of Business Development. Huw Rees, age 48, has served as Vice President, Business Development since November 2008. From January 2001 to November 2008, Mr. Rees served as our Vice President, Sales and Marketing. He served as the Chairman and Chief Executive Officer of the Company's wholly owned subsidiary, Centile, Inc., from July 2001 until September 2003. Additionally, he served as Vice President, Sales and Business Development of Centile from March 2001 to July 2001. He served as Vice President, Sales of the Solutions Group of the Company from August 2000 until February 2001 and as Director, North American Sales of the Company from April 1999 to August 2000. He previously worked at Mitel Corporation as Sales Manager of the Western Region and also in sales management roles at GEC Plessey Inc. and Marconi PLC. He received a B.Sc. (Hons) from the University of Manchester, Institute of Science and Technology in Electrical and Electronic Engineering and a M.B.A. from the University of LaVerne.

Debbie Jo Severin, Chief Marketing Officer and Vice President of Marketing. Debbie Jo Severin, age 49, has served as Chief Marketing Officer and Vice President of Marketing since March 2009. From 2003 to March 2009, Ms. Severin served as Vice President of Marketing for Covad Communications. From 1998 to 2003, Ms. Severin was Vice President of Marketing for PrimeOne Tele-TV, Northpoint Communications and Valiant Networks. Between 1986 and 1998, Ms. Severin served in various marketing roles for BellSouth Telecommunications and Pacific Bell.

ITEM 1A. RISK FACTORS

If any of the following risks actually occur, our business, results of operations and financial condition could suffer significantly.

The impact of the current economic climate and tight financing markets may impact customer demand for our products and services.

Many of our existing and target customers are in the small and medium business sector. Although we believe our products and services are less costly than traditional telephone services, these businesses may be more likely to be significantly affected by economic downturns than larger, more established businesses. Additionally, these customers often have limited discretionary funds, which they may choose to spend on items other than our products and services. If small and medium businesses experience economic hardship, it could negatively affect the overall demand for our products and services, could cause delay and lengthen sales cycles and could cause our revenue to decline.

Although the majority of our billing arrangements with customers are prepaid, we regularly monitor the percentage of customers who cease to pay for our services due to closing their business. Even though our customer churn rates improved in the fourth quarter of 2009, a larger percentage of our total customer churn was due to these issues in the fourth fiscal quarter, and we cannot guarantee that we will continue to experience the same improvement in churn rates that we had in the fourth quarter of 2009, especially given current economic conditions. Additionally, the combination of our sales cycle coupled with challenging economic conditions could have a negative impact on the results of our operations.

The success of our Company is dependent on the growth and public acceptance of 8x8 Services.

Our future success as a Company depends on our ability to significantly increase revenues generated from our 8x8 services. In turn, the success of our 8x8 voice and video communications services depends, among other things, upon future demand for VoIP telephony systems and services. Because the use of our service requires that the user be a subscriber to an existing broadband Internet service, usually provided through a cable or digital subscriber line, or DSL, connection, slow or limited

adoption of broadband Internet service could adversely affect the growth in our subscriber base and revenues. Although the number of broadband subscribers worldwide has grown significantly over the last five years, VoIP service has not yet been adopted by a majority of consumers. To increase the deployment of broadband Internet services from broadband Internet service providers, telephone companies and cable companies must continue to invest in the deployment of high speed broadband networks to residential and business customers, over which we have no control. In addition, VoIP networks must improve quality of service for real-time communications, managing effects such as packet jitter, packet loss, and unreliable bandwidth, so that toll-quality service can be consistently provided. VoIP telephony equipment and services must achieve a similar level of reliability that users of the PSTN have come to expect from their telephone service, and the cost and feature benefits of VoIP must be sufficient to cause customers to switch away from traditional telephony service providers. Furthermore, customers in markets serviced by deregulated telecommunications providers are not familiar with obtaining services from competitors of these providers, and may be reluctant to use new providers such as us. We will need to devote substantial resources to educate customers and end users about the benefits of VoIP telephony solutions, in general, and our services in particular. If any or all of these factors fail to occur, our business may be affected adversely.

Certain aspects of our service are not the same as traditional telephone service, which may limit the acceptance of our services by mainstream consumers and businesses customers and our potential for growth.

Certain aspects of our service are not the same as traditional telephone service. Because our continued growth is dependent on the adoption of our services by mainstream customers and business customers, our ability to adequately address significant differences through our technology, service offerings, marketing and sales efforts is becoming increasingly important. For example:

- Our business services differ from traditional business private branch exchange, or PBX, systems in that no customer premise equipment is required other than our telephones and terminal adapters. There is no “equipment closet” or dedicated voice wiring required. For many of our customers, these are new and unfamiliar concepts.
- Our E-911 calling service is different, in significant respects, from the E-911 service associated with traditional wireline and wireless telephone providers.
- Our customers may experience higher dropped-call rates and lower service availability rates than they are used to from traditional wireline telephone carriers because our services depend on networks and services with more single points of failure than traditional wireline networks.
- Our customers cannot accept collect calls.
- In the event of a power loss or Internet access interruption, our services are interrupted. Unlike some cable VoIP services, we have not installed batteries at the customer premises to provide temporary emergency power for our customers’ equipment if they lose power, though our data centers are protected by power backup and other measures to mitigate the risk of not being able to maintain our data center operations in the event of a power outage or some other emergency situation.

If customers do not accept the differences between our service and traditional telephone service, they might not subscribe to our VoIP services and our business, operating results and cash flows would be affected adversely.

We have a history of losses and are uncertain of our future profitability.

We recorded an operating loss of \$3 million for the fiscal year ended March 31, 2009 and ended the period with an accumulated deficit of \$203 million. In addition, we recorded operating losses of approximately \$4 million and \$14 million for the fiscal years ended March 31, 2008 and 2007, respectively. We may continue to incur operating losses for the foreseeable future, and such losses may be substantial. We will need to increase revenues in order to generate sustainable operating profit. Given our history of fluctuating revenues and operating losses, we cannot be certain that we will be able to achieve operating profitability on an annual basis or maintain operating profitability on a quarterly basis in the future.

The VoIP telephony market is subject to rapid technological change, and we depend on new product and service introductions in order to maintain and grow our business.

VoIP telephony is an emerging market that is characterized by rapid changes in customer requirements, frequent introductions of new and enhanced products, and continuing and rapid technological advancement. To compete successfully in this emerging market, we must continue to design, develop, manufacture, and sell new and enhanced VoIP telephony software products and

services that provide increasingly higher levels of performance and reliability at lower cost. These new and enhanced products must take advantage of technological advancements and changes and respond to new customer requirements. Our success in designing, developing, manufacturing, and selling such products and services will depend on a variety of factors, including:

- quality of the service that we provide;
- the identification of new technologies and timely implementation of product design and development;
- the scalability of our VoIP telephony software products;
- product and feature selection;
- product performance;
- cost-effectiveness of current products and services and products under development;
- our ability to successfully implement service features mandated by federal and state law; and
- effectiveness of promotional efforts.

Decreasing telecommunications rates and increasing regulatory charges may diminish or eliminate our competitive pricing advantage.

Decreasing telecommunications rates may diminish or eliminate the competitive pricing advantage of our services. Increased regulation and the imposition of additional regulatory funding obligations at the federal, state and local level could require us to either increase the retail price for our services, thus making us less competitive, or absorb such costs, thus decreasing our profit margins. In fiscal 2007, we began to pass Universal Service and E-911 fees and taxes onto our customers and in fiscal 2008 and 2009, we began to pass sales, use and communications taxes onto certain of our customers. International and domestic telecommunications rates have decreased significantly over the last few years in most of the markets in which we operate, and we anticipate these rates will continue to decline in all of the markets in which we do business or expect to do business. Users who select our services to take advantage of the current pricing differential between traditional telecommunications rates and our rates may switch to traditional telecommunications carriers if such pricing differentials diminish or disappear, and we will be unable to use such pricing differentials to attract new customers in the future. In addition, our ability to market our services to other service providers depends upon the existence of spreads between the rates offered by us and the rates offered by traditional telecommunications carriers, as well as a spread between the retail and wholesale rates charged by the carriers from whom we obtain wholesale services. Continued rate decreases would require us to lower our rates to remain competitive and would reduce or possibly eliminate any gross profit from our services. Furthermore, if telecommunications rates continue to decline, we may lose subscribers for our services.

We rely on third party network service providers to originate and terminate substantially all of our public switched telephone network calls.

We leverage the infrastructure of third party network service providers to provide telephone numbers, PSTN call termination and origination services and local number portability for our customers rather than deploying our own network throughout the United States. This decision has resulted in lower operating costs for our business in the short term but has reduced our operating flexibility and ability to make timely service changes. If any of these network service providers cease operations or otherwise terminate the services that we depend on, the delay in switching our technology to another network service provider, if available, and qualifying this new service could have a material adverse effect on our business, financial condition or operating results.

While we believe that relations with our current service providers are good and we have contracts in place, there can be no assurance that these service providers will be able or willing to supply cost-effective services to us in the future or that we will be successful in signing up alternative or additional providers. While we believe that we could replace our current providers, if necessary, our ability to provide service to our subscribers would be impacted during this timeframe, and this could have an adverse effect on our business, financial condition or results of operations. The loss of access to, or requirement to change, the telephone numbers we provide to our customers also could have a material adverse effect on our business, financial condition or operating results.

Intense competition in the markets in which we compete could prevent us from increasing or sustaining our revenue and increasing or maintaining profitability.

The telecommunications industry is highly competitive. We face intense competition from traditional telephone companies, wireless companies, cable companies, competitive local exchange carriers, alternative voice communication providers and independent VoIP providers.

Most of our current and potential competitors have longer operating histories, significantly greater resources and name recognition, and a larger base of customers than we have. As a result, these competitors may have greater credibility with our existing and potential customers. They also may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their products than we can to ours. Our competitors may also offer bundled service arrangements offering a more complete product despite the technical merits or advantages of our products. Competition could decrease our prices, reduce our sales, lower our gross profits or decrease our market share.

Most traditional wireline and wireless telephone service providers and cable companies are substantially larger and better capitalized than we are and have the advantage of a large, existing customer base. Because most of our target customers are already purchasing communications services from one or more of these providers, our success is dependent upon our ability to attract target customers away from their existing providers. Until recently, our target market has been composed largely of early adopters, or people who tend to seek out new technologies and services. Attracting customers away from their existing providers will become more difficult as the early adopter market becomes saturated and mainstream customers make up more of our target market. In addition, these competitors could focus their substantial financial resources to develop competing technology that may be more attractive to potential customers than what we offer. Our competitors' financial resources may allow them to offer services at prices below cost or even free in order to maintain and gain market share or otherwise improve their competitive positions. Our competitors could also use their greater financial resources to offer VoIP services with more attractive service packages that include on-site installation and more robust customer service. In addition, because of the other services our competitors provide, they may choose to offer VoIP services as part of a bundle that includes other products, such as video, high speed Internet access and wireless telephone service, which we do not offer. This bundle may enable our competitors to offer VoIP service at prices we may not be able to compete with, to offer a single bill for multiple services, or to offer functionality that integrates VoIP service with their other offerings, any of which may be more desirable to consumers. Any of these competitive factors could make it more difficult for us to attract and retain customers or could cause us to lower our prices in order to compete and reduce our market share and revenues.

We also compete against established alternative voice communication providers and face competition from other large, well-capitalized Internet companies that have recently launched or plan to launch VoIP-enabled services. In addition, we compete with independent VoIP service providers. Some of these service providers may choose to sacrifice revenue in order to gain market share by offering their services at lower prices or free. In order to compete with such service providers, we may have to significantly reduce our prices, which would delay or prevent our profitability.

We also are subject to the risk that new technologies may be developed that are able to deliver competing voice services at lower prices, better or more conveniently. Future competition from new technologies could have a material adverse effect on our growth and operating results.

Given the significant price competition in the markets for our products, we are at a significant disadvantage compared to our competitors, many of whom have substantially greater resources, and therefore may be better able to withstand an extended period of downward pricing pressure. The adverse impact of a shortfall in our revenues may be magnified by our inability to adjust spending to compensate for such shortfall. Announcements by our competitors or us of new products and technologies could cause customers to defer purchases of our existing products, which also could have a material adverse effect on our business, financial condition or operating results.

We depend on contract manufacturers to manufacture substantially all of our products, and any delay or interruption in manufacturing by these contract manufacturers would result in delayed or reduced shipments to our customers and may harm our business.

We do not have long-term purchase agreements with our contract manufacturers and we depend on a concentrated group of contract manufacturers for a substantial portion of manufacturing our products. There can be no assurance that our contract manufacturers will be able or willing to reliably manufacture our products, in volumes, on a cost-effective basis or in a timely manner. If we cannot compete effectively for the business of these contract manufacturers, or if any of the contract manufacturers experience financial or other difficulties in their businesses, our revenue and our business could be adversely

affected. In particular, if one of our contract manufacturers becomes subject to bankruptcy proceedings, we may not be able to obtain any of our products held by the contract manufacturer.

We also rely on third party component suppliers to provide semiconductor circuit packages for our products. In some instances, these components are provided by a single supplier. Our reliance on these suppliers involves a number of risks, including reduced control over delivery schedules, quality assurance and costs. We currently do not have long-term supply contracts with any of these component vendors. As a result, most of these third party vendors are not obligated to provide products or perform services to us for any specific period, in any specific quantities or at any specific price, except as may be provided in a particular purchase order. The inability of these third party vendors to deliver components of acceptable quality and in a timely manner, particularly the sole source vendors, could adversely affect our operating results or cause them to fluctuate more than anticipated. Additionally, some of our products may require specialized or high-performance component parts that may not be available in quantities or in time frames that meet our requirements.

We may have difficulty identifying the source of the problem when there is a problem in a network.

Our 8x8 service must successfully integrate with products from other vendors, such as gateways to traditional telephone systems. As a result, when problems occur in a network, it may be difficult to identify the source of the problem. The occurrence of hardware and software errors, whether caused by our 8x8 service or another vendor's products, may result in the delay or loss of market acceptance of our products and any necessary revisions may force us to incur significant expenses. The occurrence of some of these types of problems may seriously harm our business, financial condition or operating results.

Our infringement of a third party's proprietary technology would disrupt our business.

There has been substantial litigation in the communications, VoIP services, semiconductor, electronics, and related industries regarding intellectual property rights and, from time to time, third parties may claim infringement by us of their intellectual property rights. Our broad range of technology, including IP telephony systems, digital and analog circuits, software, and semiconductors, increases the likelihood that third parties may claim infringement by us of their intellectual property rights. For example, on May 2, 2008, we received a letter from AT&T Intellectual Property, L.L.C. ("AT&T IP") expressing the belief that we must license a specified patent for use in our 8x8 broadband telephone service, as well as suggesting that we obtain a license to its portfolio of MPEG-4 patents for use with our video telephone products and services. At the same time, we began an evaluation of whether AT&T IP's affiliated entities may need to license any of our patents or other intellectual property. We have continued to engage in discussions with AT&T IP to explore a mutually agreeable resolution of the parties' respective assertions regarding these intellectual property issues. We are unable at this time to state whether we will enter into any license or cross-license agreements with AT&T IP or whether we ultimately anticipate any material effects on our operating results or financial condition as a consequence of these matters. If we were found to be infringing on the intellectual property rights of any third party, we could be subject to liabilities for such infringement, which could be material. We could also be required to refrain from using, manufacturing or selling certain products or using certain processes, either of which could have a material adverse effect on our business and operating results. From time to time, we have received, and may continue to receive in the future, notices of claims of infringement, misappropriation or misuse of other parties' proprietary rights. There can be no assurance that we will prevail in these discussions and actions or that other actions alleging infringement by us of third party patents will not be asserted or prosecuted against us.

Certain technology necessary for us to provide our services may, in fact, be patented by other parties either now or in the future. If such technology were held under patent by another person, we would have to negotiate a license for the use of that certain technology. We may not be able to negotiate such a license at a price that is acceptable. The existence of such a patent, or our inability to negotiate a license for any such technology on acceptable terms, could force us to cease using such technology and offering products and services incorporating such technology. For example, on April 22, 2009, we were named as a defendant, along with Comcast, Microsoft, Avaya, Embarq, and Qwest, in a complaint filed by Web Telephony, LLC in the Eastern District of Texas. On April 29, 2009, we entered into a settlement agreement with Web Telephony, which filed a motion to dismiss the lawsuit on May 8, 2009.

We license technology from third parties that we do not control and cannot be assured of retaining.

We rely upon certain technology, including hardware and software, licensed from third parties. There can be no assurance that the technology licensed by us will continue to provide competitive features and functionality or that licenses for technology currently utilized by us or other technology which we may seek to license in the future, will be available to us on commercially reasonable terms or at all. The loss of, or inability to maintain, existing licenses could result in shipment delays or reductions until equivalent technology or suitable alternative products could be developed, identified, licensed and integrated, and could

harm our business. These licenses are on standard commercial terms made generally available by the companies providing the licenses. The cost and terms of these licenses individually are not material to our business.

Inability to protect our proprietary technology would disrupt our business.

We rely, in part, on trademark, copyright, and trade secret law to protect our intellectual property in the United States and abroad. We seek to protect our software, documentation, and other written materials under trade secret and copyright law, which afford only limited protection. We also rely, in part, on patent law to protect our intellectual property in the United States and internationally. As of March 31, 2009, we had been awarded 73 United States patents and have additional United States and foreign patent applications pending. We cannot predict whether such pending patent applications will result in issued patents that effectively protect our intellectual property. We may not be able to protect our proprietary rights in the United States or internationally (where effective intellectual property protection may be unavailable or limited), and competitors may independently develop technologies that are similar or superior to our technology, duplicate our technology or design around any patent of ours. We have, in the past, licensed and, in the future, expect to continue licensing our technology to others, many of whom are located or may be located abroad. There are no assurances that such licensees will protect our technology from misappropriation. Moreover, litigation may be necessary in the future to enforce our intellectual property rights, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of management time and resources and could have a material adverse effect on our business, financial condition, and operating results. Any settlement or adverse determination in such litigation would also subject us to significant liability.

Our products must comply with industry standards, FCC regulations, state, local, country-specific and international regulations, and changes may require us to modify existing products and/or services.

In addition to reliability and quality standards, the market acceptance of telephony over broadband IP networks is dependent upon the adoption of industry standards so that products from multiple manufacturers are able to communicate with each other. Our VoIP telephony products rely heavily on communication standards such as SIP, MGCP and network standards such as TCP/IP and UDP to interoperate with other vendors' equipment. There is currently a lack of agreement among industry leaders about which standard should be used for a particular application, and about the definition of the standards themselves. These standards, as well as audio and video compression standards, continue to evolve. We also must comply with certain rules and regulations of the Federal Communications Commission (FCC) regarding electromagnetic radiation and safety standards established by Underwriters Laboratories, as well as similar regulations and standards applicable in other countries. Standards are continuously being modified and replaced. As standards evolve, we may be required to modify our existing products or develop and support new versions of our products. We must comply with certain federal, state and local requirements regarding how we interact with our customers, including marketing practices, consumer protection, privacy, and billing issues, the provision of 9-1-1 emergency service and the quality of service we provide to our customers. The failure of our products and services to comply, or delays in compliance, with various existing and evolving standards could delay or interrupt volume production of our VoIP telephony products, subject us to fines or other imposed penalties, or harm the perception and adoption rates of our service, any of which would have a material adverse effect on our business, financial condition or operating results.

Our ability to offer services outside the U.S. is subject to the local regulatory environment, which may be unknown, complicated and uncertain.

Regulatory treatment of VoIP telephony outside the United States varies from country to country and often the laws are unclear. We currently distribute our products and services directly to consumers and through resellers that may be subject to telecommunications regulations in their home countries. The failure by us or our customers and resellers to comply with these laws and regulations could reduce our revenue and profitability. Because of our relationship with the resellers, some countries may assert that we are required to register as a telecommunications provider in that country. In such case, our failure to do so could subject us to fines or penalties. In addition, some countries are considering subjecting VoIP services to the regulations applied to traditional telephone companies. Regulatory developments such as these could have a material adverse effect on our international operation.

Future legislation or regulation of the Internet and/or voice and video over IP services could restrict our business, prevent us from offering service or increase our cost of doing business.

There are an increasing number of regulations and rulings that specifically address access to commerce and communications services on the Internet, including IP telephony. We are unable to predict the impact, if any, that future legislation, legal decisions or regulations concerning the Internet may have on our business, financial condition, and results of operations.

Regulation may be targeted towards, among other things, assessing access or settlement charges, imposing taxes related to Internet communications and imposing tariffs or regulations based on encryption concerns or the characteristics and quality of products and services, any of which could restrict our business or increase our cost of doing business. The increasing growth of the broadband IP telephony market and popularity of broadband IP telephony products and services heighten the risk that governments or other legislative bodies will seek to regulate broadband IP telephony and the Internet. In addition, large, established telecommunication companies may devote substantial lobbying efforts to influence the regulation of the broadband IP telephony market, which may be contrary to our interests.

Many regulatory actions are underway or are being contemplated by federal and state authorities, including the FCC and other state and local regulatory agencies. On February 12, 2004, the FCC initiated a notice of public rule-making to update FCC policy and consider the appropriate regulatory classification for VoIP and other IP enabled services. On November 9, 2004, the FCC ruled that Vonage DigitalVoice and similar services are jurisdictionally interstate and not subject to state certification, tariffing and other common carrier regulations. This ruling was subsequently appealed by several states. On March 21, 2007, the United States Court of Appeals for the Eighth Circuit affirmed the FCC's declaratory ruling.

There is risk that a regulatory agency will require us to conform to rules that are unsuitable for IP communications technologies or rules that cannot be complied with due to the nature and efficiencies of IP routing, or are unnecessary or unreasonable in light of the manner in which 8x8 offers service to its customers. It is not possible to separate the Internet, or any service offered over it, into intrastate and interstate components as we currently have no means to automatically identify the physical location of one of our subscribers on the Internet. While suitable alternatives may be developed in the future, the current IP network does not enable us to identify the geographic nature of the traffic traversing the Internet, or dynamically pinpoint or update the location of our customers' telephony devices. In the United States, the FCC as well as our competitors have made statements in the past suggesting that we should be required to automatically determine the physical location of our customers' equipment as a precondition for offering telecommunications services to them.

Internet service providers might restrict our ability to provide VoIP telephony services in the future.

It is not clear whether suppliers of broadband Internet access have a legal obligation to allow their customers to access and use our service without interference. As a result of recent decisions by the U.S. Supreme Court and the FCC, providers of broadband services are subject to relatively light regulation by the FCC. Consequently, federal and state regulators might not prohibit broadband providers from limiting their customers' access to VoIP applications and services, or otherwise discriminating against VoIP providers. Conceivably, some providers of broadband access may take measures that affect their customers' ability to use our service, such as degrading the quality of the data packets we transmit over their lines, giving those packets lower priority, giving other packets higher priority than ours, blocking our packets entirely or attempting to charge their customers more for also using our services. Interference with our service or higher charges for also using our service could cause us to lose existing customers, impair our ability to attract new customers and harm our revenue and growth. These problems have arisen in the past in the United States and in certain international markets.

Taxes will increase our customers' cost of using our service and we may be subject to liabilities for past sales and additional taxes, surcharges and fees.

Until 2007, we did not collect or remit state or municipal taxes, such as sales, excise, and ad valorem taxes, fees or surcharges on the charges to our customers for our services, except that we have historically complied with the collection of California sales tax and financial contributions to the 9-1-1 system and Universal Service Fund. We have received inquiries or demands from a number of state and municipal taxing agencies seeking payment of taxes, fees or surcharges that are applied to or collected from customers of providers of traditional public switched telephone network services. Although we have consistently maintained that these taxes, fees or surcharges do not apply to our service for a variety of reasons depending on the statute or rule that establishes such obligations, a number of states have changed their statutes as part of streamlined sales tax initiatives and we are now collecting and remitting sales taxes in those states. The collection of these taxes, fees or surcharges will have the effect of decreasing any price advantage we may have over other providers who have historically paid these taxes and fees. Our compliance with these tax initiatives will also make us less competitive with those competitors who choose not to comply with these tax initiatives. Additionally, we are currently being audited by two states for state and municipal taxes. We have established an accrued tax liability of \$0.2 million as of March 31, 2009, to account for the claims by some states that we should have collected and remitted sales taxes in the past. If our ultimate liability exceeds that amount, it could result in significant charges to our earnings.

Our emergency and E-911 calling services are different from those offered by traditional wireline telephone companies and may expose us to significant liability. There may be risks associated with limitations associated with E-911 emergency dialing with the 8x8 service.

Both our emergency calling service and our E-911 calling service are different, in significant respects, from the emergency calling services offered by traditional wireline telephone companies. In each case, the differences may cause significant delays, or even failures, in callers' receipt of the emergency assistance they need.

Traditional wireline telephone companies route emergency calls over a dedicated infrastructure directly to an emergency services dispatcher at the Public Safety Answering Point, or PSAP, in the caller's area. Generally, the dispatcher automatically receives the caller's phone number and actual location information. While the E-911 service we have deployed in the United States is designed to route calls in a fashion similar to traditional wireline services, our E-911 capabilities are not yet available from all locations. In addition, the only location information that our E-911 service can transmit to a dispatcher at a PSAP is the information that our customers have registered with us prior to the 9-1-1 call. A customer's registered location may be different from the customer's actual location at the time of the call because customers can use the 8x8 service from any broadband connection anywhere in the world.

We are currently deploying E-911 service that is similar to the emergency calling services provided to customers of traditional wireline telephone companies in the same area. For those customers located in an E-911 area, emergency calls are routed, subject to the limitations discussed below, directly to an emergency services dispatcher at the PSAP in the area of the customer's registered location. The dispatcher will have automatic access to the customer's telephone number and registered location information. If a customer moves their 8x8 service to a new location, the customer's registered location information must be updated and verified by the customer. Until that takes place, the customer will have to verbally advise the emergency dispatcher of his or her actual location at the time of an emergency 9-1-1 call. This can lead to delays in the delivery of emergency services.

The emergency calls of customers located in areas where we are currently unable to provide E-911 service as described above are supported by a national call center that is run by a third-party provider and operates 24 hours per day, seven days per week. These operators still receive the customer's registered service location and phone number automatically, and coordinate connecting the caller to the appropriate PSAP or emergency services provider and providing the customer's registered service location and phone number to those local authorities, which can also delay the delivery of emergency services. In the event that a customer experiences a broadband or power outage, or if a network failure were to occur, the customer will not be able to reach an emergency services provider using our services.

Delays our customers may encounter when making emergency services calls and any inability of the answering point to automatically recognize the caller's location or telephone number can result in life threatening consequences. Customers may, in the future, attempt to hold us responsible for any loss, damage, personal injury or death suffered as a result of any failure of our E-911 services. In late July 2008, the President signed into law the "New and Emerging Technologies 911 Improvement Act of 2008." The law provides public safety, interconnected VoIP providers and others involved in handling 911 calls the same liability protections when handling 911 calls from interconnected VoIP users as from mobile or wired telephone service users. The applicability of the liability protections to our national call center solution is unclear at the present time. Also, we may be exposed to liability for 911 calls made prior to the adoption of this new law although we are unaware of any such liability.

In May 2005, the FCC unanimously adopted an order and Notice of Proposed Rulemaking, or NPRM, which required VoIP providers that interconnect with the PSTN, or interconnected VoIP providers, to provide enhanced 9-1-1, or E-911, service.

On November 7, 2005, the Enforcement Bureau of the FCC issued a notice to interconnected VoIP providers detailing the information required to be submitted to the FCC in E-911 compliance letters due by November 28, 2005. In this notice, the Enforcement Bureau stated that, although it would not require providers that had not achieved full E-911 compliance by November 28, 2005, to discontinue the provision of interconnected VoIP services to any existing customers, it did expect that such providers would discontinue marketing VoIP services, and accepting new customers for their services, in all areas where they are not transmitting 9-1-1 calls to the appropriate PSAP in full compliance with the FCC rules. On November 28, 2005, we began offering nomadic E-911 service to all of our customers with United States service addresses, and began charging those customers an additional \$1.99 per month plus any applicable local 9-1-1 taxes and surcharges effective January 1, 2006. On November 28, 2005, we also modified the 8x8 account signup procedures to require service addresses to be entered and validated, at the time an order for service is placed, to ascertain whether 8x8's nomadic E-911 service is available at that address. On November 28, 2005, we also filed our E-911 compliance report which is available on the FCC's website, at

<http://www.fcc.gov>, under Wireline Competition Docket Number 05-196. On March 19, 2007, we received a letter from the Enforcement Bureau of the FCC requesting that we file an updated E-911 Status Report no later than April 11, 2007. On April 11, 2007, we responded to the FCC stating that 91% of our customers are either in compliance with the VoIP 9-1-1 order or were signed up prior to November 28, 2005. We provide a nomadic emergency calling service to 100% of our customers who have a service location, as registered by the customer, within the United States.

The FCC may determine that our nomadic emergency calling solution does not satisfy the requirements of its VoIP E-911 order because, in some instances, our nomadic emergency calling solution requires that we route an emergency call to a national emergency call center instead of connecting our customers directly to a local PSAP through a dedicated connection and through the appropriate selective router. The FCC may issue further guidance on compliance requirements in the future that might require us to disconnect those customers not receiving access to emergency services in a manner consistent with the VoIP E-911 order. The effect of such disconnections, monetary penalties, cease and desist orders or other enforcement actions initiated by the FCC or other agency or task force against us could have a material adverse effect on our business, financial condition or operating results.

On June 1, 2007, the FCC released a Notice of Proposed Rulemaking in which it tentatively concluded that all interconnected VoIP service providers that allow customers to use their service in more than one location (nomadic VoIP service providers such as us) must utilize an automatic location technology that meets the same accuracy standards which apply to providers of commercial mobile radio services (mobile phone service providers). The outcome of this proceeding cannot be determined at this time and we may or may not be able to comply with any such obligations that may be adopted. At present, we currently have no means to automatically identify the physical location of one of our customers on the Internet. The FCC's VoIP E-911 order has increased our cost of doing business and may adversely affect our ability to deliver the 8x8 service to new and existing customers in all geographic regions or to nomadic customers who move to a location where emergency calling services compliant with the FCC's mandates are unavailable. Our compliance with and increased costs due to the FCC's VoIP E-911 order put us at a competitive disadvantage to those VoIP service providers who have chosen not to comply with the FCC's mandates. We cannot guarantee that emergency calling service consistent with the VoIP E-911 order will be available to all of our customers, especially those accessing our services from outside of the United States. The FCC's current VoIP E-911 order or follow-on orders or clarifications or their impact on our customers due to service price increases or other factors could have a material adverse effect on our business, financial condition or operating results.

There may be risks associated with our ability to comply with the requirements of federal law enforcement agencies.

On August 5, 2005, the FCC unanimously adopted an order responsive to a joint petition filed by the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration asking the FCC to declare that broadband Internet access services and VoIP services be covered by the Communications Assistance for Law Enforcement Act, or CALEA.

The FCC, in a subsequent order released on May 12, 2006, required all interconnected VoIP providers to become fully CALEA compliant by May 14, 2007. The FCC allowed VoIP providers to comply with CALEA through the use of a solution provided by a trusted third party with the ability to extract call content and call-identifying information from a VoIP provider's network. While the FCC permits carriers to use the services provided these third parties to become CALEA compliant by the deadline, the carrier remains ultimately responsible for ensuring the timely delivery of call content and call-identifying information to law enforcement, and for protecting subscriber privacy, as required by CALEA.

We selected a partner to work with us to develop a solution for CALEA compliant lawful interception of communications and, as of May 14, 2007, we had installed this solution in our network operations and data centers, but had not yet completed certification testing of all required intercept capabilities of this equipment. We completed formal CALEA compliance testing with this partner in March 2009 and currently, our tested CALEA solution is fully deployed in our network. However, we could be subject to an enforcement action by the FCC or law enforcement agencies for any delays related to meeting, or if we fail to comply with, any current or future CALEA obligations.

There may be risks associated with our ability to comply with requirements of the Telecommunications Relay Service.

On June 15, 2007, the FCC extended the disability access requirements of Sections 225 and 255 of the Communications Act, which applied to traditional phone services, to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide those services. In addition, the FCC determined that interconnected VoIP providers were subject to the requirements of Section 225, including contributing to the Telecommunications Relay Services, or TRS, fund and that they must offer 7-1-1 abbreviated dialing for access to relay services. While the rules became effective October 5, 2007, the FCC granted a limited waiver to interconnected VoIP providers concerning the 7-1-1 call routing requirement until March

31, 2009. Interconnected VoIP providers do not have to route such calls to the "appropriate relay center," meaning the relay center(s) serving the state in which the caller is geographically located or the relay center(s) associated with the caller's last registered address until the waiver period expires. As of April 5, 2008, we have implemented a 7-1-1 system which routes such calls to the appropriate relay center based upon the customer's assigned telephone number. We may be subject to enforcement actions including, but not limited to, fines, cease and desist orders, or other penalties if the FCC believes we are not compliant with these new disability requirements.

There may be risks associated with our ability to comply with the requirements of federal and other regulations related to Customer Proprietary Network Information (CPNI).

On April 2, 2007, the FCC released an order extending the application of the customer proprietary network information, or CPNI, rules to interconnected VoIP providers. VoIP providers have six months from the effective date of the order to implement all the CPNI rules. CPNI includes information such as the phone numbers called by a consumer, the frequency, duration, and timing of such calls, and any services/features purchased by the consumer, such as call waiting, call forwarding, and caller ID, in addition to other information that may appear on a consumer's bill.

Under the FCC's existing rules, carriers may not use CPNI without customer approval except in narrow circumstances related to the provision of existing services, and must comply with detailed customer approval processes when using CPNI outside of these narrow circumstances. The new CPNI requirements are also aimed at establishing more stringent security measures for access to a customer's CPNI data in the form of required passwords for on-line access and call-in access to account information as well as customer notification of account or password changes.

At the present time, we do not utilize our customer's CPNI in a manner which would require us to obtain consent from our customers but, in the event that we do in the future, we will be required to adhere to specific CPNI rules aimed at marketing such services. By December 8, 2007, we implemented internal processes in order to be in compliance with all of the FCC's CPNI rules. Our failure to achieve compliance with any future CPNI orders, rules, filings or standards, or any enforcement action initiated by the FCC or other agency, state or task force against us could have a material adverse effect on our business, financial condition or operating results.

There may be risks associated with our ability to comply with funding requirements of the Universal Service Fund, or USF, Telecommunications Relay Service, or TRS, fund, federal regulatory recovery fees and similar state or federal funds, or that our customers will cancel service due to the impact of these price increases to their services.

On June 21, 2006, the FCC expanded the base of Universal Service Fund, or USF, contributions to interconnected VoIP providers. The FCC established a safe harbor percentage of interstate revenue of 64.9% of total VoIP service revenue. We were allowed to calculate our contribution based on the safe harbor or by preparing a traffic study. We began contributing to the federal USF on October 1, 2006. For a period of at least two quarters beginning October 1, 2006, we were required to contribute to the USF for all subscribers' retail revenues as well as through its underlying carriers' wholesale charges. The FCC order applying USF contributions to interconnected VoIP providers was appealed and on June 1, 2007, the U.S. Court of Appeals for the District of Columbia ruled that the FCC was within its authority when it required interconnected VoIP service providers to contribute to the Universal Service Fund, though it struck down the provision of the order which required pre-approval of traffic studies by the FCC and the provision that required double contributions to the fund for two quarters from our underlying carriers' wholesale charges. There is also a risk that state Universal Service Funds may attempt to impose state USF contribution obligations and other state and local charges. At this time, at least three states, including Nebraska, contend that providers of interconnected VoIP services, like us, should contribute to its USF fund. On March 3, 2008, the U.S. District Court for Nebraska issued a preliminary injunction and found that Nebraska's state Public Service Commission does not have jurisdiction to require Universal Service contributions from VoIP providers. On May 1, 2009, a panel of the U.S. Circuit Court of Appeals for the Eighth Circuit affirmed the U.S. District court ruling. But, on May 14, 2009, the Nebraska Public Service Commission requested a rehearing or a rehearing *en banc* of the decision handed down by the three-judge panel. We cannot predict the outcome of this ongoing litigation. As of March 31, 2009, we were collecting or remitting state USF in one state. Effective June 1, 2009, we will cease collecting and remitting state USF.

We charge our subscribers a USF fee equal to the USF contribution amounts we must contribute based upon our subscribers' retail revenues. The impact of this price increase on our customers or our inability to recoup our costs or liabilities in remitting USF contributions or other factors could have a material adverse effect on our financial position, results of operations and cash flows.

The FCC and various state commissions are considering the imposition of additional fees on interconnected VoIP providers, like us. Several states are either considering extending or have imposed state USF, state TRS fees, and other taxes and fees on

interconnected VoIP providers like us. If we pass through the taxes, fees and surcharges that may be applied to our service, the impact of this price increase on our customers or our inability to recoup our costs or liabilities in remitting such taxes, fees and surcharges could have a material adverse effect on our financial position, results of operations and cash flows. We may also be at a competitive disadvantage to other providers who choose not to comply with these payment obligations.

If we are unable to improve our process for local number portability provisioning, our growth may be negatively affected.

We support local number portability, or LNP, for our customers, which allows our customers to retain their existing telephone numbers when subscribing to our services. Transferring numbers is a manual process that, in the past, has taken us 20 business days or longer, although we have taken steps to automate this process to reduce the delay. A new customer of our services must maintain both the new 8x8 service and the customer's existing telephone service during the number transfer process. By comparison, transferring wireless telephone numbers among wireless service providers generally takes several hours, and transferring wireline telephone numbers among traditional wireline service providers generally takes a few days. The additional delay that we experience is due to our reliance on third party carriers to transfer the numbers, as well as the delay the existing telephone service provider may contribute to the process. Local number portability is considered an important feature by many potential customers, especially our business customers, and if we fail to reduce related delays, we may experience increased difficulty in acquiring new customers or retaining existing customers. Moreover, the FCC now requires interconnected VoIP providers, like us, to comply with industry standard timeframes and a new order shortens the timeframe for certain types of ports considerably, although the new order will not be effective for at least nine months. If we are unable to process ports within the requisite timeframes, we could be subject to fines and/or penalties. Additionally, both customers and carriers may seek relief from the relevant state public utility commission, the FCC, and/or in state or federal court. During fiscal 2008, the FCC required interconnected VoIP providers to remit regulatory and local number portability fees.

The rates we pay to underlying telecommunications carriers may increase which may reduce our profitability and increase the retail price of our service.

The FCC has several open proceedings considering new rules that may impact charges that regulated telecommunications carriers assess each other for originating and terminating traffic. It is possible that the FCC will adopt new rules that subjects interconnected VoIP traffic to increased charges. Should this occur, the rates that we pay to our underlying carriers may increase which may reduce our profitability and may also increase the retail price of our service making our service less competitive with other providers of similar calling services. We cannot predict either the timing or the outcome of these proceedings.

Our success also depends on our ability to handle a large number of simultaneous calls, which our network may not be able to accommodate.

We expect the volume of simultaneous calls to increase significantly as the 8x8 subscriber base grows. Our network hardware and software may not be able to accommodate this additional volume. If we fail to maintain an appropriate level of operating performance, or if our service is disrupted, our reputation could be hurt, we could lose customers, all of which could have a material adverse effect on our business, financial condition or operating results.

We could be liable for breaches of security on our web site, fraudulent activities of our users, or the failure of third-party vendors to deliver credit card transaction processing services.

A fundamental requirement for operating an Internet-based, worldwide voice and video communications service and electronically billing our 8x8 customers is the secure transmission of confidential information and media over public networks. Although we have developed systems and processes that are designed to protect consumer information and prevent fraudulent credit card transactions and other security breaches, failure to mitigate such fraud or breaches may adversely affect our operating results. The law relating to the liability of providers of online payment services is currently unsettled and states may enact their own rules with which we may not comply. We rely on third party providers to process and guarantee payments made by 8x8 subscribers up to certain limits, and we may be unable to prevent our customers from fraudulently receiving goods and services. Our liability risk will increase if a larger fraction of our 8x8 transactions involve fraudulent or disputed credit card transactions. Any costs we incur as a result of fraudulent or disputed transactions could harm our business. In addition, the functionality of our current billing system relies on certain third-party vendors delivering services. If these vendors are unable or unwilling to provide services, we will not be able to charge for our 8x8 services in a timely or scalable fashion, which could significantly decrease our revenue and have a material adverse effect on our business, financial condition and operating results.

We have experienced losses due to subscriber fraud and theft of service.

Subscribers have obtained access to the 8x8 service without paying for monthly service and international toll calls by unlawfully using our authorization codes or by submitting fraudulent credit card information. To date, such losses from unauthorized credit card transactions and theft of service have not been significant. We have implemented anti-fraud procedures in order to control losses relating to these practices, but these procedures may not be adequate to effectively limit all of our exposure in the future from fraud. If our procedures are not effective, consumer fraud and theft of service could significantly decrease our revenue and have a material adverse effect on our business, financial condition and operating results.

A higher rate of customer terminations would negatively affect our business by reducing our revenue or requiring us to spend more money to grow our customer base.

Our rate of customer terminations, or average monthly customer churn, was 3.6% for the fiscal year ended March 31, 2009. Our churn rate could increase in the future if customers are not satisfied with our service. Other factors, including increased competition from other VoIP providers, alternative technologies, and adverse business conditions also influence our churn rate.

Because of churn, we have to acquire new customers on an ongoing basis just to maintain our existing level of customers and revenues. As a result, marketing expenditures are an ongoing requirement of our business. If our churn rate increases, we will have to acquire even more new customers in order to maintain our existing revenues. We incur significant costs to acquire new customers, and those costs are an important factor in determining our net profitability. Therefore, if we are unsuccessful in retaining customers or are required to spend significant amounts to acquire new customers beyond those budgeted, our revenue could decrease and our net income could decrease.

Our success also depends on third parties in our distribution channels.

We currently sell our products directly to consumers and through third party resellers and retailers, such as Office Depot. Agreements with distribution partners generally provide for one-time or recurring commissions based on our list prices, and do not require minimum purchases or restrict development or distribution of competitive products. Therefore, entities that distribute our products may compete with us. In addition, distributors and resellers may not dedicate sufficient resources or give sufficient priority to selling our products. Our failure to develop new distribution channels, the loss of a distribution relationship or a decline in the efforts of a material reseller or distributor could have a material adverse effect on our business, financial condition or operating results.

Our future operating results may vary substantially from period to period and may be difficult to predict.

Our historical operating results have fluctuated significantly and will likely continue to fluctuate in the future, and a decline in our operating results could cause our stock price to fall. On an annual and a quarterly basis, there are a number of factors that may affect our operating results, many of which are outside our control. These include, but are not limited to:

- changes in market demand;
- the timing of customer orders;
- customer cancellations;
- competitive market conditions;
- lengthy sales cycles and/or regulatory approval cycles;
- new product introductions by us or our competitors;
- market acceptance of new or existing products;
- the cost and availability of components;
- the mix of our customer base and sales channels;
- the mix of products sold;

- the management of inventory;
- continued compliance with industry standards and regulatory requirements; and
- general economic conditions.

Due to these and other factors, we believe that period-to-period comparisons of our results of operations are not meaningful and should not be relied upon as indicators of our future performance. It is possible that in some future periods our results of operations may be below the expectations of public market analysts and investors. If this were to occur, the price of our common stock would likely decline significantly.

We need to retain key personnel to support our products and ongoing operations.

The development and marketing of our VoIP products will continue to place a significant strain on our limited personnel, management, and other resources. Our future success depends upon the continued services of our executive officers and other key employees who have critical industry experience and relationships that we rely on to implement our business plan. None of our officers or key employees are bound by employment agreements for any specific term. The loss of the services of any of our officers or key employees could delay the development and introduction of, and negatively impact our ability to sell our products which could adversely affect our financial results and impair our growth. We currently do not maintain key person life insurance policies on any of our employees.

We may not be able to manage our inventory levels effectively, which may lead to inventory obsolescence that would force us to incur inventory write-downs.

Our products have lead times of up to several months and are built to forecasts that are necessarily imprecise. Because of our practice of building our products to necessarily imprecise forecasts, it is likely that from time to time we will have either excess or insufficient product inventory. In addition, because we rely on third party vendors for the supply of components and contract manufacturers to assemble our products, our inventory levels are subject to the conditions regarding the timing of purchase orders and delivery dates that are not within our control. Excess inventory levels would subject us to the risk of inventory obsolescence, while insufficient levels of inventory may negatively affect relations with customers. For instance, our customers rely upon our ability to meet committed delivery dates, and any disruption in the supply of our products could result in legal action from our customers, loss of customers or harm to our ability to attract new customers. Any of these factors could have a material adverse effect on our business, financial condition or operating results.

The fair value of certain warrant liabilities may increase or decrease, and as a result, we may be required, pursuant to EITF 00-19, to reflect a corresponding increase or decrease in our net income or net loss, as the case may be, and the amount of our recorded liability for the warrants for the applicable quarter also may fluctuate materially.

Pursuant to Emerging Issues Task Force Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to and Potentially Settled in a Company's Own Stock" ("EITF 00-19"), warrants issued to two investors in an equity financing we consummated in fiscal 2006 are classified as liabilities because of the possibility, however likely or unlikely, that the Company would be unable to deliver registered shares upon a future exercise of these warrants means that the warrants are deemed to include a "net cash settlement" provision within the meaning of EITF 00-19. The required accounting for a warrant with a "net cash settlement" provision under EITF 00-19 is to estimate the fair value on the date of issuance and to record a liability equal to that value to reflect the required assumption that the Company will breach its obligation to deliver registered shares in the future (which we refer to as a "presumed breach"). The warrants will continue to be recorded as liabilities until such time as the warrants are exercised, expire or we and the warrant holders amend the applicable warrant agreement in a manner that renders this accounting treatment unnecessary. In the event that at the end of any fiscal quarter the fair value of these warrants increases or decreases, we will be required to re-value the warrants and reflect such change for the applicable fiscal quarter in our financial statements in accordance with EITF 00-19. If the fair value at the end of any fiscal quarter increases, we will recognize a corresponding increase in expense for such fiscal quarter, as well as reflect a corresponding increase in our liabilities for such fiscal quarter, in accordance with EITF 00-19, resulting in a reduction of our stockholders' equity on our balance sheet for such fiscal quarter and a decrease in net income on our income statement for such fiscal quarter. If the fair value at the end of any fiscal quarter decreases, we will recognize a corresponding decrease in expense for such fiscal quarter, as well as reflect a corresponding decrease in our liabilities for such fiscal quarter, in accordance with EITF 00-19, resulting in an increase of our stockholders' equity on our balance sheet for such fiscal quarter and increase in net income on our income statement for such fiscal quarter. The amount we record as a liability under EITF 00-19 is not, nor do we intend for it to be, an admission or stipulation of the amount that we would owe or be obligated to pay the warrant holder in the event of an actual

breach by us of the warrant terms. In fact, we have made no determination of the amount of liability, if any, that we would owe to the warrant holder in the event of such a breach.

We may need to raise additional capital to support our future operations.

As of March 31, 2009, we had cash and cash equivalents and investments of approximately \$16.4 million. While we believe these funds are sufficient to meet our current and anticipated liquidity requirements, we may need to raise additional capital. We may not be able to obtain such additional financing as needed on acceptable terms, or at all, which may require us to reduce our operating costs and other expenditures, including reductions of personnel and capital expenditures. If we issue additional equity or convertible debt securities to raise funds, the ownership percentage of our existing stockholders would be reduced and they may experience significant dilution. New investors may demand rights, preferences or privileges senior to those of existing holders of our common stock. If we are not successful in these actions, we may be forced to cease operations.

Our stock price has been highly volatile.

The market price of the shares of our common stock has been and is likely to continue to be highly volatile. It may be significantly affected by factors such as:

- actual or anticipated fluctuations in our operating results;
- announcements of technical innovations;
- future legislation or regulation of the Internet and/or VoIP;
- loss of key personnel;
- new entrants into the VOIP service marketplace, including cable and incumbent telephone companies and other well-capitalized competitors;
- new products or new contracts by us, our competitors or their customers;
- the perceived or real impact of events that negatively affect our direct competitors; and
- developments with respect to patents or proprietary rights, general market conditions, changes in financial estimates by securities analysts, and other factors which could be unrelated to, or outside of, our control.

The stock market has from time to time experienced significant price and volume fluctuations that have particularly affected the market prices for the common stocks of technology companies and that have often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the market price of our common stock. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been initiated against the issuing company. If our stock price is volatile, we may also be subject to such litigation. Such litigation could result in substantial costs and a diversion of management's attention and resources, which would disrupt business and could cause a decline in our operating results. Any settlement or adverse determination in such litigation would also subject us to significant liability.

We may not be able to maintain our listing on the NASDAQ Capital Market.

Our common stock trades on the NASDAQ Capital Market, which has certain compliance requirements for continued listing of common stock. We have in the past been subject to delisting procedures due to a drop in the price of our common stock. If our minimum closing bid price per share falls below \$1.00 for a period of 30 consecutive trading days in the future, we may again be subject to delisting procedures. As of the close of business on May 21, 2009, our common stock had a closing bid price of approximately \$0.72 per share. We also must meet additional continued listing requirements contained in NASDAQ Marketplace Rule 4310(c)(2)(b), which requires that we have a minimum of \$2,500,000 in stockholders' equity or \$35,000,000 market value of listed securities held by non-affiliates or \$500,000 of net income from continuing operations for the most recently completed fiscal year (or two of the three most recently completed fiscal years). As of May 21, 2009, based on our closing price as of that day, the market value of our securities held by non-affiliates approximated \$44,634,000 and we were therefore in compliance with NASDAQ Marketplace Rule 4310(c)(2)(b).

On March 23, 2009, NASDAQ announced that it would temporarily suspend enforcement of its rules regarding minimum closing bid price and minimum market value of public shares in light of current extraordinary market conditions. Both rules are to be reinstated on July 20, 2009.

There can be no assurances that we will continue to meet the continued listing requirements. Delisting could reduce the ability of our shareholders to purchase or sell shares as quickly and as inexpensively as they have done historically. For instance, failure to obtain listing on another market or exchange may make it more difficult for traders to sell our securities. Broker-dealers may be less willing or able to sell or make a market in our common stock. Not maintaining our NASDAQ Capital Market listing may:

- result in a decrease in the trading price of our common stock;
- lessen interest by institutions and individuals in investing in our common stock;
- make it more difficult to obtain analyst coverage; and
- make it more difficult for us to raise capital in the future.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our principal operations are located in Santa Clara, CA in a facility that is approximately 47,000 square feet and is leased through August 2009. Design, testing, research and development, sales and marketing, shipping, customer service and administrative activities are performed at this facility. We also lease office space for our research and development operation in Sophia-Antipolis, France. On May 1, 2009, we entered into a lease agreement pursuant to which we will lease approximately 52,000 square feet of office space in Sunnyvale, California for our principal headquarters. The scheduled commencement date for the Sunnyvale, California facility is September 1, 2009, and the term of the lease is three years. We believe our new facilities will adequately meet our current and foreseeable future needs. For additional information regarding our obligations under leases see Note 3 to the consolidated financial statements contained in Part II, Item 8 of this Report.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we become involved in various legal claims and litigation that arise in the normal course of our operations. While the results of such claims and litigation cannot be predicted with certainty, we are not currently aware of any such matters that we believe would have a material adverse effect on our financial position, results of operations or cash flows.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of fiscal 2009.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

We completed our initial public offering on July 2, 1997 under the name 8x8, Inc. From that date through April 3, 2000, our common stock was traded on what was then known as the NASDAQ National Market (the NASDAQ) under the symbol "EGHT." From April 4, 2000 through July 18, 2001, our common stock was traded on the NASDAQ under the symbol "NTRG." Since July 19, 2001 our common stock has traded under the symbol "EGHT." In July 2002, our listing was transferred to the NASDAQ Capital Market of the NASDAQ Stock Market LLC.

We have never paid cash dividends on our common stock and have no plans to do so in the foreseeable future. We did not repurchase any of our equity securities during the fourth quarter of fiscal 2009. As of May 21, 2009, there were 290 holders of record of our common stock.

The following table sets forth the range of high and low close prices for each period indicated:

Period	High	Low
Fiscal 2009:		
First quarter	\$ 1.27	\$ 0.97
Second quarter	\$ 1.14	\$ 0.87
Third quarter	\$ 0.90	\$ 0.42
Fourth quarter	\$ 0.65	\$ 0.45
Fiscal 2008:		
First quarter	\$ 1.53	\$ 1.24
Second quarter	\$ 1.52	\$ 1.22
Third quarter	\$ 1.53	\$ 0.86
Fourth quarter	\$ 1.26	\$ 0.94

See Item 12 of Part III of this Report regarding information about securities authorized for issuance under our equity compensation plans.

ITEM 6. SELECTED FINANCIAL DATA

	Years Ended March 31,				
	2009	2008	2007	2006	2005
	(in thousands, except per share amounts)				
Total revenues	\$ 64,674	\$ 61,646	\$ 53,130	\$ 31,892	\$ 11,475
Net income (loss)	\$ (2,500)	\$ 30	\$ (9,930)	\$ (23,253)	\$ (15,348)
Net income (loss) per share:					
Basic	\$ (0.04)	\$ 0.00	\$ (0.16)	\$ (0.42)	\$ (0.35)
Diluted	\$ (0.04)	\$ 0.00	\$ (0.16)	\$ (0.42)	\$ (0.35)
Total assets	\$ 21,856	\$ 21,551	\$ 19,958	\$ 31,120	\$ 39,080
Fair value of warrant liability	\$ 21	\$ 335	\$ 3,387	\$ 7,123	\$ 4,837
Accumulated deficit	\$ (202,719)	\$ (200,219)	\$ (200,249)	\$ (190,319)	\$ (167,066)
Total stockholders' equity	\$ 9,030	\$ 7,849	\$ 5,377	\$ 12,970	\$ 24,907

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

We were founded in 1987 and completed an initial public offering of common stock in 1997. We develop and market telecommunication services for Internet protocol, or IP, telephony and video applications. We offer the 8x8 broadband VoIP and video communications service, 8x8 Virtual Office service, 8x8 Trunking service, 8x8 Hosted Key System service, videophone equipment and services, and the 8x8 MobileTalk service. We shipped our first VoIP product in 1998, launched our 8x8 service in November 2002, the 8x8 Virtual Office business service offering in March 2004 and the 8x8 MobileTalk service in November 2008. As of March 31, 2009, we had more than 80,000 8x8 residential and videophone customers and more than 16,000 business customers in service. Since fiscal 2004, substantially all of our revenues have been generated from the sale, license and provision of VoIP products, services and technology. Prior to fiscal 2003, our focus was on our VoIP semiconductor business.

CRITICAL ACCOUNTING POLICIES & ESTIMATES

Our consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America. Note 1 to the consolidated financial statements in Part II, Item 8 of this Report describes the significant accounting policies and methods used in the preparation of our consolidated financial statements.

We have identified the policies below as some of the more critical to our business and the understanding of our results of operations. These policies may involve a higher degree of judgment and complexity in their application and represent the critical accounting policies used in the preparation of our financial statements. Although we believe our judgments and estimates are appropriate, actual future results may differ from our estimates. If different assumptions or conditions were to prevail, the results could be materially different from our reported results. The impact and any associated risks related to these policies on our business operations is discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations where such policies affect our reported and expected financial results.

Use of Estimates

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and equity and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, we evaluate our estimates, including, but not limited to, those related to bad debts, valuation of inventories, and litigation and other contingencies. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions or conditions. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances,

the results of which form the basis for making judgments about the carrying value of assets, liabilities and equity that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions or conditions. Additional information regarding risk factors that may impact our estimates is included above under Item 1A, "Risk Factors."

Revenue Recognition

Our revenue recognition policies are described in Note 1 to the consolidated financial statements in Part II, Item 8 of this Report. As described below, significant management judgments and estimates must be made and used in connection with the revenue recognized in any accounting period. Material differences may result in the amount and timing of our revenue for any period if our management made different judgments or utilized different estimates.

Under the terms of our typical subscription agreement, new customers can terminate their service within 30 days of order placement and receive a full refund of fees previously paid. We have determined that we have sufficient history of subscriber conduct to make a reasonable estimate of cancellations within the 30-day trial period. Therefore, we recognize new subscriber revenue in the month in which the new order was shipped, net of an allowance for expected cancellations.

Emerging Issues Task Force (EITF) consensus No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables" requires that revenue arrangements with multiple deliverables be divided into separate units of accounting if the deliverables in the arrangement meet specific criteria. In addition, arrangement consideration must be allocated among the separate units of accounting based on their relative fair values, with certain limitations. The provisioning of the 8x8 service with the accompanying desktop terminal or videophone adapter constitutes a revenue arrangement with multiple deliverables. In accordance with the guidance of EITF No. 00-21, we allocate 8x8 revenues, including activation fees, among the desktop terminal adapter, Virtual Office phone, or videophone and subscriber services. Subsequent to the subscriber's initial purchase of the services, revenues allocated to the desktop terminal adapter, Virtual Office phone or videophone are recognized as product revenues during the period of the sale less the allowance for estimated returns during the 30-day trial period. All other revenues are recognized when the related services are provided. The cost of the products sold is recognized contemporaneously with the recognition of revenue.

At the time of each revenue transaction, we assess whether the revenue amount is fixed and determinable and whether collection is reasonably assured. We assess whether the fee is fixed and determinable based on the payment terms associated with the transaction. If a significant portion of a fee is due after our normal payment terms, which are 30-90 days from invoice date, we account for the fee as not being fixed and determinable. In these cases, we recognize revenue as the fees become due. We assess collection based on a number of factors, including past transaction history with the customer and the creditworthiness of the customer. We generally do not request collateral from our customers. If we determine that collection of a fee is not reasonably assured, we defer the fee and recognize revenue at the time collection becomes reasonably assured, which is generally upon receipt of payment. We defer recognition of revenue on product sales to retailers where the right of return exists until products are resold to the end user and the trial period has expired.

During fiscal 2009, 2008 and 2007, revenues from software licensing and related arrangements were limited. For arrangements with multiple obligations (for example, undelivered maintenance and support), we have allocated revenue to each component of the arrangement using the residual value method based on the fair value of the undelivered elements, which is specific to us. This means that we defer revenue from the arranged fee that is equivalent to the fair value of the undelivered elements. Fair values for the ongoing maintenance and support obligations for our technology licenses are based upon separate sales of renewals to other customers or upon renewal rates quoted in the contracts. We base the fair value of services, such as training or consulting, on separate sales of these services to other customers. We recognize revenue for maintenance services ratably over the contract term. Our training and consulting services are billed based on hourly rates, and we generally recognize revenue as these services are performed.

Under our revenue recognition accounting principles, if a software license arrangement includes acceptance criteria, we do not recognize revenue until we can demonstrate objectively that the software or service can meet the acceptance criteria or that the customer has signed formal acceptance documentation. If a software license arrangement obligates us to deliver unspecified future products, we recognize revenue on a subscription basis, ratably over the term of the contract.

For all sales, except those completed via the Internet, we use either a binding purchase order or other signed agreement as evidence of an arrangement. For sales over the Internet, we use a credit card authorization as evidence of an arrangement, and recognize revenue upon settlement of the transaction, if there are no customer acceptance conditions. We do not settle credit card transactions until equipment related to the transaction, if any, is shipped to a customer.

Our ability to enter into revenue generating transactions and recognize revenue in the future is subject to a number of business and economic risks discussed above under Item 1A, "Risk Factors."

Collectability of Accounts Receivable

We must make estimates of the collectability of our accounts receivable. Management specifically analyzes accounts receivable, including historical bad debts, customer concentrations, customer creditworthiness, current economic trends and changes in our customer payment terms when evaluating the adequacy of the allowance for doubtful accounts. As of March 31, 2009, the accounts receivable balance was \$0.4 million, net of an allowance for doubtful accounts of \$302,000, including a reserve for disputed credits, and an estimated returns reserve of \$77,000. If the financial condition of our customers deteriorates, our actual losses may exceed our estimates, and additional allowances would be required.

Valuation of Inventories

We write down our inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand, market conditions and replacement costs. If actual future demand or market conditions are less favorable than those projected by us, additional inventory write-downs may be required.

Acquired Product Rights

On April 29, 2009, we resolved a patent litigation matter with Web Telephony by entering into a license and settlement agreement that resolved all legal claims by Web Telephony. As part of the settlement, we will pay eight quarterly payments over the next two years. Under the transaction, we expensed \$339,000 of the patent settlement costs during the year ended March 31, 2009 that were related to benefits received by us in and during the periods prior to fiscal year 2009. The remaining license fee was recorded as other long term assets as of March 31, 2009 and is being amortized to cost of service revenues in the Consolidated Statements of Operations over the remaining life of the primary patent, which expires in September 2017.

Warrant Liability

We account for our warrants in accordance with Emerging Issues Task Force Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to and Potentially Settled in a Company's Own Stock" ("EITF 00-19") which requires warrants to be classified as permanent equity, temporary equity or as assets or liabilities. In general, warrants that either require net-cash settlement or are presumed to require net-cash settlement are recorded as assets and liabilities at fair value and warrants that require settlement in shares are recorded as equity instruments. Certain of our warrants require settlement in shares and are accounted for as permanent equity. We also have two investor warrants that are classified as liabilities because they include a provision that specifies that we must deliver freely tradable shares upon exercise by the warrant holder. Because there are circumstances, irrespective of likelihood, which may not be within our control that could prevent delivery of registered shares, EITF 00-19 requires the warrants be recorded as a liability at fair value, with subsequent changes in fair value recorded as income (loss) in change in fair value of warrant liability. The fair value of the warrant is determined using a Black-Scholes option pricing model, and is affected by changes in inputs to that model including our stock price, expected stock price volatility and contractual term.

The amount we record as a liability under EITF 00-19 is not, nor do we intend for it to be an admission or stipulation of the amount that we would owe or be obligated to pay the warrant holder in the event of an actual breach by us of the warrant terms. In fact, we have made no determination of the amount of liability, if any, that we would owe to the warrant holder in the event of such a breach.

Income and Other Taxes

As part of the process of preparing our consolidated financial statements we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process requires us to estimate our actual current tax expense and to assess temporary differences resulting from book-tax accounting differences for items such as deferred revenue. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheet. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe that recovery is not likely, we must establish a valuation allowance. In the event that we determine that we would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to the deferred tax asset would increase income in the period such determination was made.

Significant management judgment is required to determine the valuation allowance recorded against our net deferred tax assets, which consist of net operating loss and tax credit carry forwards. We have recorded a valuation allowance of approximately \$71.4 million as of March 31, 2009, due to uncertainties related to our ability to utilize most of our deferred tax assets before they expire. The valuation allowance is based on our estimates of taxable income by jurisdiction in which we operate and the period over which our deferred tax assets will be recoverable.

We have received inquiries, demands or audit requests from several states and municipal taxing and 9-1-1 agencies seeking payment of taxes that are applied to or collected from the customers of providers of traditional public switched telephone network services. We have recorded an expense of \$72,000 and \$375,000 for the years ended March 31, 2009 and 2008, respectively, as our estimate of the increase in probable tax exposure for such assessments. Our cumulative estimate for probable assessments is \$0.2 million as of March 31, 2009, which is recorded in the accrued taxes line item in the consolidated balance sheets.

Stock-Based Compensation

Effective April 1, 2006, we account for our employee stock options and stock purchase rights granted under the 1996 Stock Plan, 1996 Director Option Plan, 1999 Nonstatutory Stock Option Plan and the 2006 Stock Plan and stock purchase rights under the 1996 Employee Stock Purchase Plan ("Purchase Plan") under the provisions of Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment" ("SFAS 123(R)"), Financial Accounting Standards Board ("FASB") Technical Bulletin 97-1, "Accounting under Statement 123 for Certain Employee Stock Purchase Plans with a Look-Back Option" and Securities and Exchange Commission ("SEC") Staff Accounting Bulletin ("SAB"), No. 107. Under the provisions of SFAS No. 123(R), share-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity grant), net of estimated forfeitures. We have adopted the modified prospective transition method as provided by SFAS No. 123(R) and, accordingly, financial statement amounts for the prior periods have not been restated to reflect the fair value method of expensing share-based compensation.

Prior to April 1, 2006, we accounted for stock-based awards in accordance with APB 25, whereby the difference between the exercise price and the fair market value on the date of grant, or the intrinsic value, is recognized as compensation expense. Under the intrinsic value method of accounting, no compensation expense generally was recognized when the exercise price of the employee stock option grants equaled the fair market value of the underlying common stock on the date of grant. However, to the extent awards were granted either below fair market value or were modified which required a re-measurement of compensation costs, we recorded compensation expense.

Stock-based compensation expense recognized in the Consolidated Statements of Operations for fiscal 2009 included both the unvested portion of stock-based awards granted prior to April 1, 2006 and stock-based awards granted subsequent to April 1, 2006. Stock options granted in periods prior to fiscal 2007 were measured based on SFAS No. 123 criteria, whereas stock options granted subsequent to April 1, 2006 were measured based on SFAS No. 123(R) criteria. In conjunction with the adoption of SFAS No. 123(R), we changed our method of attributing the value of stock-based compensation to expense from the accelerated multiple-option approach to the straight-line single option method. Compensation expense for all share-based payment awards granted subsequent to April 1, 2006 has been recognized using the straight-line single-option method. Stock-based compensation expense included in fiscal 2009 included the impact of estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. For the periods prior to fiscal 2007, we accounted for forfeitures as they occurred.

To value option grants and stock purchase rights under the Purchase Plan for actual and pro forma stock-based compensation we used the Black-Scholes option valuation model. Fair value determined using the Black-Scholes option valuation model varies based on assumptions used for the expected stock prices volatility, expected life, risk free interest rates and future dividend payments. For fiscal years 2009, 2008 and 2007, we used the historical volatility of our stock over a period equal to the expected life of the options to their fair value. The expected life assumptions represent the weighted-average period stock-based awards are expecting to remain outstanding. These expected life assumptions were established through the review of historical exercise behavior of stock-based award grants with similar vesting periods. The risk free interest was based on the closing market bid yields on actively traded U.S. treasury securities in the over-the-counter market for the expected term equal to the expected term of the option. The dividend yield assumption was based on our history and expectation of future dividend payout.

SFAS No. 123(R) requires us to calculate the additional paid in capital pool (“APIC Pool”) available to absorb tax deficiencies recognized subsequent to adopting SFAS No. 123(R), as if we had adopted SFAS No. 123 at its effective date of January 1, 1995. There are two allowable methods to calculate our APIC Pool: (1) the long form method as set forth in SFAS No. 123(R) or (2) the short form method as set forth in FASB Staff Position No. 123(R)-3. We have elected to use the long form method under which we track each award grant on an employee-by-employee basis and grant-by-grant basis to determine if there is a tax benefit or tax deficiency for such award. We then compared the fair value expense to the tax deduction received for each grant and aggregated the benefits and deficiencies to establish the APIC Pool.

Due to the adoption of SFAS No. 123R, some exercises result in tax deductions in excess of previously recorded benefits based on the option value at the time of grant, or windfalls. We recognize windfall tax benefits associated with the exercise of stock options directly to stockholders’ equity only when realized. Accordingly, we are not recognizing deferred tax assets for net operating loss carryforwards resulting from windfall tax benefits occurring from April 1, 2006 onward. A windfall tax benefit occurs when the actual tax benefit realized by the company upon an employee’s disposition of a share-based award exceeds the deferred tax asset, if any, associated with the award that the company had recorded. We use the “with and without” approach as described in Emerging Issues Task Force (“EITF”) Topic No. D-32, in determining the order in which our tax attributes are utilized. The “with and without” approach results in the recognition of the windfall stock option tax benefits only after all other tax attributes of ours have been considered in the annual tax accrual computation. Also, we have elected to ignore the indirect tax effects of share-based compensation deductions in computing our research and development tax and as such, we recognize the full effect of these deductions in the income statement in the period in which the taxable event occurs.

On January 27, 2009, our board of directors approved the acceleration of unvested stock options to purchase 3,902,186 shares of common stock. 1,737,509 of these shares are subject to options held by our executive officers and directors. These options of our executive officers and directors, taken as a whole, have a weighted average exercise price of \$1.06 per share and range from \$0.63 to \$1.79 per share, and a weighted average remaining vesting term of 2.85 years. Approximately \$1.1 million of the \$2.4 million stock-based compensation charge in the fourth quarter of 2009 applies to the options held by our executive officers and directors.

SELECTED OPERATING STATISTICS

We periodically review certain key business metrics, within the context of our articulated performance goals, in order to evaluate the effectiveness of our operational strategies, allocate resources and maximize the financial performance of our business. The selected operating statistics include the following:

	Selected Operating Statistics							
	March 31, 2009	Dec. 31, 2008	Sept. 30, 2008	June 30, 2008	March 31, 2008	Dec. 31, 2007	Sept. 30, 2007	June 30, 2007
Gross business customer additions (1)	2,792	2,437	3,324	2,398	2,162	1,924	1,872	1,746
Gross business customer cancellations (less cancellations within 30 days of sign-up)	1,245	1,224	1,187	1,098	1,138	949	849	876
Business customer churn (less cancellations within 30 days of sign-up) (2)	2.7%	2.9%	3.1%	3.2%	3.6%	3.3%	3.3%	3.8%
Total business customers (3)	16,013	14,706	13,744	11,898	10,845	10,007	9,111	8,160
Business customer average monthly service per customer (4)	\$ 202	\$ 208	\$ 220	\$ 237	\$ 229	\$ 233	\$ 234	\$ 247
Revenue from business customers (in '000s)	\$ 10,728	\$ 10,614	\$ 9,826	\$ 9,077	\$ 8,111	\$ 7,542	\$ 6,953	\$ 6,444
Revenue from residential and video customers (in '000s)	\$ 5,236	\$ 5,572	\$ 6,356	\$ 7,192	\$ 7,685	\$ 8,182	\$ 7,793	\$ 8,181
Revenue from technology licensing (in '000s)	\$ (199)	\$ 17	\$ 243	\$ 12	\$ 536	\$ 80	\$ 22	\$ 117
Total Revenue	\$ 15,765	\$ 16,203	\$ 16,425	\$ 16,281	\$ 16,332	\$ 15,804	\$ 14,768	\$ 14,742
Percentage of revenue from business customers	68.1%	65.5%	59.8%	55.8%	49.7%	47.7%	47.1%	43.7%
Percentage of revenue from residential and video customers	33.2%	34.4%	38.7%	44.1%	47.0%	51.8%	52.8%	55.5%
Percentage of revenue from technology licensing	-1.3%	0.1%	1.5%	0.1%	3.3%	0.5%	0.1%	0.8%
Total Revenue	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Overall service margin	71%	74%	73%	75%	74%	70%	67%	70%
Overall product margin	-50%	9%	-10%	-13%	-23%	15%	-77%	-4%
Overall gross margin	59%	67%	65%	68%	67%	65%	52%	64%
Total (business, residential and video) subscriber acquisition cost per service (5)	\$ 119	\$ 135	\$ 163	\$ 162	\$ 155	\$ 129	\$ 99	\$ 138
Business subscriber acquisition cost per service (6)	\$ 118	\$ 141	\$ 171	\$ 171	\$ 158	\$ 161	\$ 142	\$ 141
Average number of services subscribed to per business customer	6.6	6.6	6.9	7.1	7.2	7.3	7.2	7.0
Business customer subscriber acquisition cost (7)	\$ 785	\$ 933	\$ 1,174	\$ 1,217	\$ 1,135	\$ 1,177	\$ 1,028	\$ 991
Residential lines in service	81,569	86,992	93,865	100,937	107,260	112,229	117,338	100,571
Total (business, residential and video) customer churn (less cancellations within 30 days of sign-up) (8)	3.5%	3.9%	4.2%	3.5%	4.0%	3.8%	3.9%	4.6%

(1) Includes 1,154 "Find me, Follow me" and 40 8x8 Virtual Office customers acquired in the second quarter of fiscal 2009 from Avtex Solutions, LLC ("Avtex").

(2) Business customer churn is calculated by dividing the number of business customers that terminated (after the expiration of the 30 day trial) during that period by the simple average number of business customers during the period and dividing the result by the number of months in the period. The simple average number of business customers during the period is the number of business customers on the first day of the period plus the number of business customers on the last day of the period divided by two.

(3) Business customers are defined as customers paying for service. Prior to April 1, 2008, 8x8 included customers in the business customer count that were using the service as a trial or evaluation and not yet paying for service. The numbers in this table prior to and after April 1, 2008, only include business customers that are paying for service. Customers that have prepaid for their first month of service and are currently in the 30 day trial period are considered to be customers that are paying for service.

(4) Business customer average monthly service revenue per customer is service revenue from business customers in the period divided by the number of months in the period divided by the simple average number of business customers during the period.

(5) Total (business, residential and video) subscriber acquisition cost per service is defined as the combined costs of advertising, marketing, promotions, commissions and equipment subsidies during the period divided by the number of gross services added during the period.

(6) Business subscriber acquisition cost per service is defined as the combined costs of advertising, marketing, promotions, commissions and equipment subsidies for business services sold during the period divided by the number of gross business services added during the period. The addition of 1,154 Avtex customers that migrated to 8x8 in the second fiscal quarter of 2009 but subscribed to "Find me, Follow me" services rather than 8x8 Virtual Office service, and the \$79,230 in expense related to the acquisition of these 1,154 customers, is excluded from this calculation.

(7) Business customer subscriber acquisition cost is business subscriber acquisition cost per service times the average number of services subscribed to per business customer.

(8) Total (business, residential and video) customer churn is calculated by dividing the number of services terminated (after the expiration of the 30 day trial) during that period by the simple average number of services during the period and dividing the result by the number of months in the period.

We believe it is useful to monitor these metrics together and not individually as we do not make business decisions based upon any single metric.

RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our Consolidated Financial Statements and related notes included elsewhere in this Report.

REVENUES

	Year Ended March 31,			Year-Over-Year Change			
	2009	2008	2007	2008 to 2009		2007 to 2008	
	<i>(dollar amounts in thousands)</i>						
Service revenues	\$ 58,486	\$ 56,177	\$ 45,046	\$ 2,309	4.1%	\$ 11,131	24.7%
Percentage of total revenues	90.4%	91.1%	84.8%				

Service revenues consist primarily of revenues attributable to the provision of our 8x8 services and royalties earned under our VoIP technology licenses. We expect that 8x8 service revenues will continue to comprise nearly all of our service revenues for the foreseeable future.

The increase in fiscal year 2009, compared with fiscal year 2008, was primarily attributable to a \$9.3 million increase in 8x8 service revenues resulting from the growth of our business service subscriber base. Our business service subscriber base grew from approximately 11,000 customers at the end of fiscal 2008 to approximately 16,000 customers on March 31, 2009. The increase was offset by a decrease of \$5.7 million attributable to residential and videophone services and a \$0.7 million decrease in revenue attributable to royalties earned. The decrease in service revenues from residential and video customers resulted from a reduction in the number of residential and video lines in service from approximately 107,000 in fiscal 2008 to approximately 82,000 in fiscal 2009. Also, compared with fiscal 2008, there was a \$0.6 million reduction in the one time recognition of revenue due to a ruling by the U.S. Court of Appeals for the District of Columbia in June 2007 that interconnected VoIP providers are not required to obtain pre-approval of traffic studies. As a result of the ruling, in the first quarter of fiscal 2008 we retroactively applied our traffic study contribution rate to our historical subscriber retail revenues which resulted in the recognition of revenue of \$0.6 million from the reduction of the related accrued liability in the first fiscal quarter of 2008.

The increase in fiscal year 2008, compared with fiscal year 2007, was primarily attributable to an \$11.8 million increase in 8x8 service revenues resulting from the growth in the business service subscriber base and an increase in the price of our service instituted on March 1, 2007. The business service subscriber base grew from approximately 7,000 customers at the end of fiscal 2007 to approximately 11,000 on March 31, 2008. Our residential customer base did not significantly change between the end of fiscal 2007 and 2008, as the decline in our existing customer base was offset by the transition of a competitor's

former customers to the 8x8 residential service. While service revenues increased during fiscal 2008 our wholesale service and royalty revenues declined by \$1.3 million primarily due to the termination of our agreement with Bellsouth in the fourth fiscal quarter of 2007 in connection with its merger with AT&T.

	Year Ended March 31,			Year-Over-Year Change			
	2009	2008	2007	2008 to 2009	2007 to 2008		
	<i>(dollar amounts in thousands)</i>						
Product revenues	\$ 6,188	\$ 5,469	\$ 8,084	\$ 719	13.1%	\$ (2,615)	-32.3%
Percentage of total revenues	9.6%	8.9%	15.2%				

Product revenues consist of revenues from sales of VoIP terminal adapters, telephones and videophones, primarily attributable to our 8x8 service.

The increase in fiscal year 2009 from fiscal year 2008 resulted from a \$2.2 million increase in product revenue attributable to growth in our business customer subscriber base. However, product revenue attributable to residential and video service customers declined by \$1.5 million.

The decrease in fiscal year 2008 from fiscal year 2007 was primarily attributable to a \$3.4 million decrease in product revenue attributable to residential customers as we redirected our marketing away from residential customers to marketing our services to small businesses. In addition, we waived the regular start-up costs, which include the equipment cost associated with residential service plans, as part of the transition of a competitor's former customers to the 8x8 service. The decrease in residential customer product revenues during fiscal 2008 was partially offset by an increase of \$0.8 million in product revenue attributable to the growth in our business customer subscriber base.

No single customer represented more than 10% of our total revenues during fiscal 2009, 2008 or 2007.

The following table illustrates our net revenues by geographic area. Revenues are attributed to countries based on the destination of shipment (in thousands):

	Years Ended March 31,		
	2009	2008	2007
United States	\$ 64,633	\$ 61,052	\$ 52,463
Other locations	41	594	667
	<u>\$ 64,674</u>	<u>\$ 61,646</u>	<u>\$ 53,130</u>

COST OF REVENUES

	Year Ended March 31,			Year-Over-Year Change			
	2009	2008	2007	2008 to 2009	2007 to 2008		
	<i>(dollar amounts in thousands)</i>						
Cost of service revenues	\$ 15,714	\$ 16,671	\$ 19,020	\$ (957)	-5.7%	\$ (2,349)	-12.4%
Percentage of service revenues	26.9%	29.7%	42.2%				

The cost of service revenues primarily consist of costs associated with network operations and related personnel, telephony origination and termination services provided by third party carriers and technology license and royalty expenses.

Cost of service revenues for fiscal 2009 compared with fiscal 2008 decreased \$1.0 million primarily due to a reduction in pricing by third party network service vendors and our use of multiple third party network provider vendors, which allows us to route call traffic to the third party network provider vendor with the most favorable pricing. The reduction in pricing by third party

network service vendors was partially offset by an increase in personnel and licenses fee costs compared with the prior fiscal year.

Cost of service revenues for fiscal 2008 compared with fiscal 2007 decreased \$2.3 million also due to a price reduction by third party network service vendors and our switch to the use of multiple third party network provider vendors throughout fiscal 2007 and 2008. The cost of service revenues as a percentage of service revenues decreased substantially from fiscal 2007 to fiscal 2008 due to a reduction in pricing by third party network service vendors combined with an increase in the percentage of total revenue from business customers. The cost of service revenues as a percentage of service revenues is less for business customers than for residential customers.

	<u>Year Ended March 31,</u>			<u>Year-Over-Year Change</u>			
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2008 to 2009</u>		<u>2007 to 2008</u>	
	<i>(dollar amounts in thousands)</i>						
Cost of product revenues	\$ 7,135	\$ 6,762	\$ 8,074	\$ 373	5.5%	\$ (1,312)	-16.2%
Percentage of product revenues	115.3%	123.6%	99.9%				

The cost of product revenues consist of costs associated with systems, components, system manufacturing, assembly and testing performed by third party vendors, estimated warranty obligations and direct and indirect costs associated with product purchasing, scheduling, quality assurance, shipping and handling. We generally do not charge residential subscribers for the terminal adapters used to provide our service when they subscribe through our website. We also have offered incentives to customers who purchase terminal adapters and telephones in our retail channels to offset the customer's cost of the equipment purchased from a retailer. We allocate a portion of service revenues to product revenues but these revenues are less than the cost of the terminal adapters.

The increase in the cost of product revenues for fiscal 2009 from fiscal 2008 was primarily due to a \$2.0 million increase in the shipment of equipment to our business customers. The increase in cost of product revenues was partially offset by a \$1.7 million decrease in shipments of equipment to residential subscribers and a \$0.4 million reduction in freight costs. The cost of product revenues as a percentage of product revenues decreased in part due to a reduction in discounting of product sales by our sales force in fiscal 2009.

The decrease in the cost of product revenues for fiscal 2008 from fiscal 2007 was primarily due to a \$1.1 million reduction in shipments of residential and videophone equipment and a \$0.5 million reduction in product reserves as we eliminated a royalty expense accrual after determining that we were unlikely to pay such royalties in the future.

Cost of product revenues during fiscal 2008 included an increase of \$0.3 million for shipments of equipment attributable to growth in our business customer subscriber base and a \$0.1 million increase in costs from the write-off of equipment shipped to a failed retailer. The cost of product revenues as a percentage of product revenue increased due to an increase in shipments of equipment to residential subscribers who switched to our service when one of our competitors shut down and terminated its service offering.

RESEARCH AND DEVELOPMENT EXPENSES

	<u>Year Ended March 31,</u>			<u>Year-Over-Year Change</u>			
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2008 to 2009</u>		<u>2007 to 2008</u>	
	<i>(dollar amounts in thousands)</i>						
Research and development	\$ 5,212	\$ 4,335	\$ 4,712	\$ 877	20.2%	\$ (377)	-8.0%
Percentage of total revenues	8.1%	7.0%	8.9%				

Historically, our research and development expenses have consisted primarily of personnel, system prototype design, and equipment costs necessary for us to conduct our development and engineering efforts. We expense research and development costs, including software development costs, as they are incurred.

The increase in research and development expenses for fiscal 2009 from fiscal 2008 was primarily attributable to an increase in personnel and contractor headcount expenses, including a \$0.3 million increase in SFAS 123(R) stock-based compensation expense.

The decrease in research and development expenses for fiscal 2008 from fiscal 2007 was primarily attributable to a \$0.3 million decrease in contractor headcount expenses. In addition, departures by employees that we did not replace in fiscal 2008 reduced total research and development expenses.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

	Year Ended March 31,			Year-Over-Year Change			
	2009	2008	2007	2008 to 2009	2007 to 2008		
	<i>(dollar amounts in thousands)</i>						
Selling, general and administrative	\$ 39,680	\$ 37,596	\$ 35,657	\$ 2,084	5.5%	\$ 1,939	5.4%
Percentage of total revenues	61.4%	61.0%	67.1%				

Selling, general and administrative expenses consist primarily of personnel and related overhead costs for sales, marketing, customer support, finance, human resources and general management. Such costs also include outsourced customer service call center operations, sales commissions, as well as trade show, advertising and other marketing and promotional expenses.

The increase in selling, general and administrative expenses for fiscal 2009 from fiscal 2008 was primarily due to a \$4.1 million increase in employee and temporary personnel costs, including a \$1.5 million increase in SFAS 123(R) stock-based compensation expense, \$0.5 million increase in advertising, public relations and other marketing and promotional expenses, a \$0.2 million increase in travel and meal expenses, a \$0.1 million increase in printing expenses, and a \$0.1 million increase in expensed equipment and software. This increase was partially offset by a \$1.5 million decrease in sales agent and retailer commissions, a \$0.9 million decrease in sales and use tax expenses as we began to collect and remit taxes in states outside of California, a \$0.3 million decrease in accounting and tax fees, and a \$0.2 million decrease in credit card processing fees.

The increase in selling, general and administrative expenses for fiscal 2008 from fiscal 2007 was primarily due to a \$2.3 million increase in additional employee and temporary personnel costs and a \$1.4 million increase in advertising, public relations, and other marketing and promotional expenses. This increase was partially offset by a \$0.9 million decrease in sales agent and retailer commissions and a \$0.5 million decrease in sales and use tax expenses as we began to collect and remit taxes in states outside of California.

INTEREST INCOME AND OTHER, NET

	Year Ended March 31,			Year-Over-Year Change			
	2009	2008	2007	2008 to 2009	2007 to 2008		
	<i>(dollar amounts in thousands)</i>						
Interest income and other, net	\$ 298	\$ 1,606	\$ 667	\$ (1,308)	-81.4%	\$ 939	140.8%
Percentage of total revenues	0.5%	2.6%	1.3%				

Our interest income and other, net, primarily consists of interest and investment income earned on our cash, cash equivalents and investment balances. This item consisted of interest income alone in 2009. Other income in fiscal 2008 included \$1.2 million from the sale of two patents.

The increase in other income for fiscal 2008 from fiscal 2007 consists primarily of \$1.2 million from the sale of two patents offset by a reduction in interest and investment income earned on our cash, cash equivalents and investment balances of \$0.2 million due to lower average cash balances and interest rates.

INCOME ON CHANGE IN FAIR VALUE OF WARRANT LIABILITY

	<u>Year Ended March 31,</u>			<u>Year-Over-Year Change</u>			
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2008 to 2009</u>	<u>2007 to 2008</u>		
	<i>(dollar amounts in thousands)</i>						
Income on change in fair value of warrant liability	\$ 314	\$ 2,142	\$ 3,736	\$ (1,828)	-85.3%	\$ (1,594)	-42.7%
Percentage of total revenues	0.5%	3.5%	7.0%				

In connection with the sale of shares of our common stock in fiscal 2005 and 2006, we issued warrants in three different equity financings. The warrants included a provision that we must deliver freely tradable shares upon exercise of the warrant. Because there are circumstances that may not be within our control that could prevent delivery of registered shares, EITF 00-19 requires the warrants be recorded as a liability at fair value with subsequent changes in fair value recorded as a gain or loss. The fair value of the warrant is determined using a Black-Scholes option pricing model, and is affected by changes in inputs to that model including our stock price, expected stock price volatility and contractual term. To the extent that the fair value of the warrant liability increases or decreases, we record a loss or income in our statement of operations. The amount we record as a liability under EITF 00-19 is not, nor do we intend for it to be, an admission or stipulation of the amount that we would owe or be obligated to pay the warrant holder in the event of an actual breach by us of the warrant terms. In fact, we have made no determination of the amount of liability, if any, that we would owe to the warrant holder in the event of such a breach.

The decrease in the income from change in fair value of warrants in fiscal 2009 from fiscal 2008 occurred because the fair value of warrants and warrant liability declined due to a reduction in our stock price, expected stock price volatility, risk free interest rate and contractual life of the warrants which are the primary assumptions applied to the Black-Scholes model which we have used to calculate the fair value of the warrants.

The decrease in the income from change in fair value of warrants in fiscal 2008 from fiscal 2007 occurred because the fair value of warrants and warrant liability declined due to a reduction in our stock price, expected stock price volatility and contractual life of the warrants. Furthermore, on August 29, 2007, we and the warrant holders amended the terms of warrants to purchase 3,659,624 shares of common stock that we had classified as liabilities. The amended warrants met the requirement to be classified as equity and accordingly, they were reclassified from liability to equity. A total of \$0.8 million of the income from the change in fair value of the warrants in fiscal 2008 was related to the amended warrants and \$0.9 million was reclassified from liability to equity. The remaining investor warrants for 1,785,714 shares of common stock issued on December 19, 2005 have not been amended and will continue to be accounted for as liabilities until exercised or expiration in December 2010.

PROVISION FOR INCOME TAXES

	<u>Year Ended March 31,</u>			<u>Year-Over-Year Change</u>			
	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2008 to 2009</u>	<u>2007 to 2008</u>		
	<i>(dollar amounts in thousands)</i>						
Provision for income taxes	\$ 45	\$ -	\$ -	\$ 45	100.0%	\$ -	0.0%
Percentage of total revenues	0.1%	0.0%	0.0%				

We had a \$45,000 provision for income taxes for the fiscal year ended March 31, 2009 for state tax in several states and foreign withholding tax on royalty revenue. We had no provision for income taxes in the fiscal years ended March 31, 2008 and 2007.

At March 31, 2009, we had net operating loss carryforwards for federal and state income tax purposes of approximately \$153.9 million and \$88.1 million, respectively, that expire at various dates beginning in 2013 and continuing through 2029. In addition, at March 31, 2009, we had research and development credit carryforwards for federal and state tax reporting purposes of approximately \$3.4 million and \$2.8 million, respectively. The federal credit carryforwards will begin expiring in 2010 continuing through 2029, while the California credit will carry forward indefinitely. Under the ownership change limitations of the Internal Revenue Code of 1986, as amended, the amount and benefit from the net operating losses and credit carryforwards may be impaired or limited in certain circumstances.

At March 31, 2009 and 2008, we had gross deferred tax assets of approximately \$71.4 million and \$72.1 million, respectively. Because of uncertainties regarding the realization of deferred tax assets, we have applied a full valuation allowance as of March 31, 2009 and 2008.

LIQUIDITY AND CAPITAL RESOURCES

As of March 31, 2009, we had \$16.4 million of cash and cash equivalents. By comparison, at March 31, 2008, we had \$11.2 million in cash and cash equivalents, and \$3.4 million in investments for a combined total of \$14.6 million. We currently have no borrowing arrangements. Our cash and cash equivalents balance increased \$5.2 million and the combined balance increased by \$1.8 million during fiscal 2009. The increase in cash, cash equivalents and investments was primarily attributable to a \$2.3 million of cash from operating activities, and \$0.4 million of proceeds from issuance of common stock under employee stock plans, partially offset by \$0.8 million of capital expenditures, as discussed below.

Net cash provided by operating activities for fiscal 2009 was \$2.3 million, compared with \$3.0 million provided by operating activities for fiscal 2008.

The net cash provided by operating activities for fiscal 2009 resulted primarily from a net loss of \$2.5 million, a \$3.3 million adjustment for stock compensation, which includes \$2.4 million due to the acceleration of unvested employee stock options in January 2009, a \$1.3 million adjustment for depreciation, a \$1.0 million reduction in accounts receivable related to the payment by nationwide retailers and software licensing and royalty customers, a \$0.8 million reduction in deferred cost of goods sold primarily related to sell thru of equipment by retailers and net retailer returns, a \$1.3 million increase in other current and noncurrent liabilities primarily due to a license and settlement agreement, a \$0.6 million provision for inventory primarily due to \$0.5 million of excess inventory related to our business services analog phone, a \$0.4 million provision for doubtful accounts primarily related to royalty revenue, and a \$0.2 million write off of our legacy billing system recorded as other adjustments to reconcile net loss to net cash provided by operating activities. This was reduced by a \$1.4 million increase in inventory due to the procurement of the new business IP phones launched in July 2008, timing of receipt of inventory and net retailer returns, a reduction of \$1.3 million due to payment of accrued sales tax, a net \$0.2 million increase in accrued taxes, a \$0.9 million decrease in deferred revenue related to cash collections of \$4.3 million from annual service plans in which the customer pre-pays for 12 months of service offset by a \$4.5 million recognition of deferred annual plan revenue, a \$0.7 million reduction related to sell thru of equipment by retailers and net retailer returns, and a \$0.4 million increase in other current and noncurrent assets primarily related to acquired product rights.

The net cash provided by operating activities for fiscal 2008 resulted primarily from a \$1.0 million decrease in inventory due to lower inventory levels of customer premise equipment (CPE), a \$0.8 million increase in accrued taxes, a \$1.7 million increase in deferred revenue related to cash collections of \$4.7 million from annual plan subscriptions primarily due to the transition of a competitor's former customers to the 8x8 residential annual plan service offset by recognition of \$3.1 million of annual plan revenue, net of \$0.7 million non-cash items including depreciation and amortization, stock compensation expense, and change in fair value of warrant liability. This was reduced by a \$1.2 million increase in accounts receivable primarily due to retailer transactions.

Although we have achieved positive cash flows from operations in the fiscal year ended March 31, 2009 and 2008, historical net losses and negative cash flows have been funded primarily through the issuance of equity securities and borrowings. We believe that current cash, cash equivalents and investments will be sufficient to finance our operations for at least the next 12 months. However, we continually evaluate our cash needs and may pursue additional equity or debt financing in order to achieve our overall business objectives. There can be no assurance that such financing will be available, or, if available, at a price or terms that are acceptable to us. Failure to generate sufficient revenues, raise additional capital or reduce certain discretionary spending could have an adverse impact on our ability to achieve our longer term business objectives. In addition, any such financing may be materially dilutive to our existing stockholders.

Contractual Obligations

Future operating lease payments, net of sublease income, capital lease payments and purchase obligations at March 31, 2009 for the next five years were as follows (in thousands):

	Year Ending March 31,					Total
	2010	2011	2012	2013	2014	
Capital leases	\$ 42	\$ 26	\$ 22	\$ -	\$ -	\$ 90
Office leases	206	-	-	-	-	206
License fee	550	250				800
Purchase obligations						
Third party customer support provider	2,457	-	-	-	-	2,457
Open purchase orders	2,132	-	-	-	-	2,132
	<u>\$ 5,387</u>	<u>\$ 276</u>	<u>\$ 22</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 5,685</u>

In April 2005, June 2006 and March 2007, we entered into a series of noncancelable five year capital lease agreements for office equipment bearing interest at various rates. Assets under capital lease at March 31, 2009 totaled \$182,000 with accumulated amortization of \$102,000.

We lease our primary facility in Santa Clara, California under a non-cancelable operating lease that expires in fiscal 2010. We also have a leased facility in France. On May 1, 2009, we entered into a three year lease for a new primary facility in Sunnyvale, California. The facility leases include rent escalation clauses and require us to pay utilities and normal maintenance costs. Rent expense is reflected in our consolidated financial statements on a straight-line basis over the term of the leases.

We entered into a new contract with one of our third party customer support vendors containing a minimum monthly commitment of approximately \$491,000. The agreement requires 150 day notice to terminate. The total remaining obligation under the contract is \$2.5 million.

At March 31, 2009 we had open purchase orders related to our contract manufacturers and other contractual obligations of approximately \$2.1 million primarily related to inventory purchases. These purchase commitments are reflected in our consolidated financial statements once goods or services have been received or at such time when we are obligated to make payments related to these goods or services.

Subsequent to year end, in April 2009, the Company entered into a license and settlement agreement. The agreement requires the Company to pay eight quarterly payments over the next two years. The total remaining obligation under the contract is \$0.8 million

At March 31, 2009, we had a \$21,000 liability related to warrants issued to two investors in an equity financing transaction in fiscal 2006. The warrants expire in December 2010. We account for these warrants as liabilities because of the possibility, however likely or unlikely, that we would be unable to deliver registered shares upon a future exercise of these warrants. The required accounting for a warrant with an assumed "net cash settlement" provision under EITF 00-19 is to estimate the fair value on the date of issuance and to record a liability equal to that value with subsequent changes in the fair value recorded as income or expense at the end of each reporting period under EITF 00-19. The amount we record as a liability under EITF 00-19 is not, nor do we intend for it to be, an admission or stipulation of the amount that we would owe or be obligated to pay the warrant holder in the event that we are unable to deliver registered shares to the warrant holder. In fact, we have made no determination of the amount of liability, if any, that we would owe to the warrant holder in the event of such a breach.

RECENT ACCOUNTING PRONOUNCEMENTS

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards (SFAS) No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (GAAP) and expands disclosures about fair value measurements. SFAS No. 157 applies to other accounting pronouncements that require or permit fair value measurements, but does not require any new fair value measurements. The adoption of SFAS No. 157 did not have a material effect on our condensed consolidated results of operations and financial condition.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS No. 159") which permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. The adoption of SFAS No. 159 did not have a material effect on our condensed consolidated results of operations and financial condition.

In December 2007, the FASB issued SFAS No. 141(Revised 2007), "Business Combinations" ("SFAS No. 141(R)"). SFAS No. 141(R) significantly changes the accounting for business combinations in a number of areas including the treatment of contingent consideration, acquired contingencies, transaction costs, in-process research and development and restructuring costs. In addition, under SFAS No. 141(R), changes in an acquired entity's deferred tax assets and uncertain tax positions after the measurement period will impact income tax expense. SFAS No. 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Earlier adoption is prohibited. We will adopt this pronouncement in the first quarter of fiscal 2010 and do not expect the adoption of SFAS No. 141(R) will have a material impact on our consolidated results of operations and financial condition.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interest in Consolidated Financial Statements an Amendment of ARB No. 51" ("SFAS No. 160"), which establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary, changes in a parent's ownership interest in a subsidiary and the deconsolidation of a subsidiary. SFAS No. 160 is effective for fiscal years beginning on or after December 15, 2008. Earlier adoption is prohibited. We will adopt this pronouncement in the first quarter of fiscal 2010 and do not expect the adoption of SFAS No. 160 will have a material impact on our consolidated results of operations and financial condition.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. Some of the securities in which we invest may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. To minimize this risk, we may maintain our portfolio of cash equivalents and investments in a variety of securities, including commercial paper, money market funds, debt securities and certificates of deposit. The risk associated with fluctuating interest rates is limited to our investment portfolio and we do not believe that a 10% change in interest rates would have a significant impact on our interest income.

During the years ended March 31, 2009 and 2008, we did not have any outstanding debt instruments other than equipment under capital leases and, therefore, we were not exposed to market risk relating to interest rates.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULE

	Page
FINANCIAL STATEMENTS:	
<u>Report of Independent Registered Public Accounting Firm</u>	45
<u>Report of Independent Registered Public Accounting Firm</u>	46
<u>Consolidated Balance Sheets at March 31, 2009 and 2008</u>	47
<u>Consolidated Statements of Operations for each of the three years in the period ended March 31, 2009</u>	48
<u>Consolidated Statements of Stockholders' Equity for each of the three years in the period ended March 31, 2009</u>	49
<u>Consolidated Statements of Cash Flows for each of the three years in the period ended March 31, 2009</u>	50
<u>Notes to Consolidated Financial Statements</u>	51
FINANCIAL STATEMENT SCHEDULE:	
<u>Schedule II -- Valuation and Qualifying Accounts</u>	71
Schedules other than the one listed above have been omitted because they are inapplicable, because the required information has been included in the financial statements or notes thereto, or the amounts are immaterial.	
<u>Consolidated Quarterly Financial Data</u>	72

Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders of
8x8, Inc.

We have audited the accompanying consolidated balance sheets of 8x8, Inc. (the Company) as of March 31, 2009 and the related consolidated statements of operations, stockholders' equity and cash flows for the years then ended. Our audit also included the financial statement Schedule II- Valuation and Qualifying Accounts. We also have audited the Company's internal control over financial reporting as of March 31, 2009, based on criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control - Integrated Framework*. The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in management's report on internal control over financial reporting appearing under Item 9A. Our responsibility is to express an opinion on these financial statements and an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audit of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also include performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of 8x8, Inc. and consolidated subsidiaries, as of March 31, 2009, and the consolidated results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement Schedule II, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein. Also in our opinion, 8x8, Inc., maintained, in all material respects, effective internal control over financial reporting as of March 31, 2009, based on criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control - Integrated Framework*.

/s/ Moss Adams LLP

San Francisco, California
May 22, 2009

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of 8x8, Inc:

In our opinion, the consolidated balance sheet as of March 31, 2008 and the related consolidated statements of operations, shareholders' equity and cash flows for each of two years in the period ended March 31, 2008 present fairly, in all material respects, the financial position of 8x8, Inc. and its subsidiaries at March 31, 2008, and the results of their operations and their cash flows for each of the two years in the period ended March 31, 2008, in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule for each of the two years in the period ended March 31, 2008 presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
San Jose, California
May 23, 2008

8X8, INC.
CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	March 31,	
ASSETS	2009	2008
Current assets:		
Cash and cash equivalents	\$ 16,376	\$ 11,185
Short-term investments	-	3,382
Accounts receivable, net of allowance of \$302 and \$61	414	1,807
Inventory	2,297	1,539
Deferred cost of goods sold	193	943
Other current assets	648	549
Total current assets	19,928	19,405
Property and equipment, net	1,485	2,010
Other assets	443	136
Total assets	\$ 21,856	\$ 21,551
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 4,810	\$ 4,885
Accrued compensation	1,264	1,048
Accrued warranty	328	314
Accrued taxes	1,777	2,896
Deferred revenue	2,254	3,139
Other accrued liabilities	2,081	976
Total current liabilities	12,514	13,258
Non-current liabilities	291	109
Fair value of warrant liability	21	335
Total liabilities	12,826	13,702
Commitments and contingencies (Note 3)		
Stockholders' equity:		
Preferred stock, \$0.001 par value:		
Authorized: 5,000,000 shares;		
Issued and outstanding: no shares at March 31, 2009		
and at March 31, 2008	-	-
Common stock, \$0.001 par value:		
Authorized: 100,000,000 shares at March 31, 2009 and March 31, 2008;		
Issued and outstanding: 62,686,039 shares		
at March 31, 2009 and 62,067,269 shares at March 31, 2008	63	62
Additional paid-in capital	211,686	208,001
Accumulated other comprehensive income	-	5
Accumulated deficit	(202,719)	(200,219)
Total stockholders' equity	9,030	7,849
Total liabilities and stockholders' equity	\$ 21,856	\$ 21,551

The accompanying notes are an integral part of these consolidated financial statements.

8X8, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	Years Ended March 31,		
	2009	2008	2007
Service revenues	\$ 58,486	\$ 56,177	\$ 45,046
Product revenues	6,188	5,469	8,084
Total revenues	64,674	61,646	53,130
Operating expenses:			
Cost of service revenues	15,714	16,671	19,020
Cost of product revenues	7,135	6,762	8,074
Research and development	5,212	4,335	4,712
Selling, general and administrative	39,680	37,596	35,657
Total operating expenses	67,741	65,364	67,463
Loss from operations	(3,067)	(3,718)	(14,333)
Other income, net	298	1,606	667
Income on change in fair value of warrant liability	314	2,142	3,736
Income (loss) before provision for income taxes	(2,455)	30	(9,930)
Provision for income taxes	45	-	-
Net income (loss)	\$ (2,500)	\$ 30	\$ (9,930)
Net income (loss) per share:			
Basic	\$ (0.04)	\$ 0.00	\$ (0.16)
Diluted	\$ (0.04)	\$ 0.00	\$ (0.16)
Weighted average number of shares:			
Basic	62,317	61,897	61,365
Diluted	62,317	62,112	61,365

The accompanying notes are an integral part of these consolidated financial statements.

8X8, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(IN THOUSANDS, EXCEPT SHARES)

	Common Stock		Additional Paid-in Capital	Accumulated other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount				
Balance at March 31, 2006	61,138,280	\$ 61	\$ 203,263	\$ (35)	\$ (190,319)	\$ 12,970
Issuance of common stock under stock plans	633,552	1	494	-	-	495
Stock compensation charge	-	-	1,810	-	-	1,810
Unrealized investment loss	-	-	-	32	-	-
Net loss	-	-	-	-	(9,930)	-
Total comprehensive loss	-	-	-	-	-	(9,898)
Balance at March 31, 2007	61,771,832	62	205,567	(3)	(200,249)	5,377
Issuance of common stock under stock plans	295,437	-	252	-	-	252
Stock compensation charge	-	-	1,272	-	-	1,272
Conversion of warrant liability to equity	-	-	910	-	-	910
Unrealized investment gain	-	-	-	8	-	-
Net income	-	-	-	-	30	-
Total comprehensive income	-	-	-	-	-	38
Balance at March 31, 2008	62,067,269	62	208,001	5	(200,219)	7,849
Issuance of common stock under stock plans	513,770	1	317	-	-	318
Issuance of common stock on exercise of warrant	105,000	-	73	-	-	73
Stock compensation charge	-	-	3,295	-	-	3,295
Unrealized investment loss	-	-	-	(5)	-	-
Net loss	-	-	-	-	(2,500)	-
Total comprehensive loss	-	-	-	-	-	(2,505)
Balance at March 31, 2009	62,686,039	\$ 63	\$ 211,686	\$ -	\$ (202,719)	\$ 9,030

The accompanying notes are an integral part of these consolidated financial statements.

8X8, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	Years Ended March 31,		
	2009	2008	2007
Cash flows from operating activities:			
Net income (loss)	\$ (2,500)	\$ 30	\$ (9,930)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	1,269	1,529	1,430
Stock compensation expense	3,295	1,272	1,810
Income on change in fair value of warrant liability	(314)	(2,142)	(3,736)
Amortization of discount and premium on marketable securities	(8)	(55)	32
Other	1,118	390	251
Changes in assets and liabilities:			
Accounts receivable, net	1,032	(1,202)	(72)
Inventory	(1,356)	994	(1,035)
Other current and noncurrent assets	(406)	(97)	300
Deferred cost of goods sold	750	121	478
Accounts payable	(177)	(54)	466
Accrued compensation	216	223	(112)
Accrued warranty	14	(9)	22
Accrued taxes	(1,119)	818	1,315
Deferred revenue	(885)	1,651	(1,005)
Other current and noncurrent liabilities	1,325	(438)	(136)
Net cash provided by (used in) operating activities	2,254	3,031	(9,922)
Cash flows from investing activities:			
Acquisitions of property and equipment	(801)	(699)	(1,424)
Proceeds from the sale of property and equipment	-	37	19
Purchase of investments	-	(5,323)	(2,300)
Sales of short-term investments	-	3,520	1,100
Maturities of short-term investments	3,385	3,650	12,700
Net cash provided by investing activities	2,584	1,185	10,095
Cash flows from financing activities:			
Bank overdraft	-	-	(153)
Proceeds from issuance of common stock under employee stock plans	391	272	475
Capital lease payments	(38)	(38)	(19)
Net cash provided by financing activities	353	234	303
Net increase in cash and cash equivalents	5,191	4,450	476
Cash and cash equivalents, beginning of year	11,185	6,735	6,259
Cash and cash equivalents, end of year	\$ 16,376	\$ 11,185	\$ 6,735
Supplemental and non-cash disclosures:			
Conversion of warrant liability to equity	\$ -	\$ 910	\$ -
Assets acquired under capital lease	\$ -	\$ -	\$ 119
Assets disposed under capital lease	\$ -	\$ -	\$ (29)
Interest paid	\$ 9	\$ 8	\$ 6

The accompanying notes are an integral part of these consolidated financial statements.

8X8, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. THE COMPANY AND SIGNIFICANT ACCOUNTING POLICIES

THE COMPANY

8x8, Inc. (“8x8” or the “Company”) develops and markets communication technology and services for Internet protocol, or IP, telephony and video applications. The Company was incorporated in California in February 1987, and in December 1996 was reincorporated in Delaware.

The Company offers the 8x8 broadband Voice over Internet Protocol, or VoIP, and video communications service, 8x8 Virtual Office service, 8x8 Trunking service, 8x8 Hosted Key system, videophone equipment and services, and 8x8 MobileTalk service. The 8x8 voice and video communications service enables broadband Internet users to add digital voice and video communications services to their high-speed Internet connection. Customers can choose a direct-dial phone number from any of the rate centers offered by the service, and then use an 8x8-supplied IP Phone or terminal adapter to connect any telephone to a broadband Internet connection to make or receive calls from a regular telephone number. All 8x8 telephone accounts come with voice mail, caller ID, call waiting, call waiting caller ID, call forwarding, hold, line-alternate, 3-way conferencing, web access to account controls, and online billing. In addition, 8x8 offers videophones for use with the 8x8 service. 8x8 has developed a suite of business services called 8x8 Virtual Office that offer feature-rich communications services to small and medium-sized business, eliminating the need for traditional telecommunications services and business phone systems. 8x8’s primary product focus is on replacing private branch exchange, or PBX, telephone systems in the small business marketplace with a hosted business VoIP solution. 8x8 Virtual Office can completely replace a company’s PBX infrastructure and deliver all telecom services over a managed or unmanaged Internet connection. The Company also sells pre-programmed analog telephones with speakerphones and a display screen, in conjunction with its Virtual Office service plans, which enable its business customers to access additional features of Virtual Office through on-screen phone menus. The Company’s 8x8 MobileTalk service enables mobile phone users to make international phone calls from their mobile phones over the 8x8 international network.

The Company’s fiscal year ends on March 31 of each calendar year. Each reference to a fiscal year in these notes to the consolidated financial statements refers to the fiscal year ending March 31 of the calendar year indicated (for example, fiscal 2009 refers to the fiscal year ending March 31, 2009).

LIQUIDITY

Although the Company achieved positive cash flows from operations in the fiscal years ended March 31, 2009 and 2008, historical net losses and negative cash flows have been funded primarily through the issuance of equity securities and borrowings. Management believes that current cash, cash equivalents and investments will be sufficient to finance the Company’s operations for at least the next twelve months. However, the Company continually evaluates its cash needs and may pursue additional equity or debt financing in order to achieve the Company’s overall business objectives. There can be no assurance that such financing will be available, or, if available, at a price that is acceptable to the Company. Failure to generate sufficient revenues, raise additional capital or reduce certain discretionary spending could have an adverse impact on the Company’s ability to achieve its longer term business objectives.

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of 8x8 and its subsidiaries. All material intercompany accounts and transactions have been eliminated.

USE OF ESTIMATES

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and equity and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, the Company evaluates its estimates, including, but not limited to, those related to bad debts, returns reserve for expected cancellations, valuation of inventories, income and sales tax, and

litigation and other contingencies. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions or conditions.

REVENUE RECOGNITION

VoIP service and product revenue

The Company's VoIP service and product revenue is derived from the sale of desktop terminal adapters, business telephones and VoIP service.

Emerging Issues Task Force (EITF) consensus No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables" requires that revenue arrangements with multiple deliverables be divided into separate units of accounting if the deliverables in the arrangement meet specific criteria. In addition, arrangement consideration must be allocated among the separate units of accounting based on their relative fair values, with certain limitations. The provisioning of the 8x8 service with the accompanying desktop terminal adapter constitutes a revenue arrangement with multiple deliverables. In accordance with the guidance of EITF No. 00-21, the Company allocates 8x8 revenues, including activation fees, among the desktop terminal adapter, telephone and subscriber services. Revenues allocated to the desktop terminal adapter or videophone are recognized as product revenues during the period of the sale less the allowance for estimated returns during the 30 day trial period. All other revenues are recognized as license and service revenues when the related services are provided.

Under the terms of the Company's typical subscription agreement, new customers can terminate their service within 30 days of order placement and receive a full refund of fees previously paid. The Company has determined that it has sufficient history of subscriber conduct to make a reasonable estimate of cancellations within the 30-day trial period. Therefore, the Company recognizes new subscriber revenue in the month in which the new order was shipped, net of an allowance for expected cancellations.

Deferred cost of goods sold represents the cost of products sold for which the end customer or distributor has a right of return. The cost of the products sold is recognized contemporaneously with the recognition of revenue, when the subscriber has accepted the service.

Product revenue

The Company recognizes revenue from product sales for which there are no related services to be rendered upon shipment to partners and end users provided that persuasive evidence of an arrangement exists, the price is fixed, title has transferred, collection of resulting receivables is reasonably assured, there are no customer acceptance requirements, and there are no remaining significant obligations. Gross outbound shipping and handling charges are recorded as revenue, and the related costs are included in cost of goods sold. Reserves for returns and allowances for partner and end user sales are recorded at the time of shipment. The Company defers recognition of revenue on sales to distributors, retailers, and resellers, where the right of return exists, until products are resold to the end user.

License and other revenue

During fiscal 2009, 2008 and 2007, revenues from software and technology licensing and related arrangements were limited. The Company recognizes revenue from license contracts when a non-cancelable, non-contingent license agreement has been signed, the software product has been delivered, no uncertainties surrounding product acceptance exist, fees from the agreement are fixed or determinable, and collection is probable. The Company uses the residual method to recognize revenue when a license agreement includes one or more elements to be delivered at a future date if evidence of the fair value of all undelivered elements exists. If evidence of the fair value of the undelivered elements does not exist, revenue is deferred and recognized when delivery occurs. When the Company enters into a license agreement requiring that the Company provide significant customization of the software products, the license and consulting revenue is recognized using contract accounting. Revenue from maintenance agreements is recognized ratably over the term of the maintenance agreement, which in most instances is one year. The Company recognizes royalties upon notification of sale by its licensees. Revenue from consulting, training, and development services is recognized as the services are performed.

CASH, CASH EQUIVALENTS AND INVESTMENTS

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. Management determines the appropriate categorization of its investments at the time of purchase and reevaluates the

classification at each reporting date. The cost of the Company's investments is determined based upon specific identification.

The Company's investments are comprised of corporate debt, federal agency securities and money market funds. At March 31, 2009 and 2008, all investments were classified as available-for-sale and reported at fair value, based upon quoted market prices, with unrealized gains and losses, net of related tax, if any, included in other comprehensive loss and disclosed as a separate component of stockholders' equity. Realized gains and losses on sales of all such investments are reported within the caption of other income, net in the statements of operations and computed using the specific identification method. The Company's investments in marketable securities are monitored on a periodic basis for impairment. In the event that the carrying value of an investment exceeds its fair value and the decline in value is determined to be other-than-temporary, an impairment charge is recorded and a new cost basis for the investment is established.

Available-for-sale investments were (in thousands):

	Amortized Costs	Gross Unrealized Loss	Estimated Fair Value
As of March 31, 2009			
Money market funds	\$ 15,466	\$ -	\$ 15,466
Total available-for-sale investments	\$ 15,466	\$ -	\$ 15,466
Reported as (in thousands):			
Cash and cash equivalents			\$ 15,466
Total			\$ 15,466

	Amortized Costs	Gross Unrealized Gain / (Loss)	Estimated Fair Value
As of March 31, 2008			
Money market funds	\$ 8,775	\$ -	\$ 8,775
Corporate debt	2,583	(1)	2,582
Federal agency securities	794	6	800
Total available-for-sale investments	\$ 12,152	\$ 5	\$ 12,157
Reported as (in thousands):			
Cash and cash equivalents			\$ 8,775
Short-term investments			3,382
Total			\$ 12,157

INVENTORY

Inventory is stated at the lower of standard cost, which approximates actual cost using the first-in, first-out method, or market. Inventory reserves are established when conditions indicate that the current replacement cost or market is below the carrying value due to obsolescence, changes in price levels, or other causes. Reserves are established for excess inventory generally based on inventory levels in excess of demand, as determined by management, for each specific product. Inventory at March 31, 2009 and 2008 was comprised of the following:

	March 31,	
	2009	2008
	(in thousands)	
Work-in-process	\$ 1,695	\$ 1,095
Finished goods	602	444
	<u>\$ 2,297</u>	<u>\$ 1,539</u>

PROPERTY AND EQUIPMENT

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are computed using the straight-line method. Estimated useful lives of three years are used for equipment and software and five years for furniture and fixtures. Amortization of leasehold improvements is computed using the shorter of the remaining facility lease term or the estimated useful life of the improvements. Property and equipment at March 31, 2009 and 2008 was comprised of the following:

	March 31,	
	2009	2008
	(in thousands)	
Machinery and computer equipment	\$ 4,413	\$ 3,884
Furniture and fixtures	167	167
Licensed software	1,628	1,547
Leasehold improvements	300	300
	<u>6,508</u>	<u>5,898</u>
Less: accumulated depreciation and amortization	<u>(5,023)</u>	<u>(3,888)</u>
	<u>\$ 1,485</u>	<u>\$ 2,010</u>

Maintenance, repairs and ordinary replacements are charged to expense. Expenditures for improvements that extend the physical or economic life of the property are capitalized. Gains or losses on the disposition of property and equipment are recorded in the loss from operations.

IMPAIRMENT OF LONG-LIVED ASSETS

8x8 reviews the recoverability of its long-lived assets, such as plant and equipment, when events or changes in circumstances occur that indicate that the carrying value of the asset or asset group may not be recoverable. The assessment of possible impairment is based on the Company's ability to recover the carrying value of the asset or asset group from the expected future pre-tax cash flows (undiscounted and without interest charges) of the related operations. If these cash flows are less than the carrying value of such asset, an impairment loss is recognized for the difference between estimated fair value and carrying value. The measurement of impairment requires management to estimate future cash flows and the fair value of long-lived assets.

ACQUIRED PRODUCT RIGHTS

On April 29, 2009, the Company resolved patent litigation matter with Web Telephony by entering into a license and settlement agreement that resolved all legal claims between the companies. As part of the settlement, the Company will pay eight quarterly payments over the next two years. Under the transaction, the Company expensed \$339,000 of the patent settlement costs during the year ended March 31, 2009 that were related to benefits received by the Company in and during the periods prior to fiscal year 2009. The remaining license amount was recorded as other long term assets as of March 31, 2009 and is being amortized to cost of service revenues in the Consolidated Statements of Operations over the remaining life of the primary patent, which expires in September 2017. See also Note 3, Commitments and Contingencies, *Legal Proceedings*.

WARRANTY EXPENSE

The Company accrues for estimated product warranty cost upon revenue recognition. Accruals for product warranties are calculated based on the Company's historical warranty experience adjusted for any specific requirements.

WARRANT LIABILITY

The Company accounts for its warrants in accordance with Emerging Issues Task Force Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to and Potentially Settled in a Company's Own Stock" ("EITF 00-19") which requires warrants to be classified as permanent equity, temporary equity or as assets or liabilities. In general, warrants that either require net-cash settlement or are presumed to require net-cash settlement are recorded as assets and liabilities at fair value and warrants that require settlement in shares are recorded as equity instruments. Certain of the Company's warrants require settlement in shares and are accounted for as permanent equity. The Company has two investor warrants that are classified as liabilities because they include a provision that specifies that the Company must deliver freely tradable shares upon exercise by the warrant holder. Because there are circumstances, irrespective of likelihood, which may not be within the control of the Company that could prevent delivery of registered shares, EITF 00-19 requires the warrants be recorded as a liability at fair value, with subsequent changes in fair value recorded as income (loss) in change in fair value of warrant liability. The fair value of the warrant is determined using a Black-Scholes option pricing model, and is affected by changes in inputs to that model including the Company's stock price, expected stock price volatility and contractual term.

The amount the Company records as a liability under EITF 00-19 is not, nor does the Company intend for it to be an admission or stipulation of the amount that the Company would owe or be obligated to pay the warrant holder in the event of an actual breach by the Company of the warrant terms. In fact, the Company has made no determination of the amount of liability, if any, that the Company would owe to the warrant holder in the event of such a breach.

RESEARCH, DEVELOPMENT AND SOFTWARE COSTS

Research and development costs are charged to operations as incurred. Software development costs for software to be sold or otherwise marketed incurred prior to the establishment of technological feasibility are included in research and development and are expensed as incurred. The Company defines establishment of technological feasibility as the completion of a working model. Software development costs incurred subsequent to the establishment of technological feasibility through the period of general market availability of the product are capitalized, if material. To date, all software development costs for software to be sold or otherwise marketed have been expensed as incurred. In accordance with American Institute of Certified Public Accountants Statement of Position (SOP) No. 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," the Company capitalizes purchase and implementation costs of internal use software. In accordance with SOP No. 98-1, during fiscal 2009, 2008 and 2007, the Company capitalized \$0, \$0 and \$81,000, respectively.

SALE OF PATENTS

In the third quarter of fiscal 2008, the Company completed the sale of two of its patents for \$1.2 million. The proceeds from the sale of the two patents are included in other income, net. The Company has retained a worldwide, royalty-free non-exclusive, non-sublicensable, non-transferable right and license to use the technology covered by these patents for all of its current and future products. The Company has no ongoing obligations associated with this transaction.

ADVERTISING COSTS

Advertising costs are expensed as incurred and were \$7,297,000, \$6,989,000 and \$5,614,000 for the years ended March 31, 2009, 2008 and 2007, respectively.

SUBSCRIBER ACQUISITION COSTS

Subscriber acquisition costs are expensed as incurred and include the advertising, marketing, promotions, commissions, rebates and equipment subsidy costs associated with the Company's efforts to acquire new subscribers.

FOREIGN CURRENCY TRANSLATION

Assets and liabilities of the Company's foreign subsidiaries are translated from their respective functional currencies at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at average exchange rates

prevailing during the year. If the functional currency is the local currency, resulting translation adjustments are reflected as a separate component of stockholders' equity. If the functional currency is the U.S. dollar, resulting conversion adjustments are included in the results of operations. Foreign currency transaction gains and losses, which have been immaterial, are also included in results of operations. Total assets of the Company's foreign subsidiaries were \$150,000, \$44,000 and \$45,000 as of March 31, 2009, 2008 and 2007, respectively. At March 31, 2009, the U.S. dollar was the functional currency for all foreign subsidiaries. The Company does not undertake any foreign currency hedging activities.

INCOME TAXES

Income taxes are accounted for using the asset and liability approach. Under the asset and liability approach, a current tax liability or asset is recognized for the estimated taxes payable or refundable on tax returns for the current year. A deferred tax liability or asset is recognized for the estimated future tax effects attributed to temporary differences and carryforwards. If necessary, the deferred tax assets are reduced by the amount of benefits that, based on available evidence, it is more likely than not expected to be realized.

CONCENTRATIONS

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, investments and trade accounts receivable. The Company has cash equivalents and investment policies that limit the amount of credit exposure to any one financial institution and restricts placement of these funds to financial institutions evaluated as highly credit-worthy. The Company has not experienced any material losses relating to its investment instruments. However, in February 2008, two auction rate securities held by the Company failed to auction due to sell orders exceeding buy orders. In March 2008, the Company sold its remaining two auction rate securities for less than par value which resulted in a loss of \$180,000.

The Company sells its products to consumers and distributors and OEMs. The Company performs ongoing credit evaluations of its customers' financial condition and generally does not require collateral from its customers. For the year ended March 31, 2009, the Company recorded a \$0.3 million provision for doubtful accounts related to one customer. For each of the two years ended March 31, 2008, the Company experienced minimal write-offs for bad debts and doubtful accounts. At March 31, 2009, one customer accounted for 32% of accounts receivable. At March 31, 2008, four customers accounted for 31%, 17%, 14% and 12% of accounts receivable.

The Company outsources the manufacturing of its hardware products to independent contract manufacturers. The inability of any contract manufacturer to fulfill supply requirements of the Company could materially impact future operating results, financial position or cash flows. If any of these contract manufacturers fail to perform on their obligations to the Company, such failure to fulfill supply requirements of the Company could materially impact future operating results, financial position and cash flows.

The Company also relies primarily on two third party network service providers to provide telephone numbers and public switched telephone network (PSTN) call termination and origination services for its customers. If these service providers failed to perform their obligations to the Company, such failure could materially impact future operating results, financial position and cash flows.

FAIR VALUE OF FINANCIAL INSTRUMENTS

The estimated fair value of financial instruments is determined by the Company using available market information and valuation methodologies considered to be appropriate. The carrying amounts of the Company's cash and cash equivalents, accounts receivable and accounts payable approximate their fair values due to their short maturities. The Company's investments are carried at fair values.

ACCOUNTING FOR STOCK-BASED COMPENSATION

Effective April 1, 2006, the Company accounts for its employee stock options and stock purchase rights granted under the 1996 Stock Plan, 1996 Director Option Plan, 1999 Nonstatutory Stock Option Plan and the 2006 Stock Plan and stock purchase rights under the 1996 Employee Stock Purchase Plan ("Purchase Plan") under the provisions of Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment" ("SFAS 123(R)"), Financial Accounting Standards Board ("FASB") Technical Bulletin 97-1, "Accounting under Statement 123 for Certain Employee Stock Purchase Plans with a Look-Back Option" and Securities and Exchange Commission ("SEC") Staff Accounting Bulletin ("SAB"), No. 107. Under the

provisions of SFAS No. 123(R), share-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity grant), net of estimated forfeitures. The Company has elected to adopt the modified prospective transition method as provided by SFAS No. 123(R) and, accordingly, financial statement amounts for the prior periods have not been restated to reflect the fair value method of expensing share-based compensation.

Prior to April 1, 2006, the Company accounted for stock-based awards in accordance with APB 25, whereby the difference between the exercise price and the fair market value on the date of grant, the intrinsic value, is recognized as compensation expense. Under the intrinsic value method of accounting, no compensation expense was generally recognized since the exercise price of the employee stock option grants generally equaled the fair market value of the underlying common stock on the date of grant. However, to the extent awards were granted either below fair market value or were modified which required a re-measurement of compensation costs, the Company recorded compensation expense.

To value option grants and stock purchase rights under the Purchase Plan for actual and pro forma stock-based compensation the Company used the Black-Scholes option valuation model. Fair value determined using the Black-Scholes option valuation model varies based on assumptions used for the expected stock prices volatility, expected life, risk free interest rates and future dividend payments. For fiscal years 2009, 2008 and 2007, the Company used the historical volatility of the Company's stock over a period equal to the expected life of the options to their fair value. The expected life assumptions represent the weighted-average period stock-based awards are expecting to remain outstanding. These expected life assumptions are established through the review of historical exercise behavior of stock-based award grants with similar vesting periods. The risk free interest is based on the closing market bid yields on actively traded U.S. treasury securities in the over-the-counter market for the expected term equal to the expected term of the option. The dividend yield assumption is based on the Company's history and expectation of future dividend payout.

Stock-based compensation expense recognized in the Consolidated Statements of Operations for fiscal 2009, 2008 and 2007 included both the unvested portion of stock-based awards granted prior to April 1, 2006 and stock-based awards granted subsequent to April 1, 2006. Stock options granted in periods prior to fiscal 2007 were measured based on SFAS No. 123 criteria, whereas stock options granted subsequent to April 1, 2006 were measured based on SFAS No. 123(R) criteria. In conjunction with the adoption of SFAS No. 123(R), the Company changed its method of attributing the value of stock-based compensation to expense from the accelerated multiple-option approach to the straight-line single option method. Compensation expense for all share-based payment awards granted subsequent to April 1, 2006 is recognized using the straight-line single-option method. Stock-based compensation expense included in fiscal 2009, 2008 and 2007 includes the impact of estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

On January 27, 2009, the Company's board of directors approved the acceleration of unvested stock options to purchase 3,902,186 shares of common stock. 1,737,509 of these shares are subject to options held by the Company's executive officers and directors. These options of the Company's executive officers and directors, taken as a whole, have a weighted average exercise price of \$1.06 per share and range from \$0.63 to \$1.79 per share, and a weighted average remaining vesting term of 2.85 years. Approximately \$1.1 million of the \$2.4 million stock-based compensation charge in the fourth quarter of 2009 applies to the options held by the Company's executive officers and directors.

The following table summarizes the distribution of stock-based compensation expense related to employee stock options and employee stock purchases under SFAS No. 123(R) among the Company's operating functions for the years ended March 31, 2009, 2008 and 2007 that was recorded as follows (in thousands):

	Years Ended March 31,		
	2009	2008	2007
Cost of service revenues	\$ 216	\$ 33	\$ 94
Cost of product revenues	47	18	17
Research and development	542	255	372
Selling, general and administrative	2,490	966	1,327
Total stock-based compensation expense			
related to employee stock options			
and employee stock purchases, pre-tax	3,295	1,272	1,810
Tax benefit	-	-	-
Stock based compensation expense related to			
employee stock options and employee			
stock purchases, net of tax	<u>\$ 3,295</u>	<u>\$ 1,272</u>	<u>\$ 1,810</u>

SFAS No. 123(R) requires the Company to calculate the additional paid in capital pool ("APIC Pool") available to absorb tax deficiencies recognized subsequent to adopting SFAS No. 123(R), as if the Company had adopted SFAS No. 123 at its effective date of January 1, 1995. There are two allowable methods to calculate the Company's APIC Pool: (1) the long form method as set forth in SFAS No. 123(R) and (2) the short form method as set forth in FASB Staff Position No. 123(R)-3. The Company has elected to use the long form method under which the Company tracks each award grant on an employee-by-employee basis and grant-by-grant basis to determine if there is a tax benefit or tax deficiency for such award. The Company then compares the fair value expense to the tax deduction received for each grant and aggregated the benefits and deficiencies to establish the APIC Pool.

Due to the adoption of SFAS No. 123R, some exercises result in tax deductions in excess of previously recorded benefits based on the option value at the time of grant, or windfalls. The Company recognizes windfall tax benefits associated with the exercise of stock options directly to stockholders' equity only when realized. Accordingly, deferred tax assets are not recognized for net operating loss carryforwards resulting from windfall tax benefits occurring from April 1, 2006 onward. A windfall tax benefit occurs when the actual tax benefit realized by the company upon an employee's disposition of a share-based award exceeds the deferred tax asset, if any, associated with the award that the company had recorded. The Company uses the "with and without" approach as described in Emerging Issue Task Force ("EITF") Topic No. D-32, in determining the order in which its tax attributes are utilized. The "with and without" approach results in the recognition of the windfall stock option tax benefits only after all other tax attributes of the Company have been considered in the annual tax accrual computation. Also, the Company has elected to ignore the indirect tax effects of share-based compensation deductions in computing the Company's research and development tax and as such, the Company recognizes the full effect of these deductions in the income statement in the period in which the taxable event occurs.

RECENT ACCOUNTING PRONOUNCEMENTS

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards (SFAS) No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (GAAP) and expands disclosures about fair value measurements. SFAS No. 157 applies to other accounting pronouncements that require or permit fair value measurements, but does not require any new fair value measurements. The adoption of SFAS No. 157 did not have a material effect on the Company's condensed consolidated results of operations and financial condition.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS No. 159") which permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. The adoption of SFAS No. 159 did not have a material effect on the Company's condensed consolidated results of operations and financial condition.

In December 2007, the FASB issued SFAS No. 141(Revised 2007), “Business Combinations” (“SFAS No. 141(R)”). SFAS No. 141(R) significantly changes the accounting for business combinations in a number of areas including the treatment of contingent consideration, acquired contingencies, transaction costs, in-process research and development and restructuring costs. In addition, under SFAS No. 141(R), changes in an acquired entity’s deferred tax assets and uncertain tax positions after the measurement period will impact income tax expense. SFAS No. 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company will adopt this pronouncement in the first quarter of fiscal 2010 and does not expect the adoption of SFAS No. 141(R) will have a material impact on its consolidated results of operations and financial condition.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interest in Consolidated Financial Statements an Amendment of ARB No. 51” (“SFAS No. 160”), which establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary, changes in a parent’s ownership interest in a subsidiary and the deconsolidation of a subsidiary. SFAS No. 160 is effective for fiscal years beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company will adopt this pronouncement in the first quarter of fiscal 2010 and does not expect the adoption of SFAS No. 160 will have a material impact on its consolidated results of operations and financial condition.

COMPREHENSIVE INCOME (LOSS)

Comprehensive income (loss), as defined, includes all changes in equity (net assets) during a period from non-owner sources. The difference between net income (loss) and comprehensive income (loss) is due to unrealized gains or losses on investments classified as available-for-sale. Comprehensive income (loss) is reflected in the consolidated statements of stockholders' equity.

NET INCOME (LOSS) PER SHARE

Basic net income (loss) per share is computed by dividing net income (loss) available to common stockholders (numerator) by the weighted average number of vested, unrestricted common shares outstanding during the period (denominator). Diluted net income per share is computed on the basis of the weighted average number of shares of common stock plus the effect of dilutive potential common shares outstanding during the period using the treasury stock method. Dilutive potential common shares include outstanding stock options, shares to be issued under the employee stock purchase plan and warrants.

	Years Ended March 31,		
	2009	2008	2007
Numerator:			
Net income (loss) available to common stockholders	\$ (2,500)	\$ 30	\$ (9,930)
Denominator:			
Common shares	62,317	61,897	61,365
Denominator for basic calculation	62,317	61,897	61,365
Employee stock options	-	133	-
Employee stock purchase plan	-	36	-
Warrants	-	46	-
Denominator for diluted calculation	62,317	62,112	61,365
Net income (loss) per share			
Basic	\$ (0.04)	\$ 0.00	\$ (0.16)
Diluted	\$ (0.04)	\$ 0.00	\$ (0.16)

The following shares attributable to outstanding stock options and warrants were excluded from the calculation of diluted earnings per share because their inclusion would have been anti dilutive (in thousands):

	Years Ended March 31,		
	2009	2008	2007
Common stock options	10,736	9,038	8,930
Stock purchase rights	100	-	-
Warrants	5,445	7,838	8,663
	<u>16,281</u>	<u>16,876</u>	<u>17,593</u>

2. INCOME TAXES

For the year ended March 31, 2009, the Company recorded a provision for income taxes of \$45,000, which was attributable to state tax in several states and foreign withholding tax on royalty revenue offset by federal refund in lieu of bonus depreciation (in accordance with the Economic Stimulus Act of 2009). There were no income tax provisions for the years ended March 31, 2008 and 2007. The components of the consolidated benefit for income taxes for fiscal 2009 consisted of the following (in thousands):

Current:		
Federal	\$	(72)
State		64
Foreign		53
	\$	<u>45</u>

The Company's income (loss) before income taxes included \$38,000, \$29,000 and \$26,000 of foreign subsidiary income for the fiscal years ended March 31, 2009, 2008 and 2007, respectively.

Deferred tax assets were comprised of the following (in thousands):

	March 31,	
	2009	2008
Research and development credit carryforwards	\$ 3,510	\$ 3,490
Net operating loss carryforwards	57,568	57,411
Inventory valuation	298	256
Reserves and allowances	2,194	1,514
Fixed assets and intangibles	7,783	9,415
	<u>71,353</u>	<u>72,086</u>
Valuation allowance	(71,353)	(72,086)
Total	\$ -	\$ -

Because of uncertainties regarding the realization of deferred tax assets, management has applied a full valuation allowance as of March 31, 2009 and 2008.

At March 31, 2009, the Company had net operating loss carryforwards for federal and state income tax purposes of approximately \$153.9 million and \$88.1 million, respectively, which expire at various dates beginning in 2013 and continuing through 2029. The net operating loss carryforwards include approximately \$10.0 million resulting from employee exercises of non-qualified stock options or disqualifying dispositions, the tax benefits of which, when realized, will be accounted for as an addition to additional paid-in capital rather than as a reduction of the provision for income taxes. In addition, at March 31, 2009, the Company had research and development credit carryforwards for federal and state tax reporting purposes of approximately \$3.4 million and \$2.8 million, respectively. The federal credit carryforwards will expire at various dates beginning in 2010 and continuing through 2029, while the California credits will carry forward indefinitely. Under applicable tax laws, the amount of and benefits from net operating losses and credits that can be carried forward may be impaired or

limited in certain circumstances. Events which may cause limitations in the amount of net operating loss carryforwards that the Company may utilize in any one year include, but are not limited to, a cumulative ownership change of more than 50% over a three year period.

A reconciliation of the tax provision (benefit) to the amounts computed using the statutory U.S. federal income tax rate of 34% is as follows (in thousands):

	Years Ended March 31,		
	2009	2008	2007
Tax provision (benefit) at statutory rate	\$ (835)	\$ 12	\$ (3,376)
State income taxes (benefit) before valuation allowance, net of federal effect	20	(67)	(580)
Research and development credits	(100)	(52)	250
Change in valuation allowance	395	519	3,582
Income from change in fair value of warrant liability	(107)	(728)	(1,488)
Compensation/option differences	(5)	(9)	(14)
Prior year loss carryforward reduction	-	-	797
Non-deductible compensation	674	307	720
Foreign rate differences	-	-	(2)
Other	3	18	111
	<u>\$ 45</u>	<u>\$ -</u>	<u>\$ -</u>

Effective April 1, 2007, the Company adopted the provisions of Financial Accounting Standards Board Interpretation No. 48, "Accounting for Uncertainty in Income Taxes: an Interpretation of FASB Statement No. 109" (FIN 48), which clarifies the accounting and disclosure for uncertainty in income taxes recognized in an enterprise's financial statements. As a result of the implementation of FIN No. 48, the Company recognized no material adjustment to the April 1, 2007 balance of retained earnings. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

	Unrecognized Tax Benefits	
	2009	2008
Balance at beginning of year	\$ 2,122	\$ 2,044
Gross increases - tax position in prior period	-	-
Gross decreases - tax position in prior period	(27)	-
Gross increases - tax positions related to the current year	111	78
Settlements	-	-
Lapse of statute of limitations	-	-
Balance at end of year	<u>\$ 2,206</u>	<u>\$ 2,122</u>

The total amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate is \$2.2 million, but any affect would have been fully offset by the application of the valuation allowance. To the extent that the unrecognized tax benefits are ultimately recognized, they may have an impact on the effective tax rate in future periods; however, such impact on the effective tax rate would only occur if the recognition of such unrecognized tax benefits occurs in a future period when the Company has already determined that its deferred tax assets are more likely than not realizable. The Company does not expect the unrecognized tax benefits to change significantly over the next 12 months.

The Company files U.S. federal, state and foreign income tax returns in jurisdictions with varying statutes of limitations. The Company has not been under examination by income tax authorities in federal, state or other foreign jurisdictions. The 1995 through fiscal 2009 tax years generally remain subject to examination by federal and most state tax authorities. In significant foreign jurisdictions, the fiscal year 2005 through 2009 tax years remain subject to examination by their respective tax authorities.

The Company's policy for recording interest and penalties associated with audits is to record such items as a component of operating expense income before taxes. During the fiscal year ended March 31, 2009 and 2008, the Company did not recognize any interest or penalties related to unrecognized tax benefits.

Undistributed earnings of the Company's foreign subsidiaries are indefinitely reinvested in foreign operations. No provision has been made for taxes that might be payable upon remittance of such earnings, nor is it practicable to determine the amount of this liability.

3. COMMITMENTS AND CONTINGENCIES

Guarantees

Indemnifications

In the normal course of business, the Company may agree to indemnify other parties, including customers, lessors and parties to other transactions with the Company, with respect to certain matters such as breaches of representations or covenants or intellectual property infringement or other claims made by third parties. These agreements may limit the time within which an indemnification claim can be made and the amount of the claim. In addition, the Company has entered into indemnification agreements with its officers and directors.

It is not possible to determine the maximum potential amount of the Company's exposure under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these agreements have not had a material impact on the Company's operating results, financial position or cash flows. Under some of these agreements, however, the Company's potential indemnification liability might not have a contractual limit.

Product Warranties

The Company accrues for the estimated costs that may be incurred under its product warranties upon revenue recognition. Changes in the Company's product warranty liability, which is included in cost of product revenues in the consolidated statements of operations, during the years ended March 31, 2009, 2008 and 2007 were as follows (in thousands):

	Years Ended March 31,		
	2009	2008	2007
Balance at beginning of year	\$ 314	\$ 323	\$ 301
Accruals for warranties	366	297	331
Payments	(352)	(306)	(270)
Changes in estimates	-	-	(39)
Balance at end of year	\$ 328	\$ 314	\$ 323

Standby letter of credit

At March 31, 2009 and 2008, the Company had certain restricted deposits totaling \$100,000 which were recorded in the other assets line item on the consolidated balance sheets. This deposit was made in order to obtain a standby letter of credit in accordance with certain contractual obligations, and is collateralized by a cash deposit at the Company's bank.

Leases

The Company leases its primary facility in Santa Clara, California under a non-cancelable operating lease agreement that expires in August 2009. The Company also has leased facilities in France. The facility leases include rent escalation clauses, and require the Company to pay taxes, insurance and normal maintenance costs. At March 31, 2009, future minimum annual lease payments under non-cancelable operating leases, net of sublease income, were as follows (in thousands):

<u>Year Ending March 31,</u>	
2010	\$ 206
Total minimum payments	\$ 206

Rent expense for the years ended March 31, 2009, 2008 and 2007 was \$494,000, \$486,000 and \$434,000, respectively.

On May 1, 2009, the Company entered into a three year lease for a new primary facility in Sunnyvale, California, with a scheduled commencement date of September 1, 2009. The lease is an industrial gross lease with monthly rent of approximately \$47,000 for the first 12 months, \$52,000 for the next 12 months and \$57,000 for the final 12 months of the lease term.

Capital Leases

In April 2005, June 2006 and March 2007, the Company entered into a series of non-cancelable five year capital lease agreements for office equipment bearing interest at various rates. At March 31, 2009, future minimum annual lease payments under noncancelable capital leases were as follows (in thousands):

<u>Year ending March 31:</u>	
2010	\$ 42
2011	26
2012	22
Total minimum payments	<u>90</u>
Less: Amount representing interest	<u>(5)</u>
	85
Less: Short-term portion of capital lease obligations	<u>(39)</u>
Long-term portion of capital lease obligations	<u><u>\$ 46</u></u>

Capital leases included in office equipment were \$182,000 at March 31, 2009. Total accumulated amortization was \$102,000 at March 31, 2009. Amortization expense for assets recorded under capital leases is included in depreciation expense.

Minimum Third Party Customer Support Commitments

In March 2009, the Company entered into a contract with one of its third party customer support vendors containing a minimum monthly commitment of approximately \$491,000 effective April 1, 2009. The agreement requires 150 day notice to terminate. The total remaining obligation under the contract is \$2.5 million.

Legal Proceedings

The Company, from time to time, is involved in various legal claims or litigation, including patent infringement claims that can arise in the normal course of the Company's operations. Pending or future litigation could be costly, could cause the diversion of management's attention and could upon resolution, have a material adverse effect on the Company's business, results of operations, financial condition and cash flows.

Subsequent to year end, in April 2009, the Company entered into a license and settlement agreement with a patent holder. The agreement requires the Company to pay eight quarterly payments over the next two years. At March 31, 2009, future minimum annual payments under the license and settlement agreement were as follows (in thousands):

<u>Year ending March 31:</u>	
2010	\$ 550
2011	250
Total minimum payments	<u>800</u>
Less: Amount representing interest	<u>(29)</u>
	771
Less: Short-term portion of license fee	<u>(526)</u>
Long-term portion of license fee obligation	<u><u>\$ 245</u></u>

State and Municipal Taxes

For a period of time, the Company did not collect or remit state or municipal taxes (such as sales, excise, and ad valorem taxes), fees or surcharges ("Taxes") on the charges to the Company's customers for its services, although the Company historically complied with the California sales tax and financial contributions to the 9-1-1 system and Universal Service Fund. The Company has received inquiries or demands from a number of state and municipal taxing agencies seeking payment of Taxes that are applied to or collected from customers of providers of traditional public switched telephone network services. Although the Company has consistently maintained that these Taxes do not apply to its service for a variety of reasons depending on the statute or rule that establishes such obligations, a number of states have changed their statutes as part of streamlined sales tax initiatives and, in response to these statutory changes, the Company has begun collecting and remitting Taxes in those states. Some of these Taxes could apply to the Company retroactively, and two states currently are conducting Tax audits of the Company's records. The Company has accrued a tax liability of \$0.2 million at March 31, 2009 as its current estimate of the potential tax exposure for any retroactive Tax assessment by numerous states and municipalities.

Regulatory

To date, VoIP communication services have been largely unregulated in the United States. Many regulatory actions are underway or are being contemplated by federal and state authorities, including the Federal Communications Commission (FCC), and state regulatory agencies. To date, the FCC has treated Internet service providers as information service providers. Information service providers are currently exempt from federal and state regulations governing common carriers, including the obligation to pay access charges and contribute to the universal service fund. The FCC is currently examining the status of Internet service providers and the services they provide as well as the intercarrier compensation system including access charges. The FCC initiated a notice of public rule-making in early 2004 to gather public comment on the appropriate regulatory environment for IP telephony. In November 2004, the FCC ruled that the VoIP service of a competitor and "similar" services are jurisdictionally interstate and not subject to state certification, tariffing and other legacy telecommunication carrier regulations. The FCC ruling was appealed by several states and on March 21, 2007, the United States Court of Appeals for the Eighth Circuit affirmed the FCC ruling.

Interconnected VoIP providers, like the Company, are required to offer 9-1-1 emergency calling capabilities similar to those available to subscribers of traditional switched phone lines. Moreover, interconnected VoIP providers were required to distribute stickers and labels warning customers of the limitations associated with accessing emergency services through an interconnected VoIP service, as well as to notify and obtain affirmative acknowledgement from the Company's customers that customers were aware of the differences between the emergency calling capabilities offered by interconnected VoIP providers as compared to traditional, wireline providers of telephone service. The FCC's Enforcement Bureau released an order stating that the Enforcement Bureau will not pursue enforcement against interconnected VoIP providers that have received affirmative acknowledgement from at least 90% of their subscribers. The Company has received affirmative acknowledgement from substantially all of the Company's customers and has substantially satisfied this requirement of this rule.

Like many interconnected VoIP providers, the Company currently cannot offer VoIP E-911 services that route emergency calls in a manner consistent with the FCC rules for all of the Company's customers. The Company is addressing this issue with its VoIP E-911 Solution providers. On November 28, 2005, the Company began routing certain 9-1-1 calls to a national emergency call center. The emergency dispatchers in this national call center utilize the location information provided to route the call to the correct Public Safety Answering Point (PSAP) or first responder. The FCC may determine that the Company's VoIP E-911 solution for these customers does not satisfy the requirements of the VoIP E-911 order because, in some instances, the Company will not be able to connect its subscribers directly to a PSAP.

On August 5, 2005, the FCC unanimously adopted an order requiring interconnected VoIP providers to comply with the Communications Assistance for Law Enforcement Act, or CALEA. CALEA requires covered providers to assist law enforcement agencies in conducting lawfully authorized electronic surveillance. Under the FCC order, interconnected VoIP providers were required to comply with CALEA obligations by May 14, 2007 and make certain filings prior to that date. The Company engaged a third party to help it develop a solution to be CALEA compliant. The Company completed formal CALEA compliance testing with this third party in March 2009 and currently, the Company's CALEA solution is fully deployed in the 8x8 network. However, the Company could be subject to an enforcement action by the FCC or law enforcement agencies for any delays related to meeting, or if the Company fails to comply with, any current or future CALEA obligations.

On June 21, 2006, the FCC expanded the base of Universal Service Fund, or USF, contributions to interconnected VoIP providers. The FCC established a safe harbor percentage of 64.9% of total VoIP service revenue to which federal USF contributions apply. The Company was allowed to calculate its contribution based on the safe harbor or by submitting a traffic study that would subsequently be approved by the FCC. For a period of at least two quarters beginning October 1, 2006, the Company was required to contribute to the USF for its subscribers' retail revenues as well as through the Company's underlying carriers' wholesale charges. Beginning October 1, 2006, the Company began charging its subscribers a USF surcharge fee equal to the USF contribution amounts the Company is required to contribute. The FCC order applying USF contributions to interconnected VoIP providers was appealed and on June 1, 2007, the U.S. Court of Appeals for the District of Columbia ruled that the FCC was within its authority when it required interconnected VoIP service providers to contribute to the Universal Service Fund, though it struck down the provision of the order which required pre-approval of traffic studies by the FCC and the provision that required double contributions to the fund for two quarters from the Company's underlying carriers' wholesale charges. As a result of the ruling, the Company retroactively applied its traffic study contribution rate to the historical subscriber retail revenues which resulted in the recognition of revenue of \$573,000 due to the reduction of the related accrued liability in the first fiscal quarter of 2008. As of July 1, 2007, the Company is using the results of its traffic study to calculate the required contribution to the USF. Moreover, the FCC just released an Order clarifying how providers that rely on traffic studies to calculate their USF contributions should assess certain revenues associated with minutes-of-use charges. The Company is still evaluating the impact of this Order on its USF contribution but it may require the Company to increase its contribution resulting in higher pass-through charges to its customers. In the meantime, the FCC continues to evaluate alternative methods for assessing USF charges, including imposing an assessment on telephone numbers. The outcome of these proceedings cannot be determined at this time nor can the Company determine the potential financial impact as the details of an alternative method of USF contribution have not been determined at this time. There is also a risk that state USF funds may attempt to impose state USF contribution obligations and other state and local charges. At this time, several states contend that providers of interconnected VoIP services, like us, should contribute to their state USF funds. On March 3, 2008, the U.S. District Court for Nebraska issued a preliminary injunction and found that Nebraska's state Public Service Commission does not have jurisdiction to require Universal Service contributions from VoIP providers. On May 1, 2009, a panel of the U.S. Circuit Court of Appeals for the Eighth Circuit affirmed the U.S. District court ruling. But, on May 14, 2009, the Nebraska Public Service Commission requested a rehearing or a rehearing *en banc* of the decision handed down by the three-judge panel. We cannot predict the outcome of this ongoing litigation. As of March 31, 2009, the Company was collecting and remitting state USF in one state. Effective June 1, 2009, the Company will cease collecting and remitting state USF.

On April 2, 2007, the FCC released an order extending the application of customer proprietary network information, or CPNI, rules to interconnected VoIP providers. CPNI includes information such as the phone numbers called by a consumer; the frequency, duration, and timing of such calls; and any services/features purchased by the consumer, such as call waiting, call forwarding, and caller ID, in addition to other information that may appear on a consumer's bill. Under the FCC's existing rules, carriers may not use CPNI without customer approval except in narrow circumstances related to their provision of existing services, and must comply with detailed customer approval processes when using CPNI outside of these narrow circumstances. The new CPNI requirements are also aimed at establishing more stringent security measures for access to a customer's CPNI data in the form of required passwords for on-line access and call-in access to account information as well as customer notification of account or password changes. At the present time, the Company does not utilize its customer's CPNI in a manner which would require it to obtain consent from its customers but, in the event that the Company does in the future, the Company will be required to adhere to specific CPNI rules aimed at marketing such services. Effective December 8, 2007, the Company implemented internal processes in order to be compliant with all of the FCC's CPNI rules and the Company filed its second, annual certification of its compliance with CPNI rules with the FCC on February 20, 2009. These rules may impose additional compliance costs on the Company and reduce its profitability or cause the Company to increase the retail price for its services.

On June 1, 2007, the FCC released a Notice of Proposed Rulemaking Proceeding to consider whether it should impose additional VoIP E-911 obligations on interconnected VoIP providers, including consideration of a requirement that interconnected VoIP providers automatically determine the physical location of their customer rather than allowing customers to manually register their location. The Notice includes a tentative conclusion that all interconnected VoIP service providers that allow customers to use their service in more than one location (nomadic VoIP service providers such as us) must utilize automatic location technology that meets the same accuracy standards applicable to providers of commercial mobile radio services (mobile phone service providers). The Company cannot predict the outcome of this proceeding nor its impact on the Company at this time.

On June 8, 2007, the FCC released an order implementing various recommendations from its Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks Panel, including a requirement that certain interconnected VoIP providers submit reports regarding the reliability and resiliency of their 9-1-1 systems. At this time, the Company is not subject to these reporting requirements but may become subject in future years.

On June 15, 2007, the FCC extended the disability access requirements of Sections 225 and 255 of the Communications Act, which applied to traditional phone services, to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide those services. Section 255 of the Communications Act requires service providers to ensure that its equipment and service is accessible to and usable by individuals with disabilities, if readily achievable, including requiring service providers to ensure that information and documentation provided in connection with equipment or services be accessible to people with disabilities, where readily achievable and that employee training account for accessibility requirements. In addition, the FCC said that interconnected VoIP providers were subject to the requirements of Section 225, including contributing to the Telecommunications Relay Services, or TRS, fund and that they must offer 7-1-1 abbreviated dialing for access to relay services. The Company may be subject to enforcement actions including, but not limited to, fines, cease and desist orders, or other penalties if it is not able to comply with these new disability obligations. The rules established in the Disability Access Order were scheduled to become effective on October 5, 2007, and as of this date, the Company started to remit TRS fund contributions and implemented 7-1-1 abbreviated dialing which connects all of the Company's customers to California relay service operators. On October 10, 2007, the FCC granted a limited waiver of the 7-1-1 call handling requirement. While still mandating that interconnected VoIP providers like the Company are required to transmit 7-1-1 calls to a relay center, the FCC waived the requirement, until March 31, 2009, insofar as it requires such providers to transmit the 7-1-1 call to an "appropriate relay center," meaning the relay center(s) serving the state in which the caller is geographically located or the relay center(s) corresponding to the caller's last registered address. As of April 5, 2008, the Company has implemented a 7-1-1 system which routes such calls to the appropriate relay center based upon the telephone number assigned to the account.

On August 6, 2007, the FCC released a Report and Order concerning the collection of regulatory fees for Fiscal Year 2007 ("Regulatory Fees Order"), which, for the first time, mandates the collection of such fees from interconnected VoIP service providers like 8x8. The Regulatory Fees Order requires that interconnected VoIP providers pay regulatory fees based on reported interstate and international revenues. The Regulatory Fees Order became effective in November 2007. Regulatory fees for the FCC's Fiscal Year 2007 will be due in 2008 during a separate filing window yet to be determined. Fiscal Year 2008 fees will also be paid in 2008 during the normal regulatory fee payment window. The assessment of regulatory fees on the Company's service offering will increase its costs and reduce its profitability or cause the Company to increase the retail price of the Company's service offerings.

On November 8, 2007, the FCC released a Report and Order concerning Local Number Portability ("LNP Order"). The LNP Order imposes local number portability and related obligations on interconnected VoIP Providers. The obligations require interconnected VoIP providers to contribute to shared numbering administration costs on a competitively neutral basis. The assessment of local number portability fees to the Company's service will increase the Company's costs and reduce its profitability or cause the Company to increase the price of its retail service offerings. On May 13, 2009, the FCC released another order concerning LNP that reduces the timeframe for certain types of ports that interconnected VoIP providers, like the Company, have to process requests from its customers to port numbers out to other service providers. The new rules imposing reduced porting timeframes are not currently effective and the Company does not expect them to become effective for at least one year. The Company relies on third parties to comply with the existing porting timeframes and the Company will continue to rely on third parties to comply with the new porting timeframes. The Company could be subject to fines, forfeitures and other penalties by state public utilities commissions or the FCC if it is not able to process certain ports in the existing or future timeframes or the Company could face legal liability in state or federal court from customers or carriers. The FCC also released a Further Notice of Proposed Rulemaking to refresh the record on how to further improve the porting process, and how to potentially expand the new one business day porting timeframe to other kinds of ports. The Company cannot predict the outcome of this proceeding nor its potential impact on the Company at this time.

On May 13, 2009, the FCC extended discontinuance rules that apply to non-dominant common carriers to interconnected VoIP providers, like the Company. The FCC's rules require non-dominant domestic carriers to provide notice to customers at least 30 days prior to discontinuing service to a telephone exchange, toll stations serving a community in whole or in part, and other similar activities that affect a community or part of a community. Additionally, carriers must inform certain state authorities of the discontinuation, and obtain prior FCC approval before undertaking the service disruption. The FCC's rules allow for streamlined treatment for FCC discontinuance approvals and interconnected VoIP providers will be able to take advantage of the same streamlined procedures afforded to non-dominant carriers. The applicability of these rules to interconnected VoIP

providers, like the Company, are not entirely clear but would likely be applicable should the Company discontinue one of its service offerings in its entirety or if the Company were to exit the market in whole. The new discontinuance rules are not currently effective but the Company does not expect these new obligations to have a material impact on the business.

The effect of any future laws, regulations and the orders on the Company's operations, including, but not limited to, the 8x8 service, cannot be determined. But as a general matter, increased regulation and the imposition of additional funding obligations increases the Company's costs of providing service that may or may not be recoverable from the Company's customers which could result in making the Company's services less competitive with traditional telecommunications services if the Company increases its retail prices or decreases the Company's profit margins if it attempts to absorb such costs.

4. STOCKHOLDERS' EQUITY

1996 Stock Plan

In June 1996, the Board adopted the 1996 Stock Plan (the 1996 Plan) and reserved 1,000,000 shares of the Company's common stock for issuance under this plan. The Company's stockholders subsequently authorized increases in the number of shares of the Company's common stock reserved for issuance under the 1996 Plan of 500,000 shares in June 1997 and 2,000,000 shares in August 2000. The 1996 Plan also provides for an annual increase in the number of shares reserved for issuance under the 1996 Plan on the first day of the Company's fiscal year in an amount equal to 5% of the Company's common stock issued and outstanding at the end of the immediately preceding fiscal year, subject to a maximum annual increase of 1,000,000 shares. The annual increase was 1,000,000 shares in each of fiscal 2007, 2006 and 2005. To date, this provision has resulted in increases in shares reserved for issuance under the 1996 Plan totaling 8,535,967. The 1996 Plan provides for granting incentive stock options to employees and nonstatutory stock options to employees, directors or consultants. The stock option price of incentive stock options granted may not be less than the determined fair market value at the date of grant. Options generally vest over four years and expire ten years after grant. The 1996 Plan expired in June 2006.

1996 Director Option Plan

The Company's 1996 Director Option Plan (the Director Plan) was adopted in June 1996 and became effective in July 1997. A total of 150,000 shares of common stock were initially reserved for issuance under the Director Plan. The Company's stockholders subsequently authorized an increase in the number of shares of common stock reserved for issuance under the Director Plan to 500,000 shares in August 2000, and 1,000,000 in July 2002. The Director Plan provides for both discretionary and periodic grants of nonstatutory stock options to non-employee directors of the Company (the Outside Directors). The exercise price per share of all options granted under the Director Plan will be equal to the fair market value of a share of the Company's common stock on the date of grant. Options generally vest over a period of four years. Options granted to Outside Directors under the Director Plan have a ten year term, or shorter upon termination of an Outside Director's status as a director. The Director Plan expired in June 2006.

1999 Nonstatutory Stock Option Plan

In fiscal 2000, the Board approved the 1999 Nonstatutory Stock Option Plan (the 1999 Plan) with 600,000 shares initially reserved for issuance thereunder. In fiscal 2001, the number of shares reserved for issuance was increased to 3,600,000 shares by the Board. Under the terms of the 1999 Plan, options may not be issued to either officers or directors of the Company provided, however, that options may be granted to an officer in connection with the officer's initial employment by the Company. Options generally vest over four years and expire ten years after grant. The 1999 Plan has not been approved by the stockholders of the Company. In May 2006, the Board cancelled the 1999 Plan, and no new grants may be made from the 1999 Plan.

2006 Stock Plan

In May 2006, the Board approved the 2006 Stock Plan (the "2006 Plan"). The Company's stockholders subsequently adopted the 2006 Plan at the 2006 Annual Meeting of Stockholders held September 18, 2006, and the 2006 Plan became effective in October 2006. The Company reserved 7,000,000 shares of the Company's common stock for issuance under this plan. The 2006 Plan provides for granting incentive stock options to employees and nonstatutory stock options to employees, directors or consultants. The stock option price of incentive stock options granted may not be less than the fair market value on the effective date of the grant. Other types of options and awards under the 2006 Plan may be granted at any price approved by the administrator, which generally will be the compensation committee of the board of directors. Options generally vest over four years and expire ten years after grant. In 2009, the 2006 Plan was amended to provide for the granting of stock purchase rights. The 2006 Plan expires in May 2016.

Option Activity

Option activity under the Company's stock option plans since March 31, 2006, is summarized as follows:

	Shares Available for Grant	Shares Subject to Options Outstanding	Weighted Average Exercise Price Per Share
Balance at March 31, 2006	4,059,405	8,870,718	\$ 2.31
Change in options available for grant	8,000,000	-	-
Granted	(3,074,200)	3,074,200	1.42
Exercised	-	(383,746)	0.90
Canceled/Forfeited	2,631,194	(2,631,194)	1.96
Termination of plans	(5,689,940)	-	
Balance at March 31, 2007	5,926,459	8,929,978	2.17
Granted	(2,299,000)	2,299,000	1.26
Exercised	-	(22,208)	0.90
Canceled/Forfeited	905,706	(905,706)	1.80
Termination of plans	(598,040)	-	
Balance at March 31, 2008	3,935,125	10,301,064	2.00
Granted - Options	(1,855,500)	1,855,500	0.84
Stock purchase rights	(100,000)	-	0.57
Exercised	-	(89,300)	0.37
Canceled/Forfeited	1,330,985	(1,330,985)	1.72
Termination of plans	(894,735)	-	
Balance at March 31, 2009	2,415,875	10,736,279	\$ 1.85

Significant option groups outstanding at March 31, 2009 and related weighted average exercise price and contractual life information for 8x8, Inc.'s stock option plans are as follows:

	Options Outstanding				Options Exercisable		
	Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value	Shares	Weighted Average Exercise Price Per Share	Aggregate Intrinsic Value
\$ 0.01 to \$ 1.15	2,176,133	\$ 0.86	8.4	\$ 9,111	2,176,133	\$ 0.86	\$ 9,111
\$ 1.16 to \$ 1.27	2,608,629	\$ 1.25	7.1	-	2,608,629	\$ 1.25	-
\$ 1.28 to \$ 1.72	2,392,710	\$ 1.55	5.9	-	2,392,710	\$ 1.55	-
\$ 1.73 to \$2.38	2,169,431	\$ 1.90	3.6	-	2,161,616	\$ 1.90	-
\$2.39 to \$14.94	1,389,376	\$ 4.97	2.8	-	1,389,376	\$ 4.97	-
	<u>10,736,279</u>			<u>\$ 9,111</u>	<u>10,728,464</u>		<u>\$ 9,111</u>

The Company recognized stock compensation expense in fiscal 2009, 2008 and 2007 of \$3,295,000, \$1,272,000 and \$1,810,000, respectively.

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (the aggregate difference between the closing stock price of the Company's common stock on March 31, 2009 and the exercise price for in-the-money options) that would have been received by the option holders if all in-the-money options had been exercised on March 31, 2009.

The total intrinsic value of options exercised in the years ended March 31, 2009, 2008 and 2007 were \$49,000, \$9,000 and \$146,000, respectively. As of March 31, 2009, there was \$57,000 of unamortized stock-based compensation expense related to unvested stock awards which is expected to be recognized over a weighted average period of 4.00 years.

Cash received from option exercises and purchases of shares under the Purchase Plan for the years ended March 31, 2009, 2008 and 2007 were \$0.3 million, \$0.3 million and \$0.5 million. The total tax benefit attributable to stock options exercised in the year ended March 31, 2009 was \$0.

The Company did not recognize and does not expect to recognize in the near future any tax benefit related to employee stock-based compensation cost as a result of the full valuation allowance on its net deferred tax assets and because of its net operating loss carryforwards.

1996 Employee Stock Purchase Plan

The Company's 1996 Stock Purchase Plan (the Purchase Plan) was adopted in June 1996 and became effective upon the closing of the Company's initial public offering in July 1997. The Company suspended the Purchase Plan in 2003 and reactivated the Plan in fiscal 2005. Under the Purchase Plan, 500,000 shares of common stock were initially reserved for issuance. At the start of each fiscal year, the number of shares of common stock subject to the Purchase Plan increases so that 500,000 shares remain available for issuance. During fiscal 2009, 2008 and 2007 424,470, 273,229 and 249,806 shares, respectively, were issued under the Purchase Plan. In May 2006, the Board approved a ten-year extension of the Purchase Plan so that it would be effective until 2017. Stockholders approved a ten-year extension of the Purchase Plan at the 2006 Annual Meeting of Stockholders held September 18, 2006. The Purchase Plan is effective until 2017.

The Purchase Plan permits eligible employees to purchase common stock through payroll deductions at a price equal to 85% of the fair market value of the common stock at the beginning of each two year offering period or the end of a six month purchase period, whichever is lower. When the Purchase Plan was reinstated in fiscal 2005, the offering period was reduced from two years to one year. The contribution amount may not exceed ten percent of an employee's base compensation, including commissions, but not including bonuses and overtime. In the event of a merger of the Company with or into another corporation or the sale of all or substantially all of the assets of the Company, the Purchase Plan provides that a new exercise date will be set for each option under the plan which exercise date will occur before the date of the merger or asset sale.

Assumptions Used to Calculate Stock-Based Compensation Expense

The fair value of each of the Company's option grants has been estimated on the date of grant using the Black-Scholes pricing model with the following assumptions:

	Years Ended March 31,		
	2009	2008	2007
Expected volatility	79%	79%	90%
Expected dividend yield	-	-	-
Risk-free interest rate	1.4% to 3.2%	2.2% to 4.8%	4.6% to 5.0%
Weighted average expected option term	4.6 years	3.4 years	3.4 years
Weighted average fair value of options granted	\$ 0.52	\$ 0.71	\$ 0.88

The estimated fair value of stock purchase rights granted under the Purchase Plan were estimated using the Black-Scholes pricing model with the following weighted-average assumptions:

	Years Ended March 31,		
	2009	2008	2007
Expected volatility	68%	54%	84%
Expected dividend yield	-	-	-
Risk-free interest rate	0.87%	3.83%	5.13%
Weighted average expected rights term	0.81 years	0.75 years	0.75 years
Weighted average fair value of rights granted	\$ 0.28	\$ 0.44	\$ 0.36

5. EMPLOYEE BENEFIT PLAN

401(k) Savings Plan

In April 1991, the Company adopted a 401(k) savings plan (the Savings Plan) covering substantially all of its U.S. employees. Eligible employees may contribute to the Savings Plan from their compensation up to the maximum allowed by the Internal Revenue Service. No matching contribution was made in fiscal 2006. On January 1, 2007, the Company reactivated the employer matching contribution. The employee matching contribution is 100% of each employee's contributions in each year, not to exceed \$1,500 per annum. The employee matching expense in 2009, 2008 and 2007 was \$0.2 million, \$0.1 million and \$0.1 million. The Savings Plan does not allow employee contributions to be invested in the Company's common stock.

6. SEGMENT REPORTING

SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," establishes annual and interim reporting standards for an enterprise's business segments and related disclosures about its products, services, geographic areas and major customers. Under SFAS No. 131, the method for determining what information to report is based upon the way management organizes the operating segments within the Company for making operating decisions and assessing financial performance. The Company has only one reportable segment.

The following table presents net revenues by groupings of similar products (in thousands).

	Years Ended March 31,		
	2009	2008	2007
8x8 service, equipment and other	\$ 64,601	\$ 60,891	\$ 52,799
Technology licensing and related software	73	755	331
Total revenues	<u>\$ 64,674</u>	<u>\$ 61,646</u>	<u>\$ 53,130</u>

The following table illustrates net revenues by geographic area. Revenues are attributed to countries based on the destination of shipment (in thousands):

	Years Ended March 31,		
	2009	2008	2007
United States	\$ 64,633	\$ 61,052	\$ 52,463
Other locations	41	594	667
	<u>\$ 64,674</u>	<u>\$ 61,646</u>	<u>\$ 53,130</u>

The majority of the Company's property and equipment was located in the United States. The following table illustrates property and equipment by country (in thousands):

	March 31,	
	2009	2008
United States	\$ 1,482	\$ 2,007
France	3	3
	<u>\$ 1,485</u>	<u>\$ 2,010</u>

No customer represented more than 10% of the Company's total revenues in fiscal 2009, 2008 or 2007.

8X8, INC.

SCHEDULE II -- VALUATION AND QUALIFYING ACCOUNTS
(IN THOUSANDS)

<u>Description</u>	<u>Balance at Beginning of Year</u>	<u>Additions Charged to Costs, Expenses and Other</u>	<u>Deductions</u>	<u>Balance at End of Year</u>
Year ended March 31, 2007:				
Allowance for doubtful accounts	\$ 55	\$ 48	\$ 49	\$ 54
Valuation allowance for deferred tax assets	70,541	2,632	-	73,173
Year ended March 31, 2008:				
Allowance for doubtful accounts	54	142	135	61
Valuation allowance for deferred tax assets	73,173	-	1,087	72,086
Year ended March 31, 2009:				
Allowance for doubtful accounts	61	338	97	302
Valuation allowance for deferred tax assets	72,086	-	733	71,353

8X8, INC.

**CONSOLIDATED QUARTERLY FINANCIAL DATA
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)
(UNAUDITED)**

	QUARTER ENDED							
	March 31,	Dec. 31,	Sept. 30,	June 30,	March 31,	Dec. 31,	Sept. 30,	June 30,
	2009	2008	2008	2008	2008	2007	2007	2007
Service revenues	\$ 14,198	\$ 14,366	\$ 14,903	\$ 15,019	\$ 15,068	\$ 14,426	\$ 13,272	\$ 13,411
Product revenues	1,567	1,837	1,522	1,262	1,264	1,378	1,496	1,331
Total revenues	<u>15,765</u>	<u>16,203</u>	<u>16,425</u>	<u>16,281</u>	<u>16,332</u>	<u>15,804</u>	<u>14,768</u>	<u>14,742</u>
Operating expenses:								
Cost of service revenues	4,179	3,699	4,022	3,814	3,891	4,364	4,430	3,986
Cost of product revenues	2,349	1,681	1,673	1,432	1,552	1,175	2,652	1,383
Research and development	1,538	1,183	1,299	1,192	1,171	1,081	1,026	1,057
Selling, general, and administrative	<u>11,700</u>	<u>9,562</u>	<u>9,667</u>	<u>8,751</u>	<u>9,023</u>	<u>9,604</u>	<u>10,050</u>	<u>8,919</u>
Total operating expenses	<u>19,766</u>	<u>16,125</u>	<u>16,661</u>	<u>15,189</u>	<u>15,637</u>	<u>16,224</u>	<u>18,158</u>	<u>15,345</u>
Income (loss) from operations	(4,001)	78	(236)	1,092	695	(420)	(3,390)	(603)
Other income (loss), net	32	74	107	85	(48)	1,361	161	132
Income (loss) on change in fair value of warrant liability	<u>(11)</u>	<u>66</u>	<u>190</u>	<u>69</u>	<u>44</u>	<u>448</u>	<u>671</u>	<u>979</u>
Income (loss) before provision for income taxes	(3,980)	218	61	1,246	691	1,389	(2,558)	508
Provision (benefit) for income taxes	<u>(68)</u>	<u>38</u>	<u>17</u>	<u>58</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Net income (loss)	<u>\$ (3,912)</u>	<u>\$ 180</u>	<u>\$ 44</u>	<u>\$ 1,188</u>	<u>\$ 691</u>	<u>\$ 1,389</u>	<u>\$ (2,558)</u>	<u>\$ 508</u>
Net income (loss) per share:								
Basic	\$ (0.06)	\$ 0.00	\$ 0.00	\$ 0.02	\$ 0.01	\$ 0.02	\$ (0.04)	\$ 0.01
Diluted	\$ (0.06)	\$ 0.00	\$ 0.00	\$ 0.02	\$ 0.01	\$ 0.02	\$ (0.04)	\$ 0.01
Shares used in per share calculations:								
Basic	62,568	62,332	62,278	62,096	62,019	61,927	61,870	61,772
Diluted	62,568	62,394	62,361	62,192	62,148	62,113	61,870	62,080

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Changes in Internal Control Over Financial Reporting

There have not been any changes in the Company's internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of March 31, 2009. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of March 31, 2009, the Company's disclosure controls and procedures were effective.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on criteria established in the framework in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management concluded that its internal control over financial reporting was effective as of March 31, 2009.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The effectiveness of our internal control over financial reporting as of March 31, 2009 has been audited by Moss Adams LLP, our independent registered public accounting firm, as stated in their report which appears in Item 8 of this Annual Report on Form 10-K.

ITEM 9B. OTHER INFORMATION

None.

PART III

Certain information required by Part III is omitted from this Report on Form 10-K in that the Registrant will file its definitive Proxy Statement for its Annual Meeting of Stockholders (the 2009 Proxy Statement) pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, not later than 120 days after the end of the fiscal year covered by this Report, and certain information included in the 2009 Proxy Statement is incorporated herein by reference.

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information regarding our directors and corporate governance will be presented in our definitive proxy statement for our 2009 Annual Meeting of Stockholders to be held on or about July 30, 2009, which information is incorporated into this report by reference. However, certain information regarding current executive officers found under the heading "Executive Officers" in Item 1 of Part I hereof is also incorporated by reference in response to this Item 10.

We have adopted a Code of Conduct and Ethics that applies to our principal executive officer, principal financial officer and all other employees at 8x8, Inc. This Code of Conduct and Ethics is posted in the corporate governance section of our website at <http://investors.8x8.com>. We intend to satisfy the disclosure requirement under Item 10 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Conduct and Ethics by posting such information in the corporate governance section on its website at <http://investors.8x8.com>.

ITEM 11. EXECUTIVE COMPENSATION

Information relating to executive compensation will be presented in our definitive proxy statement for our 2009 Annual Meeting of Stockholders to be held on or about July 30, 2009, which information is incorporated into this report by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information relating to securities authorized for issuance under equity compensation plans and other information required to be provided in response to this item will be presented in our definitive proxy statement for our 2009 Annual Meeting of Stockholders to be held on or about July 30, 2009, which information is incorporated into this report by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required to be provided in response to this item will be presented in our definitive proxy statement for our 2009 Annual Meeting of Stockholders to be held on or about July 30, 2009, which information is incorporated into this report by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required to be provided in response to this item will be presented in our definitive proxy statement for our 2009 Annual Meeting of Stockholders to be held on or about July 30, 2009, which information is incorporated into this report by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements. The information required by this item is included in Item 8.

(a)(2) Financial Statement Schedules. The information required by this item is included in Item 8.

(a)(3) Exhibits. The documents listed on the Exhibit Index appearing in this Report are filed herewith or hereby incorporated by reference. Copies of the exhibits listed in the Exhibit Index will be furnished, upon request, to holders or beneficial owners of the Company's common stock.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant, 8x8, Inc., a Delaware corporation, has duly caused this Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Santa Clara, State of California, on May 26, 2009.

8X8, INC.

By: /s/ BRYAN R. MARTIN
Bryan R. Martin,
Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Bryan R. Martin and Daniel Weirich, jointly and severally, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorney-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities and Exchange Act of 1934, this Report on Form 10-K has been signed by the following persons in the capacities and on the date indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ BRYAN R. MARTIN</u> Bryan R. Martin	Chairman and Chief Executive Officer (Principal Executive Officer)	May 26, 2009
<u>/s/ DANIEL WEIRICH</u> Daniel Weirich	Chief Financial Officer, President and Secretary (Principal Financial and Accounting Officer)	May 26, 2009
<u>/s/ GUY L. HECKER</u> Guy L. Hecker, Jr.	Director	May 26, 2009
<u>/s/ CHRISTOPHER MCNIFFE</u> Christopher McNiffe	Director	May 26, 2009
<u>/s/ JOE PARKINSON</u> Joe Parkinson	Director	May 26, 2009
<u>/s/ DONN WILSON</u> Donn Wilson	Director	May 26, 2009

8X8, INC.

EXHIBIT INDEX

Exhibit Number	Exhibit Title
3.1 (a)	Form of Restated Certificate of Incorporation of Registrant.
3.1.1(b)	Certificate of Amendment of Restated Certificate of Incorporation of Registrant, dated August 15, 2000.
3.1.1(c)	Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Registrant, dated July 16, 2001
3.2 (d)	Bylaws of Registrant.
4.1 (e)	Form of Common Stock Warrant issued in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated June 21, 2004.
4.2 (e)	Form of Common Stock Warrant issued to the placement agents in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated June 21, 2004.
4.3 (f)	Form of Common Stock Warrant issued in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated September 29, 2004.
4.4 (f)	Side Letter dated September 30, 2004, to amend the warrant dated June 23, 2004 in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated September 29, 2004.
4.5 (f)	Form of Common Stock Warrant issued to the placement agents in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated September 29, 2004.
4.12 (g)	Form of Common Stock Warrant issued in connection with a private placement of equity securities by the Registrant completed on July 29, 2003.
4.13 (h)	Common Stock Purchase Warrant issued to AGE Investments, Inc., dated March 7, 2005, in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated March 3, 2005.
4.14 (i)	Common Stock Purchase Warrant issued to Griffin Securities, Inc., dated March 7, 2005, in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-114133), as amended, and as supplemented by a prospectus supplement dated March 3, 2005.
4.15 (j)	Form of Common Stock Warrant issued in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-126350), as amended, and as supplemented by a prospectus supplement dated December 15, 2005.

- 4.16 (k) Form of Common Stock Warrant issued to the placement agents in connection with the sale of the Registrant's common stock and warrants under its shelf registration statement (File No. 333-126350), as amended, and as supplemented by a prospectus supplement dated December 15, 2005.
- 4.17 (l) Amendment to June 21, 2004, Common Stock Purchase Warrant dated August 29, 2007.
- 4.18 (m) Amendment to September 30, 2004, Common Stock Purchase Warrant dated August 29, 2007.
- 10.1 (a) Form of Indemnification Agreement between the Registrant and each of its directors and officers.
- 10.2 (a)* 1992 Stock Option Plan, as amended, and form of Stock Option Agreement.
- 10.3 (n)* 1996 Stock Plan, as amended, and form of Stock Option Agreement.
- 10.4 (o)* Amended and Restated 1996 Employee Stock Purchase Plan, as amended, and form of Subscription Agreement.
- 10.5 (p)* 1996 Director Option Plan, as amended. and Form of Director Option Agreement.
- 10.5.1 (q)* Form of Director Option Agreement for 1996 Director Option Plan.
- 10.6 (r)* 1999 Nonstatutory Stock Option Plan, as amended, and form of Stock Option Agreement.
- 10.7* 2006 Stock Plan, as amended.
- 10.8 (s) Sublease dated September 29, 2004, between the Registrant and SafeNet, Inc.
- 10.9 (t)* Form of 2006 Stock Option Agreement under the 2006 Stock Plan.
- 10.10* Form of Notice of Award of Stock Purchase Right and Stock Purchase Agreement under the 2006 Stock Plan.
- 10.11 Lease dated May 1, 2009, between the Registrant and SILICON VALLEY CA-I, LLC.
- 21.1 Subsidiaries of Registrant.
- 23.1 Consent of Independent Registered Public Accounting Firm.
- 23.2 Consent of Independent Registered Public Accounting Firm.
- 24.1 Power of Attorney (included on page 75).
- 31.1 Certification of Chief Executive Officer of the Registrant pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer of the Registrant pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer of the Registrant pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer of the Registrant pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Indicates management contract or compensatory plan or arrangement.

- (a) Incorporated by reference to the same numbered exhibits to the Registrant's Registration Statement on Form S-1 (Commission File No. 333-15627), as amended, declared effective July 1, 1997.
- (b) Incorporated by reference to exhibit 3.3 to the Registrant's Form 10-K filed May 24, 2001 (File No. 000-21783).
- (c) Incorporated by reference to exhibit 3.1 to the Registrant's Form 10-Q filed October 25, 2001 (File No. 000-21783).
- (d) Incorporated by reference to exhibit 3.2 to the Registrant's Report on Form 8-K filed December 19, 2007 (File No. 000-21783).
- (e) Incorporated by reference to the same numbered exhibits to the Registrant's Report on Form 8-K filed June 22, 2004 (File No. 000-21783).
- (f) Incorporated by reference to the same numbered exhibits to the Registrant's Report on Form 8-K filed October 1, 2004 (File No. 000-21783).
- (g) Incorporated by reference to the same numbered exhibit to the Registrant's Report on Form 8-K filed July 31, 2003 (File No. 000-21783).
- (h) Incorporated by reference to exhibit 4.3 to the Registrant's Report on Form 8-K/A filed March 8, 2005 (File No. 000-21783).
- (i) Incorporated by reference to exhibit 4.4 to the Registrant's Report on Form 8-K/A filed March 8, 2005 (File No. 000-21783).
- (j) Incorporated by reference to exhibit 4.3 to the Registrant's Report on Form 8-K/A filed December 20, 2005 (File No. 000-21783).
- (k) Incorporated by reference to exhibit 4.5 to the Registrant's Report on Form 8-K/A filed December 20, 2005 (File No. 000-21783).
- (l) Incorporated by reference to exhibit 4.1.1 to the Registrant's Report on Form 8-K filed August 31, 2007 (File No. 000-21783).
- (m) Incorporated by reference to exhibit 4.3.1 to the Registrant's Report on Form 8-K filed on August 31, 2007 (File No. 000-21783).
- (n) Incorporated by reference to exhibit 4.1 to the Registrant's Form S-8 filed November 7, 2000 (File No. 333-49410).
- (o) Incorporated by reference to exhibit 10.5 to the Registrant's Form S-8 filed September 26, 2006 (File No. 333-137-599).
- (p) Incorporated by reference to exhibit 10.3 to the Registrant's Form S-8 filed August 28, 2003 (File No. 333-108290).
- (q) Incorporated by reference to exhibit 4.2 to the Registrant's Form S-8 filed November 7, 2000 (File No. 333-49410).
- (r) Incorporated by reference to exhibit 4.1 to the Registrant's Form S-8 filed July 17, 2000 (File No. 333-41594).
- (s) Incorporated by reference to exhibit 10.1 to the Registrant's Report on Form 8-K filed October 5, 2004 (File No. 000-21783).
- (t) Incorporated by reference to exhibit 10.1 to the Registrant's Form 10-Q filed February 7, 2007 (File No. 000-21783).

8X8, INC.
2006 STOCK PLAN
(as amended October 28, 2008)

1. **ESTABLISHMENT, PURPOSE AND TERM OF PLAN.**

1.1 **Establishment.** The 8x8, Inc. 2006 Stock Plan (the “*Plan*”) is hereby established effective as of May 23, 2006.

1.2 **Purpose.** The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Participating Company Group and by motivating such persons to contribute to the growth and profitability of the Participating Company Group. The Company intends that the Plan comply with Section 409A of the Code (including any amendments or replacements of such section), and the Plan shall be so construed.

1.3 **Term of Plan.** The Plan shall continue in effect until the earlier of its termination by the Board or the date on which all of the shares of Stock available for issuance under the Plan have been issued and all restrictions on such shares under the terms of the Plan and the agreements evidencing Awards granted under the Plan have lapsed. However, to the extent required by applicable law, all Awards shall be granted, if at all, within ten (10) years from the earlier of the date the Plan is adopted by the Board or the date the Plan is duly approved by the stockholders of the Company.

2. **DEFINITIONS AND CONSTRUCTION.**

2.1 **Definitions.** Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) “*Affiliate*” means (i) an entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) an entity, other than a Subsidiary Corporation, that is controlled by the Company directly or indirectly through one or more intermediary entities. For this purpose, the term “control” (including the term “controlled by”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the relevant entity, whether through the ownership of voting securities, by contract or otherwise; or shall have such other meaning assigned such term for the purposes of registration on Form S-8 under the Securities Act.

(b) “*Award*” means an Option or Stock Purchase Right granted under the Plan.

(c) “*Board*” means the Board of Directors of the Company. If one or more Committees have been appointed by the Board to administer the Plan, “*Board*” also means such Committee(s).

(d) “**Change in Control**” means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant’s Option Agreement, Stock Purchase Agreement or written contract of employment or service, the occurrence of any of the following:

(i) an Ownership Change Event or a series of related Ownership Change Events (collectively, a “**Transaction**”) in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company’s voting stock immediately before the Transaction, direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or, in the case of an Ownership Change Event described in Section 2.1(t)(iii), the entity to which the assets of the Company were transferred (the “**Transferee**”), as the case may be; or

(ii) the liquidation or dissolution of the Company.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board shall have the right to determine whether multiple sales or exchanges of the voting securities of the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive.

(e) “**Code**” means the Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder.

(f) “**Committee**” means the compensation committee or other committee of the Board duly appointed to administer the Plan and having such powers as shall be specified by the Board. Unless the powers of the Committee have been specifically limited, the Committee shall have all of the powers of the Board granted herein, including, without limitation, the power to amend or terminate the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law.

(g) “**Company**” means 8x8, Inc., a Delaware corporation, or any successor corporation thereto.

(h) “**Consultant**” means a person engaged to provide consulting or advisory services (other than as an Employee or a Director) to a Participating Company.

(i) “**Director**” means a member of the Board or of the board of directors of any other Participating Company.

(j) “**Disability**” means the inability of the Participant, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of the Participant’s position with the Participating Company Group because of the sickness or injury of the Participant.

(k) “**Employee**” means any person treated as an employee (including an Officer or a Director who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of Section 422 of the Code; provided, however, that neither service as a Director nor payment of a director’s fee shall be sufficient to constitute employment for purposes of the Plan. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual’s employment or termination of employment, as the case may be. For purposes of an individual’s rights, if any, under the terms of the Plan as of the time of the Company’s determination of whether or not the individual is an Employee, all such determinations by the Company shall be final, binding and conclusive as to such rights, if any, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination as to such individual’s status as an Employee.

(l) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

(m) “**Fair Market Value**” means, as of any date, the value of a share of Stock or other property as determined by the Board, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

(i) If, on such date, the Stock is listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock (or the mean of the closing bid and asked prices of a share of Stock if the Stock is so quoted instead) as quoted on the Nasdaq National Market, The Nasdaq Capital Market or such other national or regional securities exchange or market system constituting the primary market for the Stock, as reported in The Wall Street Journal or such other source as the Company deems reliable. If the relevant date does not fall on a day on which the Stock has traded on such securities exchange or market system, the date on which the Fair Market Value shall be established shall be the last day on which the Stock was so traded prior to the relevant date, or such other appropriate day as shall be determined by the Board, in its discretion.

(ii) If, on such date, the Stock is not listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be as determined by the Board in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse, and subject to compliance with Section 409A of the Code.

(n) “**Incentive Stock Option**” means an Option intended to be (as set forth in the Option Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code.

(o) “**Insider**” means an Officer, a Director of the Company or other person whose transactions in Stock are subject to Section 16 of the Exchange Act.

(p) “**Nonstatutory Stock Option**” means an Option not intended to be (as set forth in the Option Agreement) or which does not qualify as an Incentive Stock Option.

(q) “**Officer**” means any person designated by the Board as an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(r) “**Option**” means a right granted under Section 6 to purchase Stock pursuant to the terms and conditions of the Plan. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(s) “**Option Agreement**” means a written agreement between the Company and a Participant setting forth the terms, conditions and restrictions of the Option granted to the Participant and any shares acquired upon the exercise thereof. An Option Agreement may consist of a form of “Notice of Grant of Stock Option” and a form of “Stock Option Agreement” incorporated therein by reference, or such other form or forms as the Board may approve.

(t) “**Ownership Change Event**” means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company.

(u) “**Parent Corporation**” means any present or future “parent corporation” of the Company, as defined in Section 424(e) of the Code.

(v) “**Participant**” means any eligible person who has been granted one or more Awards.

(w) “**Participating Company**” means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.

(x) “**Participating Company Group**” means, at any point in time, all entities collectively which are then Participating Companies.

(y) “**Rule 16b-3**” means Rule 16b-3 under the Exchange Act, as amended from time to time, or any successor rule or regulation.

(z) “**Securities Act**” means the Securities Act of 1933, as amended.

(aa) “**Service**” means a Participant’s employment or service with the Participating Company Group, whether in the capacity of an Employee, a Director or a Consultant. A Participant’s Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders Service to the Participating Company Group or a change in the Participating Company for which the Participant renders such Service, provided that there is no interruption or termination of the Participant’s Service. Furthermore, a

Participant's Service shall not be deemed to have terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company; provided, however, that if any such leave exceeds ninety (90) days, on the one hundred eighty-first (181st) day following the commencement of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and instead shall be treated thereafter as a Nonstatutory Stock Option unless the Participant's right to return to Service is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, a leave of absence shall not be treated as Service for purposes of determining vesting under the Participant's Option Agreement or Stock Purchase Agreement. Except as otherwise provided by the Board, in its discretion, the Participant's Service shall be deemed to have terminated either upon an actual termination of Service or upon the corporation for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant's Service has terminated and the effective date of and reason for such termination.

(bb) "**Stock**" means the common stock of the Company, as adjusted from time to time in accordance with Section 4.2.

(cc) "**Stock Purchase Agreement**" means a written agreement between the Company and a Participant setting forth terms, conditions and restrictions of the Stock Purchase Right granted to the Participant and any shares acquired upon the exercise thereof. A Stock Purchase Agreement may consist of a form of "Notice of Grant of Stock Purchase Right" and a form of "Stock Purchase Agreement" incorporated therein by reference, or such other form or forms as the Board may approve from time to time.

(dd) "**Stock Purchase Right**" means a right granted under Section 7 to purchase Stock pursuant to the terms and conditions of the Plan.

(ee) "**Subsidiary Corporation**" means any present or future "subsidiary corporation" of the Company, as defined in Section 424(f) of the Code.

(ff) "**Ten Percent Stockholder**" means a person who, at the time an Award is granted to such person, owns stock possessing more than ten percent (10%) of the total combined voting power (as defined in Section 194.5 of the California Corporations Code) of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

2.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

3. **ADMINISTRATION.**

3.1 **Administration by the Board.** The Plan shall be administered by the Board. All questions of interpretation of the Plan or of any Award shall be determined by the

Board, and such determinations shall be final and binding upon all persons having an interest in the Plan or such Award.

3.2 **Authority of Officers.** Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, determination or election.

3.3 **Powers of the Board.** In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Board shall have the full and final power and authority, in its discretion:

(a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock to be subject to each Award;

(b) to designate Options as Incentive Stock Options or Nonstatutory Stock Options;

(c) to determine the Fair Market Value of shares of Stock or other property;

(d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired upon the exercise thereof, including, without limitation, (i) the exercise price of the Award, (ii) the method of payment for shares purchased upon the exercise of the Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with the Award or such shares, including by the withholding or delivery of shares of stock, (iv) the timing, terms and conditions of the exercisability of the Award or the vesting of any shares acquired upon the exercise thereof, (v) the time of the expiration of the Award, (vi) the effect of the Participant's termination of Service on any of the foregoing, and (vii) all other terms, conditions and restrictions applicable to the Award or such shares not inconsistent with the terms of the Plan;

(e) to approve one or more forms of Option Agreement and Stock Purchase Agreement;

(f) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired upon the exercise thereof;

(g) to accelerate, continue, extend or defer the exercisability of any Award or the vesting of any shares acquired upon the exercise thereof, including with respect to the period following a Participant's termination of Service;

(h) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt supplements to, or alternative versions of, the Plan, including, without limitation, as the Board deems necessary or desirable to comply with the laws of, or to accommodate the tax policy or custom of, foreign jurisdictions whose citizens may be granted Awards; and

(i) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Option Agreement or Stock Purchase Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Board may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law; and

(j) to create such plans or subplans as may be necessary or advisable to allow the grant of Awards under the Plan in non-United States jurisdictions or to non-United States taxpayers.

3.4 Administration with Respect to Insiders. With respect to participation by Insiders in the Plan, at any time that any class of equity security of the Company is registered pursuant to Section 12 of the Exchange Act, the Plan shall be administered in compliance with the requirements, if any, of Rule 16b-3.

3.5 Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or officers or employees of the Participating Company Group, members of the Board and any officers or employees of the Participating Company Group to whom authority to act for the Board or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

4. SHARES SUBJECT TO PLAN.

4.1 Maximum Number of Shares Issuable. Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be seven million (7,000,000) which shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof. If an outstanding Award for any reason expires or is terminated or canceled or if shares of Stock are acquired upon the exercise of an Award subject to a Company repurchase option and are repurchased by the Company at the Participant's exercise or purchase price, the shares of Stock allocable to the unexercised portion of such Award or such repurchased shares of Stock shall again be available for issuance under the Plan. However, except as adjusted pursuant to Section 4.2, in no event shall more than seven million (7,000,000) shares of Stock be available for issuance pursuant to the exercise of Incentive Stock Options (the "ISO Share Limit"). Notwithstanding the foregoing, at any such time as the offer and sale of securities pursuant to the Plan is subject to compliance with Section 260.140.45 of Title 10 of the California Code of Regulations ("**Section 260.140.45**"), the total number of shares of Stock issuable upon the exercise of all outstanding Awards (together with

options outstanding under any other stock plan of the Company) and the total number of shares provided for under any stock bonus or similar plan of the Company shall not exceed thirty percent (30%) (or such other higher percentage limitation as may be approved by the stockholders of the Company pursuant to Section 260.140.45) of the then outstanding shares of the Company as calculated in accordance with the conditions and exclusions of Section 260.140.45.

4.2 Adjustments for Changes in Capital Structure. Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number and class of shares subject to the Plan and to any outstanding Awards, in the ISO Share Limit set forth in Section 5.3(a), and in the exercise or purchase price per share of any outstanding Awards in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section 4.2 shall be rounded down to the nearest whole number, and in no event may the exercise price of any Award be decreased to an amount less than the par value, if any, of the stock subject to the Award. Such adjustments shall be determined by the Board, and its determination shall be final, binding and conclusive.

5. ELIGIBILITY AND OPTION LIMITATIONS.

5.1 Persons Eligible for Awards. Awards may be granted only to Employees, Consultants and Directors of a Participating Company. Eligible persons may be granted more than one (1) Award. However, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

5.2 Option Grant Restrictions.

(a) An Incentive Stock Option may be granted only to a person who is an Employee on the effective date of grant of the Option to such person. Any person who is not an Employee on the effective date of the grant of an Option to such person may be granted only a Nonstatutory Stock Option.

5.3 Fair Market Value Limitation. To the extent that options designated as Incentive Stock Options (granted under all stock plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portions of such options which exceed such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section 5.3, options designated as Incentive

Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the time the option with respect to such stock is granted. If the Code is amended to provide for a different limitation from that set forth in this Section 5.3, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section 5.3, the Participant may designate which portion of such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Separate certificates representing each such portion shall be issued upon the exercise of the Option.

6. **TERMS AND CONDITIONS OF OPTIONS.**

Options shall be evidenced by Option Agreements specifying the number of shares of Stock covered thereby, in such form as the Board shall from time to time establish. No Option or purported Option shall be a valid and binding obligation of the Company unless evidenced by a fully executed Option Agreement. Option Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

6.1 **Exercise Price.** The exercise price for each Option shall be established in the discretion of the Board; provided, however, to the extent required by applicable law, that (a) the exercise price per share for an Incentive Stock Option shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option; (b) the exercise price per share for a Nonstatutory Stock Option shall be not less than eighty-five percent (85%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option, and (c) no Option granted to a Ten Percent Stockholder shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock Option) may be granted with an exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner qualifying under the provisions of Section 424(a) of the Code.

6.2 **Exercisability and Term of Options.** Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Board and set forth in the Option Agreement evidencing such Option; provided, however, to the extent required by applicable law, that (a) no Option shall be exercisable after the expiration of ten (10) years after the effective date of grant of such Option, (b) no Incentive Stock Option granted to a Ten Percent Stockholder shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option, and (c) with the exception of an Option granted to an Officer, a Director or a Consultant, no Option shall become exercisable at a rate less than twenty percent (20%) per year over a period of five (5) years from the effective date of grant of such Option, subject to the Participant's continued Service. Subject to the foregoing, unless otherwise specified by the Board in the grant of an Option, any Option granted hereunder shall terminate ten (10) years

after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions.

6.3 Payment of Exercise Price.

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or cash equivalent, (ii) by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant having a Fair Market Value not less than the exercise price, (iii) by delivery of a properly executed notice together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System) (a “**Cashless Exercise**”), (iv) provided that the Participant is an Employee (unless otherwise not prohibited by law, including, without limitation, any regulation promulgated by the Board of Governors of the Federal Reserve System) and in the Company’s sole discretion at the time the Option is exercised, by delivery of the Participant’s promissory note in a form approved by the Company for the aggregate exercise price, provided that, to the extent required by applicable law, the Participant shall pay in cash that portion of the aggregate exercise price not less than the par value of the shares being acquired, (v) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (vi) by any combination thereof. The Board may at any time or from time to time, by approval of or by amendment to the standard forms of Option Agreement described in Section 8, or by other means, grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

(b) **Limitations on Forms of Consideration.**

(i) **Tender of Stock.** Notwithstanding the foregoing, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company’s stock. Unless otherwise provided by the Board, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for more than six (6) months (and were not used for another Option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(ii) **Cashless Exercise.** The Company reserves, at any and all times, the right, in the Company’s sole and absolute discretion, to establish, decline to approve or terminate any program or procedures for the exercise of Options by means of a Cashless Exercise.

(iii) **Payment by Promissory Note.** No promissory note shall be permitted if the exercise of an Option using a promissory note would be a violation of any law. Any permitted promissory note shall be on such terms as the Board shall determine. The

6.4 Effect of Termination of Service.

(a) **Option Exercisability.** Subject to earlier termination of the Option as otherwise provided herein and unless otherwise provided by the Board in the grant of an Option and set forth in the Option Agreement, an Option shall be exercisable after a Participant's termination of Service to the extent it is then vested only during the applicable time period determined in accordance with this Section 6.4 and thereafter shall terminate:

(i) **Disability.** If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) for a minimum period of six (6) months to the extent required by applicable law (or such other legal period of time as determined by the Board, in its discretion) after the date on which the Participant's Service terminated, but in any event no later than the date of expiration of the Option's term as set forth in the Option Agreement evidencing such Option (the "**Option Expiration Date**").

(ii) **Death.** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death for a minimum period of six (6) months to the extent required by applicable law (or such other legal period of time as determined by the Board, in its discretion) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months (or such longer period of time as determined by the Board, in its discretion) after the Participant's termination of Service.

(iii) **Other Termination of Service.** If the Participant's Service terminates for any reason, except Disability or death, the Option, to the extent unexercised and exercisable by the Participant on the date on which the Participant's Service terminated, may be exercised by the Participant for a minimum period of thirty (30) days to the extent required by applicable law (or such other legal period of time as determined by the Board, in its discretion) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, if the exercise of an Option within the applicable time periods set forth in

Section 6.4(a) is prevented by the provisions of Section 11 below, the Option shall remain exercisable until three (3) months (or such longer period of time as determined by the Board, in its discretion) after the date the Participant is notified by the Company that the Option is exercisable, but in any event no later than the Option Expiration Date.

(c) ***Extension if Participant Subject to Section 16(b).***

Notwithstanding the foregoing, if a sale within the applicable time periods set forth in Section 6.4(a) of shares acquired upon the exercise of the Option would subject the Participant to suit under Section 16(b) of the Exchange Act, the Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which a sale of such shares by the Participant would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after the Participant's termination of Service, or (iii) the Option Expiration Date.

6.5 Transferability of Options. To the extent required by applicable law, during the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. No Option shall be assignable or transferable by the Participant, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Board, in its discretion, and set forth in the Option Agreement evidencing such Option, a Nonstatutory Stock Option shall be assignable or transferable subject to the applicable limitations, if any, described in Section 260.140.41 of Title 10 of the California Code of Regulations, Rule 701 under the Securities Act, and the General Instructions to Form S-8 Registration Statement under the Securities Act.

7. TERMS AND CONDITIONS OF STOCK PURCHASE RIGHTS.

Stock Purchase Rights shall be evidenced by Stock Purchase Agreements, specifying the number of shares of Stock covered thereby, in such form as the Board shall from time to time establish. No Stock Purchase Right or purported Stock Purchase Right shall be a valid and binding obligation of the Company unless evidenced by a fully executed Stock Purchase Agreement. Stock Purchase Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

7.1 Purchase Price. The purchase price under each Stock Purchase Right shall be established by the Board; provided, however, to the extent required by applicable law, that (a) the purchase price per share shall be at least eighty-five percent (85%) of the Fair Market Value of a share of Stock either on the effective date of grant of the Stock Purchase Right or on the date on which the purchase is consummated and (b) the purchase price per share under a Stock Purchase Right granted to a Ten Percent Stockholder shall be at least one hundred percent (100%) of the Fair Market Value of a share of Stock either on the effective date of grant of the Stock Purchase Right or on the date on which the purchase is consummated.

7.2 Purchase Period. A Stock Purchase Right shall be exercisable within such period as shall be established by the Board.

7.3 Payment of Purchase Price. Except as otherwise provided below, payment of the purchase price for the number of shares of Stock being purchased pursuant to any Stock Purchase Right shall be made (a) in cash, by check, or cash equivalent, (b) in the form of

the Participant's past service rendered to a Participating Company or for its benefit having a value not less than the aggregate purchase price of the shares being acquired, (c) by such other consideration as may be approved by the Board from time to time to the extent permitted by applicable law, or (d) by any combination thereof. The Board may at any time or from time to time, by adoption of or by amendment to the standard form of Stock Purchase Agreement described in Section 8, or by other means, grant Stock Purchase Rights which do not permit all of the foregoing forms of consideration to be used in payment of the purchase price or which otherwise restrict one or more forms of consideration.

7.4 **Vesting and Restrictions on Transfer.** Shares issued pursuant to any Stock Purchase Right may or may not be made subject to vesting conditioned upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria (the "**Vesting Conditions**") as shall be established by the Board and set forth in the Stock Purchase Agreement evidencing such Award. During any period (the "**Restriction Period**") in which shares acquired pursuant to a Stock Purchase Right remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to an Ownership Change Event, as defined in Section 9.1, or as provided in Section 7.5. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

7.5 [INTENTIONALLY OMITTED]

7.6 **Nontransferability of Stock Purchase Rights.** To the extent required by applicable law, rights to acquire shares of Stock pursuant to a Stock Purchase Right may not be assigned or transferred in any manner except by will or the laws of descent and distribution, and, during the lifetime of the Participant, shall be exercisable only by the Participant.

8. STANDARD FORMS OF AWARD AGREEMENTS.

8.1 **Option Agreement.** Unless otherwise provided by the Board at the time the Option is granted, an Option shall comply with and be subject to the terms and conditions set forth in the form of Option Agreement approved by the Board concurrently with its adoption of the Plan and as amended.

8.2 **Stock Purchase Agreement.** Unless otherwise provided by the Board at the time the Stock Purchase Right is granted, a Stock Purchase Right shall be subject to the terms and conditions set forth in the form of Stock Purchase Agreement approved by the Board concurrently with its adoption of the Plan and as amended.

8.3 **Authority to Vary Terms.** The Board shall have the authority from time to time to vary the terms of any standard form of agreement described in this Section 8 either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions

of any such new, revised or amended standard form or forms of agreement are not inconsistent with the terms of the Plan.

9. **CHANGE IN CONTROL.**

9.1 **Effect of Change in Control on Options.**

(a) ***Accelerated Vesting.*** Notwithstanding any other provision of the Plan to the contrary, the Board, in its sole discretion, may provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability and vesting in connection with such Change in Control of any or all outstanding Options and shares acquired upon the exercise of such Options, subject to compliance with Section 409A of the Code.

(b) ***Assumption or Substitution of Options.*** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the “**Acquiror**”), may, without the consent of any Participant, either assume or continue the Company’s rights and obligations under outstanding Options or substitute for outstanding Options substantially equivalent options for the Acquiror’s stock. Any Options which are neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of an Option prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of the Option Agreement evidencing such Option except as otherwise provided in such Option Agreement.

(c) ***Cash-Out of Options.*** The Board may, in its sole discretion and without the consent of any Participant, determine that, upon the occurrence of a Change in Control, each or any Option outstanding immediately prior to the Change in Control shall be canceled in exchange for a payment with respect to each vested share (and each unvested share, if so determined by the Board) of Stock subject to such canceled Option in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control over the exercise price per share under such Option (the “**Spread**”). In the event such determination is made by the Board, the Spread (reduced by applicable withholding taxes, if any) shall be paid to Participants in respect of their canceled Options as soon as practicable following the date of the Change in Control and in respect of the unvested portion of their canceled Options in accordance with the vesting schedule applicable to such Options as in effect prior to the Change in Control.

9.2 **Effect of Change in Control on Stock Purchase Right.** In the event of a Change in Control, the Acquiror, may, without the consent of any Participant, either assume or continue the Company’s rights and obligations under outstanding Stock Purchase Rights or substitute for outstanding Stock Purchase Rights substantially equivalent purchase rights for the Acquiror’s stock. Any Stock Purchase Rights which are neither assumed or continued by the

Acquiror in connection with the Change in Control nor exercised as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the date of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of a Stock Purchase Right prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of the Stock Purchase Agreement evidencing such Stock Purchase Right except as otherwise provided in such Stock Purchase Agreement.

9.3 **Federal Excise Tax Under Section 4999 of the Code.**

(a) ***Excess Parachute Payment.*** In the event that any acceleration of vesting pursuant to an Award and any other payment or benefit received or to be received by a Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an “excess parachute payment” under Section 280G of the Code, the Participant may elect, in his or her sole discretion, to reduce the amount of any acceleration of vesting called for under the Award in order to avoid such characterization.

(b) ***Determination by Independent Accountants.*** To aid the Participant in making any election called for under Section 9.3(a), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an “excess parachute payment” to the Participant as described in Section 9.3(a), the Company shall request a determination in writing by independent public accountants selected by the Company (the “***Accountants***”). As soon as practicable thereafter, the Accountants shall determine and report to the Company and the Participant the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Accountants may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determination. The Company shall bear all fees and expenses the Accountants may reasonably charge in connection with their services contemplated by this Section 9.3(b).

10. **TAX WITHHOLDING.**

10.1 **Tax Withholding in General.** The Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, including by means of a Cashless Exercise of an Option, to make adequate provision for, the federal, state, local and foreign taxes (including any social insurance tax), if any, required by law to be withheld by the Participating Company Group with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock or to release shares of Stock from an escrow established pursuant to an Option Agreement or Stock Purchase Agreement until the Participating Company Group’s tax withholding obligations have been satisfied by the Participant.

10.2 **Withholding in Shares.** The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise of an

Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of the Participating Company Group. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates.

11. **COMPLIANCE WITH SECURITIES LAW.**

The grant of Awards and the issuance of shares of Stock upon exercise of Awards shall be subject to compliance with all applicable requirements of federal, state and foreign law with respect to such securities. Awards may not be exercised if the issuance of shares of Stock upon exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised unless (a) a registration statement under the Securities Act shall at the time of exercise of the Award be in effect with respect to the shares issuable upon exercise of the Award or (b) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares hereunder shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to the exercise of any Award, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

12. **AMENDMENT OR TERMINATION OF PLAN.**

The Board may amend, suspend or terminate the Plan at any time. However, subject to changes in applicable law, regulations or rules that would permit otherwise, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Section 4.2), (b) no change in the class of persons eligible to receive Incentive Stock Options, and (c) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule, including the rules of any stock exchange or market system upon which the Stock may then be listed. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Board. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may adversely affect any then outstanding Award without the consent of the Participant. Notwithstanding any other provision of the Plan to the contrary, the Board may, in its sole and absolute discretion and without the consent of any participant, amend the Plan or any Award agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Award agreement to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A of the Code.

13. **MISCELLANEOUS PROVISIONS.**

13.1 **Repurchase Rights.** Shares issued under the Plan may be subject to a right of first refusal, one or more repurchase options, or other conditions and restrictions as determined by the Board in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

13.2 **Provision of Information.** To the extent required by applicable law, at least annually, copies of the Company's balance sheet and income statement for the just completed fiscal year shall be made available to each Participant and purchaser of shares of Stock upon the exercise of an Award. The Company shall not be required to provide such information to key employees whose duties in connection with the Company assure them access to equivalent information.

13.3 **Rights as Employee, Consultant or Director.** No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, Consultant or Director or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award shall in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

13.4 **Rights as a Stockholder.** A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.2 or another provision of the Plan.

13.5 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

13.6 **Retirement and Welfare Plans.** Neither Awards made under this Plan nor shares of Stock or cash paid pursuant to such Awards may be included as "compensation" for purposes of computing the benefits payable to any Participant under any Participating Company's retirement plans (both qualified and non-qualified) or welfare benefit plans unless such other plan expressly provides that such compensation shall be taken into account in computing a Participant's benefit.

13.7 **Severability.** If any one or more of the provisions (or any part thereof) of this Plan shall be held invalid, illegal or unenforceable in any respect, such provision shall be modified so as to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) of the Plan shall not in any way be affected or impaired thereby.

13.8 **No Constraint on Corporate Action.** Nothing in this Plan shall be construed to: (a) limit, impair, or otherwise affect the Company's or another Participating Company's right or power to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its business or assets; or (b) limit the right or power of the Company or another Participating Company to take any action which such entity deems to be necessary or appropriate.

13.9 **Choice of Law.** Except to the extent governed by applicable federal law, the validity, interpretation, construction and performance of the Plan and each Award Agreement shall be governed by the laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within the State of Delaware. Any proceeding arising out of or relating to an Award Agreement or the Plan may be brought only in the state or federal courts located in the State of Delaware.

13.10 **Stockholder Approval.** To the extent required by applicable law, the Plan or any increase in the maximum aggregate number of shares of Stock issuable thereunder as provided in Section 4.1 (the "**Authorized Shares**") shall be approved by a majority of the outstanding securities of the Company entitled to vote within twelve (12) months before or after the date of adoption thereof by the Board. Awards granted prior to security holder approval of the Plan or in excess of the Authorized Shares previously approved by the security holders shall become exercisable no earlier than the date of security holder approval of the Plan or such increase in the Authorized Shares, as the case may be.

PLAN HISTORY

May 23, 2006 Board adopts Plan, with an initial reserve of seven million (7,000,000) shares.

September 18, 2006 Stockholders of the Company approve Plan

[FORM OF]
NOTICE OF AWARD OF STOCK PURCHASE RIGHT
AND
STOCK PURCHASE AGREEMENT

UNDER THE 8x8, INC. 2006 STOCK PLAN

Name of Participant: _____

Award Date: _____

Number of Shares: _____

1. Grant of Stock Purchase Right

8x8, Inc., a Delaware corporation (the “**Company**”), hereby grants to Participant a Stock Purchase Right (as defined in Section 2.1 of the Company’s 2006 Stock Plan (the “**Plan**”)) covering the number of shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”) set forth above (the “**Shares**”), subject to the terms and conditions of this Agreement (the “**Agreement**”) and the Plan. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Agreement.

2. Vesting

No portion of the Shares subject to the Stock Purchase Right will be issued to Participant until such portion has vested.

Alternative 1: Except as otherwise provided in this Agreement or under the Plan, the Shares shall vest and become exercisable with respect to one-fourth of the Shares on the first anniversary of the Award Date (set forth above) and as to [one thirty-sixth of the remaining Shares subject to the Stock Purchase Right at the end of each successive month thereafter] or [one-fourth of the remaining Shares subject to the Stock Purchase Right on each successive anniversary of the Award Date thereafter] until all of the Shares subject to the Stock Purchase Right have vested, subject to Participant’s continuing status as an Employee.

Alternative 2: Except as otherwise provided in this Agreement or under the Plan, the Shares shall vest and become exercisable contingent upon successfully achieving the [_____] performance goal of [_____] , subject to Participant’s continuing status as an Employee. There is a minimum threshold set at [__]% of [_____]. No Shares will vest below the [__]% attainment level. For performance at and above [__]%, the number of Shares that vest will be based on a graduated slope, to be capped at [__]% attainment as per Schedule 1.

3. Exercise of Stock Purchase Right

(a) Participant hereby agrees to purchase from the Company, and the Company hereby agrees to sell to Participant, any and all vested Shares subject to the Stock Purchase Right as they vest from time to time, in consideration of services rendered to the Company by Participant and otherwise in accordance with the terms and conditions of this Agreement and the Plan. Immediately upon such vesting from time to time of Shares subject to the Stock Purchase Right: (1) the Stock Purchase Right shall be deemed to be exercised to the extent of the vested Shares as of the date of such vesting; and (2) the Company shall issue the vested Shares to Participant in consideration of services rendered to the Company by Participant, in accordance with Section 7.3(b) of the Plan.

(b) As soon as practicable after the vesting of any and all Shares, Participant's name shall be entered as the stockholder of record on the books and records of the transfer agent for the Company with respect to the vested Shares subject to compliance with all requirements under applicable laws or regulations in connection with such issuance and with the requirements of this Agreement and of the Plan. The determination of the Committee as to such compliance shall be final and binding on Participant.

(c) No fraction of a Share shall be delivered to Participant at any time. In the event that, from time to time, the number of Shares that vest and would otherwise be deliverable to Participant includes a fraction of a Share, the number of Shares that shall be deliverable to Participant shall be adjusted to the nearest smaller whole number of Shares.

(d) Until such time as any Shares subject to the Stock Purchase Right have vested and been issued to Participant pursuant to this Section 3, Participant shall not have any rights as a holder of such Shares, including, but not limited to, voting rights, rights to receive dividends and other distributions with respect to Common Stock, and stockholder inspection rights.

4. Termination of Service

Participant's right to purchase any Shares that are not vested as of the date on which Participant's Service has ceased shall automatically terminate on such date, and the Stock Purchase Right shall be canceled as provided under the Plan and shall be of no further force and effect. In the event of termination of Service, the Company, as soon as practicable following the effective date of termination, shall issue Shares to Participant (or Participant's designated beneficiary or estate executor in the event of Participant's death) with respect to any Shares which, as of the effective date of termination of Service, have vested but for which Shares had not yet been issued to Participant.

5. Adjustments

Subject to any required action by the stockholders of the Company, the number of Shares covered by the Stock Purchase Right shall be proportionately adjusted for certain corporate actions in accordance with and pursuant to Section 4.2 of the Plan. Such adjustments shall be made by the Committee, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or purchase price of Shares subject to the Stock Purchase Right.

6. Incorporation of General Terms and Conditions

Notwithstanding anything herein to the contrary, this Award shall be subject to and governed by all the terms and conditions of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified in this Agreement.

7. Transferability

This Agreement, and the right to purchase Shares pursuant to the Stock Purchase Right, may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant. The terms of the Stock Purchase Right shall be binding upon the executors, administrators, heirs, successors and assigns of Participant.

8. Term of Stock Purchase Right

The Stock Purchase Right may not be exercised more than ten (10) years from the Award Date set forth in this Agreement. The Shares may be purchased during the term of the Stock Purchase Right only in accordance with the Plan and the terms of this Agreement.

9. Not Employment Contract

Nothing in this Agreement shall confer upon Participant any right to continue in the employ of the Company or shall interfere with or restrict in any way the rights of the Company, which are hereby expressly reserved, to discharge Participant at any time for any reason whatsoever, with or without cause, subject to the provisions of applicable law.

10. Income Tax Withholding

(a) Participant hereby authorizes the Company to withhold shares of Common Stock from the Shares to be issued pursuant hereto in order to satisfy the minimum tax withholding obligation with respect to Participant.

(b) Participant authorizes the Company to withhold in accordance with applicable law from any compensation payable to him or her any taxes required to be withheld by federal, state or local laws as a result of the exercise of the Stock Purchase Right.

(b) Any adverse consequences incurred by Participant with respect to any tax in connection with the award of the Stock Purchase Right or the issuance of Shares to Participant pursuant thereto, shall be the sole responsibility of Participant.

11. Change in Control

In the event of a Change in Control, the Acquiror may, without the consent of Participant, either assume or continue the Company's rights and obligations under the Stock Purchase Right or substitute for the Stock Purchase Right a substantially equivalent purchase right for Acquiror's stock. If the Stock Purchase Right is neither assumed, continued or substituted by the Acquiror in connection with the Change in Control, the Stock Purchase Right shall terminate and cease to be outstanding effective as of the date of the Change in Control. Notwithstanding the foregoing, any and all shares of Common Stock acquired by Participant upon the vesting of Shares subject to the Stock Purchase Right prior to the Change in Control shall continue to be subject to all applicable provisions of this Agreement.

12. Miscellaneous

(a) Notice under this Agreement shall be given to the Company at its principal place of business, and shall be given to Participant at the address set forth below, or in either case at such other address as one party may subsequently furnish to the other party in writing.

(b) The Committee may amend the terms of this Agreement, prospectively or retroactively, provided that the Agreement as amended is consistent with the terms of the Plan, but no such amendment shall impair Participant's rights under this Agreement without Participant's consent.

(c) This Agreement shall be construed and enforced in accordance with the laws of Delaware, without regard to the conflicts of laws principles thereof.

(d) This Agreement shall be binding upon and inure to the benefit of any successor or assign of the Company and any executor, administrator, trustee, guardian or other legal representative of Participant.

(e) This Agreement may be executed in counterparts. This Agreement and the Plan together constitute the entire agreement between the parties relative to the subject matter of this Agreement, and supersede all communications, whether written or oral, relating to the subject matter of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective for all purposes between themselves as of the Award Date.

8X8, INC.

By:
Title:

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned.

Signature: _____

Date: _____

Participant's Name: _____

Address: _____

[Schedule 1

Performance-Based Vesting Schedule]

LEASE

**SILICON VALLEY CA-I, LLC,
a Delaware limited liability company,**

Landlord,

and

8X8, INC., a Delaware corporation,

Tenant

TABLE OF CONTENTS

	page
1. USE AND RESTRICTIONS ON USE	1
2. TERM	2
3. RENT	3
4. RENT ADJUSTMENTS	3
5. SECURITY DEPOSIT. [INTENTIONALLY OMITTED]	5
6. ALTERATIONS	5
7. REPAIR	6
8. LIENS	7
9. ASSIGNMENT AND SUBLETTING	7
10. INDEMNIFICATION	10
11. INSURANCE	10
12. WAIVER OF SUBROGATION	10
13. SERVICES AND UTILITIES	11
14. HOLDING OVER	11
15. SUBORDINATION	11
16. RULES AND REGULATIONS	12
17. REENTRY BY LANDLORD	12
18. DEFAULT	12
19. REMEDIES	13
20. TENANT’S BANKRUPTCY OR INSOLVENCY	14
21. QUIET ENJOYMENT	15
22. CASUALTY	15
23. EMINENT DOMAIN	16
24. SALE BY LANDLORD	17
25. ESTOPPEL CERTIFICATES	17
26. SURRENDER OF PREMISES	17
27. NOTICES	18
28. TAXES PAYABLE BY TENANT	18
29. RELOCATION OF TENANT. [INTENTIONALLY OMITTED]	18
30. PARKING	18
31. DEFINED TERMS AND HEADINGS	19
32. TENANT’S AUTHORITY	19
33. FINANCIAL STATEMENTS AND CREDIT REPORTS	20
34. COMMISSIONS	20
35. TIME AND APPLICABLE LAW	20
36. SUCCESSORS AND ASSIGNS	20
37. ENTIRE AGREEMENT	20
38. EXAMINATION NOT OPTION	20

TABLE OF CONTENTS
(continued)

	page
39. RECORDATION	20
40. OPTION TO RENEW	20
41. ACCELERATION OPTION	22
42. CONSULTANT FEE	22
43. ROOF SPACE FOR DISH/ANTENNA	23
44. RIGHT OF FIRST OPPORTUNITY	24
45. MONUMENT SIGNAGE	25
46. PREMISES SIGNAGE	25
47. TENANT’S SECURITY SYSTEM	26
48. LIMITATION OF LANDLORD’S LIABILITY	27

EXHIBIT A – FLOOR PLAN DEPICTING THE PREMISES

EXHIBIT A-1 – SITE PLAN

EXHIBIT B – INITIAL ALTERATIONS

EXHIBIT C – COMMENCEMENT DATE MEMORANDUM

EXHIBIT D – RULES AND REGULATIONS

EXHIBIT E – FORM OF EARLY POSSESSION AGREEMENT

EXHIBIT F – FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SILICON VALLEY PORTFOLIO LEASE

REFERENCE PAGES

BUILDING: 810 West Maude Avenue
Sunnyvale, California 94089

LANDLORD: **SILICON VALLEY CA-I, LLC,
a Delaware limited liability company**

LANDLORD'S ADDRESS: RREEF Management Company
3303 Octavius Dr., Ste. 102
Santa Clara, California 95054
Attention: Property Manager

WIRE INSTRUCTIONS AND/OR ADDRESS FOR RENT PAYMENT: Silicon Valley CA-I, LLC
Dept. 2095
P.O. Box 39000
San Francisco, California 94139

LEASE REFERENCE DATE: April 30, 2009

TENANT: **8X8, INC., a Delaware corporation**

TENANT'S NOTICE ADDRESS:

(a) As of beginning of Term: 810 West Maude Avenue
Sunnyvale, California 94089

(b) Prior to beginning of Term (if different): 3151 Jay Street
Santa Clara, California 95054

PREMISES ADDRESS: 810 West Maude Avenue
Sunnyvale, California 94089

PREMISES RENTABLE AREA: Approximately 51,680 sq. ft. (for outline of Premises see Exhibit A)

USE: Laboratory, light manufacturing and shipping of products and general office use, with such possible use as a 24/7 call center and network monitoring center.

SCHEDULED COMMENCEMENT DATE: September 1, 2009

TERM OF LEASE: Approximately thirty-six (36) months beginning on the Commencement Date and ending on the Termination Date. The period from the Commencement Date to the last day of the same month is the "Commencement Month."

TERMINATION DATE: The last day of the thirty-sixth (36th) full calendar month after (if the Commencement Month is not a full calendar month), or from and including (if the Commencement Month is a full calendar month), the Commencement Month, which Termination Date is estimated to be August 31, 2012.

--	--

ANNUAL RENT and MONTHLY INSTALLMENT OF RENT (Article 3):

Period		Rentable Square Footage	Annual Rent Per Square Foot	Annual Rent	Monthly Installment of Rent
from	through				
Month 1	Month 12	51,680	\$10.80	\$558,144.00	\$46,512.00
Month 13	Month 24	51,680	\$12.00	\$620,160.00	\$51,680.00
Month 25	Month 36	51,680	\$13.20	\$682,176.00	\$56,848.00

*Tenant shall not be required to pay Tenant’s Proportionate Share of Taxes and Expenses during the initial Term of this Lease only as provided in Section 4.6 of this Lease.

INITIAL ESTIMATED MONTHLY INSTALLMENT OF RENT ADJUSTMENTS (Article 4): \$0.00* (see note above and Section 4.6 of this Lease)

TENANT’S PROPORTIONATE SHARE: 100%
 SECURITY DEPOSIT: \$0.00
 ASSIGNMENT/SUBLETTING FEE: \$500.00
 PARKING: One hundred and eighty-nine (189) passes at no monthly parking charge (See Article on Parking)
 REAL ESTATE BROKER: Cornish & Carey, representing Landlord, and Jones Lang LaSalle, representing Tenant
 TENANT’S SIC CODE: 4813
 AMORTIZATION RATE: N/A

The Reference Pages information is incorporated into and made a part of the Lease. In the event of any conflict between any Reference Pages information and the Lease, the Lease shall control. The Lease includes Exhibits A through F, all of which are made a part of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have entered into the Lease as of the Lease Reference Date set forth above.

LANDLORD: **TENANT:**
SILICON VALLEY CA-I, LLC, **8X8, INC.,**
a Delaware limited liability company **a Delaware corporation**

By: RREEF Management Company,
 a Delaware corporation, its Authorized Agent

By: _____

Name: James H. Ida

Title: Vice President, District Manager

Dated: _____

By: _____

Name: Bryan R. Martin

Title: Chairman and CEO

Dated: _____

LEASE

By this Lease Landlord leases to Tenant and Tenant leases from Landlord the Premises in the Building as set forth and described on the Reference Pages. The Premises are depicted on the floor plan attached hereto as Exhibit A, and the Building is depicted on the site plan attached hereto as Exhibit A-1. The Reference Pages, including all terms defined thereon, are incorporated as part of this Lease.

1. USE AND RESTRICTIONS ON USE.

1.1 The Premises are to be used solely for the purposes set forth on the Reference Pages. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure, annoy, or disturb them, or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose, or commit any waste. Tenant shall not do, permit or suffer in, on, or about the Premises the sale of any alcoholic liquor without the written consent of Landlord first obtained. Tenant shall comply with all federal, state and city laws, codes, ordinances, rules and regulations (collectively "Regulations") applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in the Building or appurtenant land, caused or permitted by, or resulting from the specific use by, Tenant, or in or upon, or in connection with, the Premises, all at Tenant's sole expense. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate or prevent the procuring of any insurance protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to persons in or about the Building or any part thereof.

1.2 Tenant shall not, and shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees (collectively, the "Tenant Entities") to at any time handle, use, manufacture, store or dispose of in or about the Premises or the Building any (collectively, "Hazardous Materials") flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively, "Environmental Laws"), nor shall Tenant suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws, in the Premises or the Building and appurtenant land or allow the environment to become contaminated with any Hazardous Materials. Notwithstanding the foregoing, Tenant may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for the use of the Premises for general office purposes; provided that Tenant shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Building and appurtenant land or the environment. Tenant shall protect, defend, indemnify and hold each and all of the Landlord Entities (as defined in Article 31) harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any actual or asserted failure of Tenant to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials by Tenant or any Tenant Entity (even though permissible under all applicable Environmental Laws or the provisions of this Lease), or by reason of any actual or asserted failure of Tenant to keep, observe, or perform any provision of this Section 1.2. Pursuant to California Health & Safety Code Section 25359.7, Landlord hereby notifies Tenant that Landlord knows or has reasonable cause to believe that a release of Hazardous Materials has come to be located on or beneath the property on which the Building lies. Notwithstanding the foregoing, as of the date hereof, Landlord has not received written notice from any governmental agencies that the Building is in violation of any Environmental Laws. Further, to Landlord's actual knowledge, there are no Hazardous Materials at the Building in violation of Environmental Laws. For purposes of this Section, "Landlord's actual knowledge" shall be deemed to mean and limited to the current actual knowledge of James H. Ida and Janet LaPerle, Property Managers for the Building, at the time of execution of this Lease and not any implied, imputed, or constructive knowledge of said individual or of Landlord or any parties related to or comprising Landlord and without any independent investigation or inquiry having been made or any implied duty to investigate or make any inquiries; it being understood and agreed that such individual shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

In the event that any governmental agency or department with valid jurisdiction requires the performance of testing, investigation or inspection of or for Hazardous Materials at the Premises (the "Compliance Investigation Request"), and a requirement for the same is not based on, or otherwise resulting from, any act or omission by Tenant or any Tenant Entity (including, without limitation, any breach or default by Tenant of this Lease), Landlord shall, at its sole cost and expense,

perform the required testing, investigation and/or inspection (the same shall not be included in Expenses). In such event, Tenant shall fully and timely cooperate with Landlord in good faith. If Tenant receives a Compliance Investigation Request, Tenant shall promptly deliver a copy of the same to Landlord and disclose to Landlord in writing whether Tenant is aware of any act or omission by Tenant or any Tenant Entity that may be a reason or motivation for the Compliance Investigation Request. In the event that it is determined that the Compliance Investigation Request was prompted by an act or omission of Tenant or any Tenant Entity, Landlord shall perform the required testing, investigation and/or inspection but Tenant shall be liable for the actual out-of-pocket costs incurred by Landlord and the same shall be reimbursed to Landlord as additional rent hereunder within thirty (30) days following Landlord's written request therefor, which request shall be accompanied by documented evidence of such costs and expenses so incurred by Landlord.

Tenant shall not be liable for any cost or expense related to removal, cleaning, abatement or remediation of Hazardous Materials existing in the Premises prior to the date Landlord grants access to the Premises to Tenant except to the extent that the foregoing results directly or indirectly from any act or omission by Tenant or any Tenant Entity or any Hazardous Materials is disturbed, distributed or exacerbated by Tenant or any Tenant Entity.

1.3 Tenant and the Tenant Entities will be entitled to the non-exclusive use of the common areas of the Building as they exist from time to time during the Term, including the parking facilities, subject to Landlord's rules and regulations regarding such use. However, in no event will Tenant or the Tenant Entities park more vehicles in the parking facilities than Tenant's Proportionate Share of the total parking spaces available for common use.

2. **TERM.**

2.1 The Term of this Lease shall begin on the date ("Commencement Date") that Landlord shall tender possession of the Premises to Tenant, and shall terminate on the date as shown on the Reference Pages as the Termination Date based on the actual Commencement Date ("Termination Date"), unless sooner terminated by the provisions of this Lease. Landlord shall tender possession of the Premises with all the work, if any, to be performed by Landlord pursuant to Exhibit B to this Lease substantially completed, subject to any Tenant Delays (defined below). Tenant shall deliver a punch list of items not completed within sixty (60) days after Landlord tenders possession of the Premises and Landlord agrees to proceed with due diligence to perform its obligations regarding such items. Tenant shall, at Landlord's request, execute and deliver a memorandum agreement provided by Landlord in the form of Exhibit C attached hereto, setting forth the actual Commencement Date, Termination Date and, if necessary, a revised rent schedule. Should Tenant fail to do so within thirty (30) days after Landlord's request, the information set forth in such memorandum provided by Landlord shall be conclusively presumed to be agreed and correct.

2.2 Tenant agrees that in the event of the inability of Landlord to deliver possession of the Premises on the Scheduled Commencement Date set forth on the Reference Pages for any reason, Landlord shall not be liable for any damage resulting from such inability, but except to the extent such delay is the result of a Tenant Delay, Tenant shall not be liable for any rent until the time when Landlord delivers possession of the Premises to Tenant. No such failure to give possession on the Scheduled Commencement Date shall affect the other obligations of Tenant under this Lease, except that the actual Commencement Date shall be postponed until the date that Landlord delivers possession of the Premises to Tenant, except to the extent that such delay is arising from or related to the acts or omissions of Tenant or any Tenant Entities, including, without limitation as a result of: (a) Tenant's failure to reasonably respond to Landlord's request for consent to plans and specifications and/or construction cost estimates or bids; (b) Tenant's request for materials, finishes or installations other than Landlord's standard except those, if any, that Landlord shall have expressly agreed to furnish without extension of time agreed by Landlord; (c) Tenant's material change in any plans or specifications (Tenant and Landlord hereby acknowledge and agree that if any change to plans and specifications by Tenant results in an actual delay, such change shall be deemed material); or, (d) performance or completion by a party employed by Tenant (each of the foregoing, a "Tenant Delay"). If any delay is the result of a Tenant Delay, the Commencement Date and the payment of rent under this Lease shall be accelerated by the number of days of such Tenant Delay.

2.3 Subject to the terms of this Section 2.3, as of the date that is five (5) days following the date that this Lease and the Early Possession Agreement (as defined below) have been fully executed by all parties and Tenant has delivered all prepaid rental, and insurance certificates required hereunder, Landlord grants Tenant the right to enter the Premises, at Tenant's sole risk, solely for the purpose of installing telecommunications and data cabling, equipment, furnishings and other personalty and to conduct business in all or any portion of the Premises (e.g., subject to the terms and conditions hereof, such early access granted to Tenant permits Tenant to partially occupy and conduct its business operations at the Premises). Such possession prior to the Commencement Date shall be subject to all of the terms and conditions of this Lease, except that Tenant shall not be required to pay Monthly Installment of Rent with respect to the period prior to the Commencement Date during which Tenant occupies the Premises solely for such purposes. However, Tenant shall be liable for any utilities or special services provided to Tenant during such period. Said early possession shall not advance the Termination Date. Landlord may temporarily withdraw such permission to enter the Premises prior to the Commencement

Date at any time that Landlord reasonably determines that such entry by Tenant is causing a dangerous situation for Landlord, Tenant or their respective contractors or employees, or if Landlord reasonably determines that such entry by Tenant is hampering or otherwise preventing Landlord from proceeding with the completion of the Initial Alterations described in Exhibit B at the earliest possible date. Landlord shall not be required to reinstate Tenant's early possession unless and until Landlord determines that Tenant no longer causes a dangerous situation or no longer hampers or otherwise prevents Landlord from proceeding with the completion of the Initial Alterations at the earliest possible date. As a condition to any early entry by Tenant pursuant to this Section 2.3, Tenant shall execute and deliver to Landlord an early possession agreement (the "Early Possession Agreement") in the form attached hereto as Exhibit E, provided by Landlord, setting forth the actual date for early possession and the date for the commencement of payment of Monthly Installment of Rent.

3. **RENT.**

3.1 Tenant agrees to pay to Landlord the Annual Rent in effect from time to time by paying the Monthly Installment of Rent then in effect on or before the first day of each full calendar month during the Term, except that the first full month's rent shall be paid upon the execution of this Lease. The Monthly Installment of Rent in effect at any time shall be one-twelfth (1/12) of the Annual Rent in effect at such time. Rent for any period during the Term which is less than a full month shall be a prorated portion of the Monthly Installment of Rent based upon the number of days in such month. Said rent shall be paid to Landlord, without deduction or offset and without notice or demand, at the Rent Payment Address, as set forth on the Reference Pages, or to such other person or at such other place as Landlord may from time to time designate in writing. If an Event of Default occurs, Landlord may require by notice to Tenant that all subsequent rent payments be made by an automatic payment from Tenant's bank account to Landlord's account, without cost to Landlord. Tenant must implement such automatic payment system prior to the next scheduled rent payment or within ten (10) days after Landlord's notice, whichever is later. Unless specified in this Lease to the contrary, all amounts and sums payable by Tenant to Landlord pursuant to this Lease shall be deemed additional rent.

3.2 Tenant recognizes that late payment of any rent or other sum due under this Lease will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in an amount equal to the greater of: (a) Fifty Dollars (\$50.00), or (b) six percent (6%) of the unpaid rent or other payment; provided, however, that Tenant shall be entitled to a grace period of five (5) days for the first late payment in a calendar year. The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant's obligation for each successive month until paid. The provisions of this Section 3.2 in no way relieve Tenant of the obligation to pay rent or other payments on or before the date on which they are due, nor do the terms of this Section 3.2 in any way affect Landlord's remedies pursuant to Article 19 of this Lease in the event said rent or other payment is unpaid after date due.

4. **RENT ADJUSTMENTS.**

4.1 For the purpose of this Article 4, the following terms are defined as follows:

4.1.1 **Lease Year:** Each fiscal year (as determined by Landlord from time to time) falling partly or wholly within the Term.

4.1.2 **Expenses:** All costs of operation, maintenance, repair, replacement and management of the Building (including the amount of any credits which Landlord may grant to particular tenants of the Building in lieu of providing any standard services or paying any standard costs described in this Section 4.1.2 for similar tenants), as determined in accordance with generally accepted accounting principles, including the following costs by way of illustration, but not limitation: water and sewer charges; insurance charges of or relating to all insurance policies and endorsements deemed by Landlord to be reasonably necessary or desirable and relating in any manner to the protection, preservation, or operation of the Building or any part thereof; provided, however, in the event that the Building is damaged by an earthquake (each, an "Earthquake Event") and Tenant's Proportionate Share of the earthquake insurance deductible for an Earthquake Event exceeds \$50,000.00 (with any such excess amount referred to herein as the "Excess Deductible Share"), any such Excess Deductible Share shall be amortized over a period of ten (10) years, with interest on the unamortized amount at one percent (1%) in excess of the Wall Street Journal prime lending rate announced from time to time, and Tenant shall only pay the initial \$50,000.00 in the year incurred and thereafter pay only the amortized portion of such Excess Deductible Share in equal monthly installments during each remaining Lease Year of the Term (including any extension thereof) following the year in which the initial payment was made; utility costs, including, but not limited to, the cost of heat, light, power, steam, gas; waste disposal; the cost of janitorial services; the cost of security and alarm services (including any central station signaling system); costs of cleaning, repairing, replacing and maintaining the common areas, including parking and landscaping, window cleaning costs; labor costs; costs and expenses of managing the Building including management and/or

administrative fees; air conditioning maintenance costs; elevator maintenance fees and supplies; material costs; equipment costs including the cost of maintenance, repair and service agreements and rental and leasing costs; purchase costs of equipment; current rental and leasing costs of items which would be capital items if purchased; tool costs; licenses, permits and inspection fees; wages and salaries; employee benefits and payroll taxes; accounting and legal fees; any sales, use or service taxes incurred in connection therewith. In addition, Landlord shall be entitled to recover, as additional rent (which, along with any other capital expenditures constituting Expenses, Landlord may either include in Expenses or cause to be billed to Tenant along with Expenses and Taxes but as a separate item), Tenant's Proportionate Share of: (i) an allocable portion of the cost of capital improvement items which are reasonably calculated to reduce operating expenses; (ii) the cost of fire sprinklers and suppression systems and other life safety systems; and (iii) other capital expenses which are required under any Regulations which were not applicable to the Building at the time it was constructed; but the costs described in this sentence shall be amortized over the reasonable life of such expenditures in accordance with such reasonable life and amortization schedules as shall be determined by Landlord in accordance with generally accepted accounting principles, with interest on the unamortized amount at one percent (1%) in excess of the Wall Street Journal prime lending rate announced from time to time. Landlord agrees to act in a commercially reasonable manner in incurring Expenses, taking into consideration the class and the quality of the Building and shall extrapolate Expenses in accordance with the methodology used to extrapolate Expenses in comparable buildings owned by Landlord and its affiliates in the geographic area in which the Building is located. Expenses shall not include depreciation or amortization of the Building or equipment in the Building except as provided herein, loan principal payments, costs of alterations of tenants' premises, leasing commissions, interest expenses on long-term borrowings or advertising costs.

The following are also excluded from Expenses:

- (a) Sums (other than management fees, it being agreed that the management fees included in Expenses are as described in Section 4.1.2 above) paid to subsidiaries or other affiliates of Landlord for services on or to the Building and/or Premises, but only to the extent that the costs of such services exceed the competitive cost for such services rendered by unrelated persons or entities of similar skill, competence and experience.
- (b) Any expenses for which Landlord has received actual reimbursement (other than through Expenses).
- (c) Attorney's fees and other expenses incurred in connection with negotiations or disputes with prospective tenants or tenants or other occupants of the Building.
- (d) Costs in connection with leasing space in the Building, including brokerage commissions, brochures and marketing supplies, legal fees in negotiating and preparing lease documents.
- (e) The cost or expense of any services or benefits provided generally to other tenants in the Building and not provided or available to Tenant.
- (f) Fines, costs or penalties incurred as a result and to the extent of a violation by Landlord of any applicable Regulations.
- (g) Any fines, penalties or interest resulting from the gross negligence or willful misconduct of Landlord.
- (h) The cost of operating any commercial concession which is operated by Landlord at the Building.
- (i) Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed for such costs by insurance proceeds, contractor warranties, guarantees, judgments or other third party sources.
- (j) Reserves not spent by Landlord by the end of the calendar year for which Expenses are paid.
- (k) All bad debt loss, rent loss, or reserves for bad debt or rent loss.
- (l) Landlord's charitable and political contributions.
- (m) All costs of purchasing or leasing major sculptures, paintings or other major works or objects of art (as opposed to decorations purchased or leased by Landlord for display in the common areas of the Building).
- (n) Depreciation; principal payments of mortgage and other non operating debts of Landlord.
- (o) Except as specifically provided in Section 4.1.2, any capital improvement costs.
- (p) Ground lease rental.
- (q) The cost of complying with any Regulations in effect (and as interpreted and enforced) on the date of this Lease, provided that if any portion of the Building that was in compliance with all applicable Regulations on the date of this Lease becomes out of compliance due to normal wear and tear, the cost of bringing such portion of the Building into compliance shall be included in Expenses unless otherwise excluded pursuant to the terms hereof.

4.1.3 **Taxes:** Real estate taxes and any other taxes, charges and assessments which are levied with respect to the Building or the land appurtenant to the Building, or with respect to any improvements, fixtures and equipment or other property of Landlord, real or personal, located in the Building and used in connection with the operation of the Building and said land, any payments to any ground lessor in reimbursement of tax payments made by such lessor; and all fees, expenses and costs incurred by Landlord in investigating, protesting, contesting or in any way seeking to reduce or avoid increase in any assessments, levies or the tax rate pertaining to any Taxes to be paid by Landlord in any Lease Year. Taxes shall not include any corporate franchise, capital stock, profits, gift, or estate, inheritance or net income tax, or tax imposed upon any transfer by Landlord of its interest in this Lease or the Building or any taxes to be paid by Tenant pursuant to Article 28.

4.2 Tenant shall pay as additional rent for each Lease Year Tenant's Proportionate Share of Expenses and Taxes incurred for such Lease Year.

4.3 The annual determination of Expenses shall be made by Landlord and shall be binding upon Landlord and Tenant, subject to the provisions of this Section 4.3. Landlord may deliver such annual determination to Tenant via regular U.S. mail. During the Term, Tenant may review, at Tenant's sole cost and expense, the books and records supporting such determination in an office of Landlord, or Landlord's agent, during normal business hours, upon giving Landlord five (5) days advance written notice within sixty (60) days after receipt of such determination, but in no event more often than once in any one (1) year period, subject to execution of a confidentiality agreement acceptable to Landlord, and provided that if Tenant utilizes an independent accountant to perform such review it shall be one of national standing which is reasonably acceptable to Landlord, is not compensated on a contingency basis and is also subject to such confidentiality agreement. If Tenant fails to object to Landlord's determination of Expenses within ninety (90) days after receipt, or if any such objection fails to state with specificity the reason for the objection, Tenant shall be deemed to have approved such determination and shall have no further right to object to or contest such determination. In the event that during all or any portion of any Lease Year, the Building is not fully rented and occupied Landlord shall make an appropriate adjustment in occupancy-related Expenses for such year for the purpose of avoiding distortion of the amount of such Expenses to be attributed to Tenant by reason of variation in total occupancy of the Building, by employing consistent and sound accounting and management principles to determine Expenses that would have been paid or incurred by Landlord had the Building been at least ninety-five percent (95%) rented and occupied, and the amount so determined shall be deemed to have been Expenses for such Lease Year.

4.4 Prior to the actual determination thereof for a Lease Year, Landlord may from time to time estimate Tenant's liability for Expenses and/or Taxes under Section 4.2, Article 6 and Article 28 for the Lease Year or portion thereof. Landlord will give Tenant written notification of the amount of such estimate and Tenant agrees that it will pay, by increase of its Monthly Installments of Rent due in such Lease Year, additional rent in the amount of such estimate. Any such increased rate of Monthly Installments of Rent pursuant to this Section 4.4 shall remain in effect until further written notification to Tenant pursuant hereto.

4.5 When the above mentioned actual determination of Tenant's liability for Expenses and/or Taxes is made for any Lease Year and when Tenant is so notified in writing, then:

4.5.1 If the total additional rent Tenant actually paid pursuant to Section 4.3 on account of Expenses and/or Taxes for the Lease Year is less than Tenant's liability for Expenses and/or Taxes, then Tenant shall pay such deficiency to Landlord as additional rent in one lump sum within thirty (30) days of receipt of Landlord's bill therefor; and

4.5.2 If the total additional rent Tenant actually paid pursuant to Section 4.3 on account of Expenses and/or Taxes for the Lease Year is more than Tenant's liability for Expenses and/or Taxes, then Landlord shall credit the difference against the then next due payments to be made by Tenant under this Article 4, or, if this Lease has terminated, refund the difference in cash.

4.6 If the Commencement Date is other than January 1 or if the Termination Date is other than December 31, Tenant's liability for Expenses and Taxes for the Lease Year in which said Date occurs shall be prorated based upon a three hundred sixty-five (365) day year. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to pay Tenant's Proportionate Share of Expenses and Taxes and this Article 4 shall have no force and effect during the initial Term of this Lease only.

5. **SECURITY DEPOSIT.** [INTENTIONALLY OMITTED]

6. **ALTERATIONS.**

6.1 Except for those, if any, specifically provided for in Exhibit B to this Lease, Tenant shall not make or suffer to be made any alterations, additions, or improvements, including, but not limited to, the attachment of any fixtures or equipment in, on, or to the Premises or any part thereof or the making of any improvements as required by Article 7, without the prior written consent of Landlord. When applying for such consent, Tenant shall, if requested by Landlord, furnish complete plans and specifications for such alterations, additions and improvements. Landlord's consent shall not be unreasonably withheld with respect to alterations which (i) are not structural in nature, (ii) are not visible from the exterior of the Building, and (iii) do not affect or require modification of the Building's electrical, mechanical, plumbing, HVAC or other systems. In addition, Tenant shall have the right to perform, with prior written notice to but without Landlord's consent, any alteration, addition, or improvement that satisfies all of the following criteria (a "Cosmetic Alteration"): (1) is of a cosmetic nature such as painting, wallpapering, hanging pictures and installing carpeting; (2) is not visible from the exterior of the Premises or Building; (3) will not affect the systems or structure of the Building; (4) costs less than \$75,000.00 in the aggregate during any twelve (12) month period of the Term of this Lease, and (5) does not require work to be performed inside the walls or above the ceiling of the Premises. However, even though consent is not required, the performance of Cosmetic Alterations shall be subject to all of the other provisions of this Article 6.

6.2 In the event Landlord consents to the making of any such alteration, addition or improvement by Tenant, the same shall be made by using either Landlord's contractor or a contractor reasonably approved by Landlord, in either event at Tenant's sole cost and expense. If Tenant shall employ any contractor other than Landlord's contractor and such other contractor or any subcontractor of such other contractor shall employ any non-union labor or supplier, Tenant shall be responsible for and hold Landlord harmless from any and all delays, damages and extra costs suffered by Landlord as a result of any dispute with any labor unions concerning the wages, hours, terms or conditions of the employment of any such labor. In any event, Landlord may charge Tenant a construction management fee not to exceed three percent (3%) of the cost of such work to cover its overhead as it relates to such proposed work (the foregoing construction management fee shall not apply to the Initial Alterations performed by Landlord in accordance with Exhibit B to this Lease nor to the Approved Alterations as defined in Section 7 of Exhibit B to this Lease), plus third-party costs actually incurred by Landlord in connection with the proposed work and the design thereof, with all such amounts being due five (5) days after Landlord's demand.

6.3 All alterations, additions or improvements proposed by Tenant shall be constructed in accordance with all Regulations, using Building standard materials where applicable, and Tenant shall, prior to construction, provide the additional insurance required under Article 11 in such case, and also all such assurances to Landlord as Landlord shall reasonably require to assure payment of the costs thereof, including but not limited to, notices of non-responsibility, waivers of lien, surety company performance bonds and funded construction escrows and to protect Landlord and the Building and appurtenant land against any loss from any mechanic's, materialmen's or other liens. Tenant shall pay in addition to any sums due pursuant to Article 4, any increase in real estate taxes attributable to any such alteration, addition or improvement for so long, during the Term, as such increase is ascertainable; at Landlord's election said sums shall be paid in the same way as sums due under Article 4. Landlord may, as a condition to its consent to any particular alterations or improvements, require Tenant to deposit with Landlord the amount reasonably estimated by Landlord as sufficient to cover the cost of removing such alterations or improvements and restoring the Premises, to the extent required under Section 26.2.

6.4 Notwithstanding anything to the contrary contained herein, so long as Tenant's written request for consent for a proposed alteration or improvements contains the following statement in large, bold and capped font "**PURSUANT TO ARTICLE 6 OF THE LEASE, IF LANDLORD CONSENTS TO THE SUBJECT ALTERATION, LANDLORD SHALL NOTIFY TENANT IN WRITING WHETHER OR NOT LANDLORD WILL REQUIRE SUCH ALTERATION TO BE REMOVED AT THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.**", at the time Landlord gives its consent for any alterations or improvements, if it so does, Tenant shall also be notified whether or not Landlord will require that such alterations or improvements be removed upon the expiration or earlier termination of this Lease. Notwithstanding anything to the contrary contained in this Lease, at the expiration or earlier termination of this Lease and otherwise in accordance with Article 26 hereof, Tenant shall be required to remove all alterations or improvements made to the Premises except for any such alterations or improvements which Landlord expressly indicates or is deemed to have indicated shall not be required to be removed from the Premises by Tenant. If Tenant's written notice strictly complies with the foregoing and if Landlord fails to so notify Tenant whether Tenant shall be required to remove the subject alterations or improvements at the expiration or earlier termination of this Lease, it shall be assumed that Landlord shall require the removal of the subject alterations or improvements.

7. REPAIR.

7.1 Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises, except as specified in Exhibit B if attached to this Lease and except that Landlord shall repair and maintain the structural portions of the Building, including the foundation, roof structure and exterior walls, basic plumbing, air conditioning, heating and

electrical systems installed or furnished by Landlord. By taking possession of the Premises, Tenant accepts them as being in good order, condition and repair and in the condition in which Landlord is obligated to deliver them, except as set forth in the punch list to be delivered pursuant to Section 2.1. However, notwithstanding the foregoing, Landlord agrees that the base Building electrical, heating, ventilation and air conditioning and plumbing systems located in the Premises shall be in good working order as of the date Landlord delivers possession of the Premises to Tenant. Except to the extent caused by the acts or omissions of Tenant or any Tenant Entities or by any alterations or improvements performed by or on behalf of Tenant, if such systems are not in good working order and repair as of the date possession of the Premises is delivered to Tenant and Tenant provides Landlord with notice of the same within three hundred and sixty-five (365) days following the date Landlord delivers possession of the Premises to Tenant, Landlord shall be responsible for repairing or restoring the same. The foregoing shall not apply to any inadequacy of the existing HVAC system serving the Premises for Tenant's purposes, as more particularly addressed in Section 7.5. It is hereby understood and agreed that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant, except as specifically set forth in this Lease.

7.2 Tenant shall, at all times during the Term, keep the Premises in as good condition and repair as received excepting damage by fire, or other casualty, and in compliance with all applicable Regulations, promptly complying with all governmental orders and directives for the correction, prevention and abatement of any violations or nuisances in or upon, or connected with, the Premises, all at Tenant's sole expense.

7.3 Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant.

7.4 Except as provided in Article 22, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or to fixtures, appurtenances and equipment in the Building. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code, or any similar or successor Regulations or other laws now or hereinafter in effect.

7.5 In the event that Tenant determines within one hundred eighty (180) days after the full and final execution of this Lease that additional heating, ventilating and air conditioning equipment is reasonably necessary to meet Tenant's needs in the network operations control room (the "NOC Room"), server room or training room located in the Premises (the "HVAC Work") and provided that Tenant is not then in default under this Lease beyond applicable notice and cure periods, Tenant shall provide plans and specifications for the HVAC Work for Landlord's reasonable approval, and upon such approval Landlord shall cause such HVAC Work to be performed. Tenant shall be responsible for the entire cost of the HVAC Work and shall (i) reimburse Landlord for all such costs as additional rent, or (ii) remit payment directly to the contractor responsible for performing the HVAC Work, within thirty (30) days of written demand. Notwithstanding the foregoing, so long as Tenant is not in default under the Lease, within such thirty (30) day period Tenant may request an allowance of up to \$27,060.00 (the "HVAC Allowance") to be applied by Landlord towards Tenant's responsibility for the costs of the HVAC Work. Any HVAC Allowance paid to or on behalf of Tenant hereunder shall be repaid to Landlord as additional rent in equal monthly installments throughout the remainder of the initial Term, commencing on the first day of the first full calendar month following the date the HVAC Allowance is disbursed to Tenant, with interest at one percent (1%) in excess of the Wall Street Journal prime lending rate announced from time to time. If Tenant is in default under the Lease after the expiration of applicable cure periods, the entire unpaid balance of the HVAC Allowance paid to or on behalf of Tenant shall become immediately due and payable and, except to the extent required by applicable law, shall not be subject to mitigation or reduction in connection with a reletting of the Premises by Landlord. Upon request of Landlord, Tenant shall execute an amendment to the Lease or other appropriate agreement, prepared by Landlord, evidencing the amount of the HVAC Allowance requested by Tenant and the repayment schedule relating to Tenant's repayment of the HVAC Allowance, as described herein.

8. **LIENS.** Tenant shall keep the Premises, the Building and appurtenant land and Tenant's leasehold interest in the Premises free from any liens arising out of any services, work or materials performed, furnished, or contracted for by Tenant, or obligations incurred by Tenant. In the event that Tenant fails, within ten (10) days following the imposition of any such lien, to either cause the same to be released of record or provide Landlord with insurance against the same issued by a major title insurance company or such other protection against the same as Landlord shall accept (such failure to constitute an Event of Default), Landlord shall have the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be payable to it by Tenant within five (5) days of Landlord's demand.

9. **ASSIGNMENT AND SUBLETTING.**

9.1 Except in connection with a Permitted Transfer (defined in Section 9.8 below), Tenant shall not have the right to assign or pledge this Lease or to sublet the whole or any part of the Premises whether voluntarily or by operation of law, or permit the use or occupancy of the Premises by anyone other than Tenant, and shall not make, suffer or permit such assignment, subleasing or occupancy without the prior written consent of Landlord, such consent not to be unreasonably withheld, and said restrictions shall be binding upon any and all assignees of this Lease and subtenants of the Premises. In the event Tenant desires to sublet, or permit such occupancy of, the Premises, or any portion thereof, or assign this Lease, Tenant shall give written notice thereof to Landlord at least fifteen (15) days but no more than one hundred twenty (120) days prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment and copies of financial reports and other relevant financial information of the proposed subtenant or assignee.

9.2 Notwithstanding any assignment or subletting, permitted or otherwise, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent specified in this Lease and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of an Event of Default, if the Premises or any part of them are then assigned or sublet, Landlord, in addition to any other remedies provided in this Lease or provided by law, may, at its option, collect directly from such assignee or subtenant all rents due and becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease.

9.3 In addition to Landlord's right to approve any subtenant or assignee, Landlord shall have the option, in its sole discretion, in the event of any proposed sublease of 100% of the Premises or an assignment of this Lease to terminate this Lease effective as of the date the proposed assignment or subletting is to be effective and, in the case of a sublease (a) that would result in fifty percent (50%) or more of the Premises being subject to the sublease, or (b) a sublease for a term of more than fifty percent (50%) of the then-remaining Term of this Lease, to recapture the portion of the Premises to be sublet effective as of the date the proposed subletting is to be effective. The option shall be exercised, if at all, by Landlord giving Tenant written notice given by Landlord to Tenant within fifteen (15) days following Landlord's receipt of Tenant's written notice as required above. However, if Tenant notifies Landlord, within five (5) days after receipt of Landlord's termination notice, that Tenant is rescinding its proposed assignment or sublease, the termination notice shall be void and this Lease shall continue in full force and effect. If this Lease shall be terminated with respect to the entire Premises pursuant to this Section, the Term of this Lease shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this Lease for the expiration of the Term. If Landlord recaptures under this Section only a portion of the Premises, the rent to be paid from time to time during the unexpired Term shall abate proportionately based on the proportion by which the approximate square footage of the remaining portion of the Premises shall be less than that of the Premises as of the date immediately prior to such recapture. Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation which may be due and owing as a result of any proposed assignment or subletting, whether or not the Premises are recaptured pursuant to this Section 9.3 and rented by Landlord to the proposed tenant or any other tenant.

9.4 In the event that Tenant sells, sublets, assigns or transfers this Lease, Tenant shall pay to Landlord as additional rent an amount equal to fifty percent (50%) of any Increased Rent (as defined below), less the Costs Component (as defined below), when and as such Increased Rent is received by Tenant. As used in this Section, "Increased Rent" shall mean the excess of (i) all rent and other consideration which Tenant is entitled to receive by reason of any sale, sublease, assignment or other transfer of this Lease, over (ii) the rent otherwise payable by Tenant under this Lease at such time. For purposes of the foregoing, any consideration received by Tenant in form other than cash shall be valued at its fair market value as determined by Landlord in good faith. The "Costs Component" is that amount which, if paid monthly, would fully amortize on a straight-line basis, over the entire period for which Tenant is to receive Increased Rent, the reasonable costs incurred by Tenant for leasing commissions, attorneys fees, and tenant improvements in connection with such sublease, assignment or other transfer.

9.5 Notwithstanding any other provision hereof, it shall be considered reasonable for Landlord to withhold its consent to any assignment of this Lease or sublease of any portion of the Premises if at the time of either Tenant's notice of the proposed assignment or sublease or the proposed commencement date thereof, there shall exist any uncured Event of Default of Tenant, or any default for which Landlord has provided notice (except for a monetary default) that remains uncured, or matter for which Landlord has provided notice which will become a default of Tenant with passage of time unless cured, or if the proposed assignee or sublessee is an entity: (a) with which Landlord is already in negotiation (unless Landlord does not have space available for lease in the Building that is comparable to the space Tenant desires to sublet or assign; provided, however, Landlord shall be deemed to have comparable space if it has, or will have, space available on any floor of the Building that is approximately the same size as the space Tenant desires to sublet or assign within four (4) months, in the aggregate, of the proposed commencement of the proposed sublease or assignment, and for a comparable

term); (b) is already an occupant of the Building unless Landlord is unable to provide the amount of space required by such occupant; (c) is a governmental agency; (d) is incompatible with the character of occupancy of the Building; (e) with which the payment for the sublease or assignment is determined in whole or in part based upon its net income or profits; or (f) would subject the Premises to a use which would: (i) involve materially increased personnel or wear upon the Building; (ii) violate any exclusive right granted to another tenant of the Building; (iii) require any addition to or modification of the Premises or the Building in order to comply with building code or other governmental requirements; or, (iv) involve a violation of Section 1.2. Tenant expressly agrees that for the purposes of any statutory or other requirement of reasonableness on the part of Landlord, Landlord's refusal to consent to any assignment or sublease for any of the reasons described in this Section 9.5, shall be conclusively deemed to be reasonable.

9.6 Upon any request to assign or sublet, Tenant will pay to Landlord the Assignment/Subletting Fee plus, on demand, a sum equal to all of Landlord's reasonable costs, including reasonable attorney's fees, incurred in investigating and considering any proposed or purported assignment or pledge of this Lease or sublease of any of the Premises (the "Review Reimbursement"), regardless of whether Landlord shall consent to, refuse consent, or determine that Landlord's consent is not required for, such assignment, pledge or sublease. Except as otherwise expressly provided herein, the Review Reimbursement shall not exceed \$500.00 (the "Cap"). Any purported sale, assignment, mortgage, transfer of this Lease or subletting which does not comply with the provisions of this Article 9 shall be void. If: (a) Tenant fails to execute Landlord's standard reasonable form of consent without any changes to this Lease, without material changes to the consent and without material negotiation of the consent, and (b) Landlord shall notify Tenant that the Review Reimbursement shall exceed the Cap as a result of such changes and/or negotiation, and (c) Tenant elects to proceed with such changes and/or negotiation, then the Cap shall not apply and Tenant shall pay to Landlord the Assignment/Subletting Fee plus the Review Reimbursement in full. The foregoing shall in no event be deemed to be a right of Tenant to rescind its written notice to Landlord requesting consent to a transfer of this Lease or a sublease of all or a portion of the Premises as provided in Section 9.1. In the event that Tenant fails to notify Landlord of its election as provided in subsection (c) above within three (3) business days following Landlord's notice to Tenant of the excess described in subsection (b) above, then Tenant shall be deemed to have elected proceed with any such changes and/or negotiation and the Cap shall not apply.

9.7 If Tenant is a corporation, limited liability company, partnership or trust, any transfer or transfers of or change or changes within any twelve (12) month period in the number of the outstanding voting shares of the corporation or limited liability company, the general partnership interests in the partnership or the identity of the persons or entities controlling the activities of such partnership or trust resulting in the persons or entities owning or controlling a majority of such shares, partnership interests or activities of such partnership or trust at the beginning of such period no longer having such ownership or control shall be regarded as equivalent to an assignment of this Lease to the persons or entities acquiring such ownership or control and shall be subject to all the provisions of this Article 9 to the same extent and for all intents and purposes as though such an assignment.

9.8 So long as Tenant is not entering into the Permitted Transfer (as defined below) for the purpose of avoiding or otherwise circumventing the remaining terms of this Article 9, Tenant may assign its entire interest under this Lease, without the consent of Landlord, to (a) an affiliate, subsidiary, or parent of Tenant, or a corporation, partnership or other legal entity wholly owned by Tenant (collectively, an "Affiliated Party"), or (b) a successor to Tenant by purchase, merger, consolidation or reorganization, provided that all of the following conditions are satisfied (each such transfer a "Permitted Transfer" and any such assignee or sublessee of a Permitted Transfer, a "Permitted Transferee"): (i) Tenant is not in default under this Lease beyond any applicable notice and cure period; (ii) the Permitted Use does not allow the Premises to be used for retail purposes; (iii) Tenant shall give Landlord written notice at least twenty (20) days prior to the effective date of the proposed Permitted Transfer (provided that, if prohibited by confidentiality in connection with a proposed purchase, merger, consolidation or reorganization, then Tenant shall give written notice to Landlord within thirty (30) days after the effective date of the proposed purchase, merger, consolidation or reorganization); (iv) with respect to a proposed Permitted Transfer to an Affiliated Party, Tenant continues to have a net worth equal to Tenant's net worth as of the date of this Lease; and (v) with respect to a purchase, merger, consolidation or reorganization or any Permitted Transfer which results in Tenant ceasing to exist as a separate legal entity, (A) Tenant's successor shall own all or substantially all of the assets of Tenant, and (B) Tenant's successor shall have a net worth which is at least equal to the greater of Tenant's net worth at the date of this Lease or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, Tenant's successor shall sign a commercially reasonable form of assumption agreement. As used herein, (1) "parent" shall mean a company which owns a majority of Tenant's voting equity; (2) "subsidiary" shall mean an entity wholly owned by Tenant or at least fifty-one percent (51%) of whose voting equity is owned by Tenant; and (3) "affiliate" shall mean an entity controlled, controlling or under common control with Tenant.

10. INDEMNIFICATION.

10.1 None of the Landlord Entities shall be liable and Tenant hereby waives all claims against them for any damage to any property or any injury to any person in or about the Premises or the Building by or from any cause whatsoever (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Building not being in good condition or repair, gas, fire, oil, electricity or theft), except to the extent caused by or arising from the gross negligence or willful misconduct of Landlord or its agents, employees or contractors. Tenant shall protect, indemnify and hold the Landlord Entities harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of (a) any damage to any property (including but not limited to property of any Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises or the Building to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant or any Tenant Entity to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by the Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; (c) Tenant's actual or asserted failure to comply with any and all Regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease.

10.2 Landlord shall protect, indemnify and hold Tenant harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any damage to any property (including but not limited to property of Tenant) or any injury (including but not limited to death) to any person occurring in, on or about the common areas of the Building to the extent that such injury or damage shall be caused by or arise from the gross negligence or willful misconduct of Landlord or any of Landlord's agents or employees.

10.3 The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

11. INSURANCE.

11.1 Tenant shall keep in force throughout the Term: (a) a Commercial General Liability insurance policy or policies to protect the Landlord Entities against any liability to the public or to any invitee of Tenant or a Landlord Entity incidental to the use of or resulting from any accident occurring in or upon the Premises with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the annual aggregate, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and \$1,000,000 products/completed operations aggregate; (b) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident; (c) Worker's Compensation Insurance with limits as required by statute and Employers Liability with limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease--each employee; (d) All Risk or Special Form coverage protecting Tenant against loss of or damage to Tenant's alterations, additions, improvements, carpeting, floor coverings, panelings, decorations, fixtures, inventory and other business personal property situated in or about the Premises to the full replacement value of the property so insured; and, (e) Business Interruption Insurance with limit of liability representing loss of at least approximately six (6) months of income. Landlord agrees to waive Business Interruption insurance requirements of Tenant. In doing so, Tenant hereby agrees that Tenant waives all claims for recovery against Landlord for business interruption expenses that would have been covered by the waived Business Interruption insurance. Tenant agrees that Tenant's insurance carrier will not subrogate against Landlord's insurance carrier for the same.

11.2 The aforesaid policies shall (a) be provided at Tenant's expense; (b) name the Landlord Entities as additional insureds (General Liability) and loss payee (Property—Special Form); (c) be issued by an insurance company with a minimum Best's rating of "A-:VII" during the Term; and (d) provide that said insurance shall not be canceled unless thirty (30) days prior written notice (ten days for non-payment of premium) shall have been given to Landlord; a certificate of Liability insurance on ACORD Form 25 and a certificate of Property insurance on ACORD Form 28 shall be delivered to Landlord by Tenant upon the Commencement Date and at least ten (10) days prior to each renewal of said insurance.

11.3 Whenever Tenant shall undertake any alterations, additions or improvements in, to or about the Premises ("Work") the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, without limitation including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such Work.

12. **WAIVER OF SUBROGATION.** Tenant and Landlord hereby mutually waive their respective rights of recovery against each other for any loss insured (or required to be insured pursuant to this Lease) by fire, extended coverage, All Risks

13. **SERVICES AND UTILITIES.** Tenant shall pay for all water, gas, heat, light, power, telephone, sewer, sprinkler system charges and other utilities and services used on or from the Premises, together with any taxes, penalties, and surcharges or the like pertaining thereto and any maintenance charges for utilities. Tenant shall furnish all electric light bulbs, tubes and ballasts, battery packs for emergency lighting and fire extinguishers. Landlord shall in no event be liable for any interruption or failure of utility services on or to the Premises. Landlord hereby represents that standard fiber optic infrastructure, including cable is, as of the date of this Lease, installed to the existing main point of entry located in the existing telco/server room in the Premises (the "Fiber Optic Cable"). Except to the extent caused by the acts or omissions of Tenant or any Tenant Entities or by any alterations or improvements performed by or on behalf of Tenant, if the Fiber Optic Cable is not in good condition as of the date possession of the Premises is delivered to Tenant and Tenant provides Landlord with notice of the same within thirty (30) days following the date Landlord delivers possession (including the date of early access as provided in Article 2 above) of the Premises to Tenant, Landlord shall be responsible for bringing the same into good condition.

14. **HOLDING OVER.** Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part of them after termination of this Lease by lapse of time or otherwise at the rate ("Holdover Rate") which shall be One Hundred and Fifty Percent (150%) of the amount of the Annual Rent (which is, as stated below, pro rated on a daily basis) for the last period prior to the date of such termination plus Tenant's Proportionate Share of Expenses and Taxes under Article 4, prorated on a daily basis, and also pay all damages sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to such effect, such holding over shall constitute renewal of this Lease for a period from month to month at the Holdover Rate, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. In any event, no provision of this Article 14 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law.

15. **SUBORDINATION.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be subject and subordinate at all times to ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter placed on, against or affecting the Building, Landlord's interest or estate in the Building, or any ground or underlying lease; provided, however, that if the lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease be superior to any such instrument, then, by notice to Tenant, this Lease shall be deemed superior, whether this Lease was executed before or after said instrument. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver within ten (10) business days of Landlord's request such further instruments evidencing such subordination or superiority of this Lease as may be required by Landlord. Notwithstanding the foregoing, upon written request by Tenant, Landlord will use reasonable efforts to obtain a non-disturbance, subordination and attornment agreement from Landlord's then current mortgagee on such mortgagee's then current standard form of agreement. "Reasonable efforts" of Landlord shall not require Landlord to incur any cost, expense or liability to obtain such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the mortgagee. Upon request of Landlord, Tenant will execute the mortgagee's form of non-disturbance, subordination and attornment agreement and return the same to Landlord for execution by the mortgagee. Landlord's failure to obtain a non-disturbance, subordination and attornment agreement for Tenant shall have no effect on the rights, obligations and liabilities of Landlord and Tenant or be considered to be a default by Landlord hereunder. Notwithstanding the foregoing in this Section to the contrary, as a condition precedent to the future subordination of this Lease to a future mortgage, Landlord shall be required to provide Tenant with a non-disturbance, subordination, and attornment agreement in favor of Tenant from any such mortgagee who comes into existence after the Commencement Date. Such non-disturbance, subordination, and attornment agreement in favor of Tenant shall provide that, so long as Tenant is paying the rent due under the Lease and is not otherwise in default under the Lease beyond any applicable cure period, its right to possession and the other terms of the Lease shall remain in full force and effect. Such non-disturbance, subordination, and attornment agreement may include other commercially reasonable provisions in favor of the mortgagee, including, without limitation, additional time on behalf of the mortgagee to cure defaults of the Landlord and provide that (a) neither mortgagee nor any successor-in-interest shall be bound by (i) any payment of the Monthly Installment of Rent or any other sum due under this Lease for more than one (1) month in advance or (ii) any amendment or modification of the Lease made without the express written consent of mortgagee or any successor-in-interest; (b) neither mortgagee nor any successor-in-interest will be liable for (i) any act or omission or warranties of any prior landlord (including Landlord), (ii) the breach of any warranties or obligations relating to construction of improvements on the property or any tenant finish work performed or to have been performed by any prior landlord (including Landlord), or (iii) the return of any security deposit, except to the extent such deposits have been received by mortgagee; and (c) neither mortgagee nor any successor-in-interest shall be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord). Landlord shall use commercially reasonable efforts to obtain an

executed Subordination, Nondisturbance and Attornment Agreement for Tenant's benefit in the form of Exhibit F attached hereto within thirty (30) days following the mutual execution and delivery of this Lease and the Subordination, Nondisturbance and Attornment Agreement in the form of Exhibit E.

16. **RULES AND REGULATIONS.** Tenant shall faithfully observe and comply with all the rules and regulations as set forth in Exhibit D to this Lease and all reasonable and non-discriminatory modifications of and additions to them from time to time put into effect by Landlord. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any such rules and regulations. Landlord hereby agrees to use commercially reasonable efforts to generally enforce the rules and regulations in a nondiscriminatory manner. In the event of any conflict between any of the rules and regulations set forth in Exhibit D hereto and this Lease, the terms of this Lease shall control.

17. **REENTRY BY LANDLORD.**

17.1 Landlord reserves and shall at all times have the right to re-enter the Premises to inspect the same, to show said Premises to prospective purchasers, mortgagees or tenants, and to alter, improve or repair the Premises and any portion of the Building, without abatement of rent, and may for that purpose erect, use and maintain scaffolding, pipes, conduits and other necessary structures and open any wall, ceiling or floor in and through the Building and Premises where reasonably required by the character of the work to be performed, provided entrance to the Premises shall not be blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Notwithstanding the foregoing, except (i) to the extent requested by Tenant, (ii) in connection with scheduled maintenance programs, and/or (iii) in the event of an emergency, Landlord shall provide to Tenant reasonable prior notice (either written or oral) before Landlord enters the Premises to perform any repairs therein. Landlord hereby agrees to use commercially reasonable efforts to generally enforce the rules and regulations in a nondiscriminatory manner. In the event of any conflict between any of the rules and regulations set forth in Exhibit D hereto and this Lease, the terms of this Lease shall control. Landlord shall have the right at any time to change the arrangement and/or locations of entrances, or passageways, doors and doorways, and corridors, windows, elevators, stairs, toilets or other public parts of the Building and to change the name, number or designation by which the Building is commonly known. In the event that Landlord damages any portion of any wall or wall covering, ceiling, or floor or floor covering within the Premises, Landlord shall repair or replace the damaged portion to match the original as nearly as commercially reasonable but shall not be required to repair or replace more than the portion actually damaged. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by any action of Landlord authorized by this Article 17. Notwithstanding the foregoing, except in emergency situations, as determined by Landlord, Landlord shall exercise reasonable efforts to perform any entry into the Premises in a manner that is reasonably designed to minimize interference with the operation of Tenant's business in the Premises.

17.2 For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency to obtain entry to any portion of the Premises. As to any portion to which access cannot be had by means of a key or keys in Landlord's possession, Landlord is authorized to gain access by such means as Landlord shall elect and the cost of repairing any damage occurring in doing so shall be borne by Tenant and paid to Landlord within five (5) days of Landlord's demand.

18. **DEFAULT.**

18.1 Except as otherwise provided in Article 20, the following events shall be deemed to be Events of Default under this Lease:

18.1.1 Tenant shall fail to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, any other amount treated as additional rent under this Lease, or any other payment or reimbursement to Landlord required by this Lease, whether or not treated as additional rent under this Lease, and such failure shall continue for a period of five (5) days after written notice that such payment was not made when due, but if any such notice shall be given two (2) times during the twelve (12) month period commencing with the date of the first (1st) such notice, the third (3rd) failure to pay within five (5) days after due any additional sum of money becoming due to be paid to Landlord under this Lease during such twelve (12) month period shall be an Event of Default, without notice. The notice required pursuant to this Section 18.1.1 shall replace rather than supplement any statutory notice required under California Code of Civil Procedure Section 1161 or any similar or successor statute.

18.1.2 Tenant shall fail to comply with any term, provision or covenant of this Lease which is not provided for in another Section of this Article and shall not cure such failure within twenty (20) days (forthwith, if the failure

involves a hazardous condition) after written notice of such failure to Tenant provided, however, that such failure shall not be an event of default if such failure could not reasonably be cured during such twenty (20) day period, Tenant has commenced the cure within such twenty (20) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days.

18.1.3 Tenant shall fail to vacate the Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only.

18.1.4 Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.

18.1.5 A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

19. REMEDIES.

19.1 Upon the occurrence of any Event or Events of Default under this Lease, whether enumerated in Article 18 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever (and without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of rent or other obligations and waives any and all other notices or demand requirements imposed by applicable law):

19.1.1 Terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to the sum of the following:

19.1.1.1 The Worth at the Time of Award of the unpaid rent which had been earned at the time of termination;

19.1.1.2 The Worth at the Time of Award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rent loss that Tenant affirmatively proves could have been reasonably avoided;

19.1.1.3 The Worth at the Time of Award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant affirmatively proves could be reasonably avoided;

19.1.1.4 Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

19.1.1.5 All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "Worth at the Time of Award" of the amounts referred to in parts 19.1.1.1 and 19.1.1.2 above, shall be computed by allowing interest at the lesser of a per annum rate equal to: (i) the greatest per annum rate of interest permitted from time to time under applicable law, or (ii) the Prime Rate plus 5%. For purposes hereof, the "Prime Rate" shall be the per annum interest rate publicly announced as its prime or base rate by a federally insured bank selected by Landlord in the State of California. The "Worth at the Time of Award" of the amount referred to in part 19.1.1.3, above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%;

19.1.2 Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

19.1.3 Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an Event or Events of Default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above in Section 19.1.1.

19.2 The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

19.3 TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER REGULATIONS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE TERM PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH. TENANT ALSO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE.

19.4 No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default.

19.5 This Article 19 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

19.6 If more than one (1) Event of Default occurs during the Term or any renewal thereof, Tenant's renewal options, expansion options, purchase options and rights of first offer and/or refusal, if any are provided for in this Lease, shall be null and void.

19.7 If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney or collection agency concerning or to enforce or defend any of Landlord's rights or remedies arising under this Lease or to collect any sums due from Tenant, Tenant agrees to pay all costs and fees so incurred by Landlord, including, without limitation, reasonable attorneys' fees and costs. If either party participates in an action against the other party arising out of or in connection with this Lease or any covenants or obligations hereunder, then the prevailing party shall be entitled to have or recover from the other party, upon demand, all reasonable attorneys' fees and costs incurred in connection therewith. **TENANT AND LANDLORD EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY.** Tenant hereby specifically also waives notice and demand for payment of rent or other obligations, except for those notices specifically required pursuant to the terms of this Lease and notices which may be required under California Code of Civil Procedure Section 1161, as described in Section 18.1.1 above.

19.8 Upon the occurrence of an Event of Default, Landlord may (but shall not be obligated to) cure such default at Tenant's sole expense. Without limiting the generality of the foregoing, Landlord may, at Landlord's option, enter into and upon the Premises if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease or to otherwise effect compliance with its obligations under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom and Tenant agrees to reimburse Landlord within five (5) days of Landlord's demand as additional rent, for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, plus interest from the date of expenditure by Landlord at the Wall Street Journal prime rate.

20. **TENANT'S BANKRUPTCY OR INSOLVENCY.**

20.1 If at any time and for so long as Tenant shall be subjected to the provisions of the United States Bankruptcy Code or other law of the United States or any state thereof for the protection of debtors as in effect at such time (each a "Debtor's Law"):

20.1.1 Tenant, Tenant as debtor-in-possession, and any trustee or receiver of Tenant's assets (each a "Tenant's Representative") shall have no greater right to assume or assign this Lease or any interest in this Lease, or to sublease any of the Premises than accorded to Tenant in Article 9, except to the extent Landlord shall be required to permit such assumption, assignment or sublease by the provisions of such Debtor's Law. Without limitation of the generality of the foregoing, any right of any Tenant's Representative to assume or assign this Lease or to sublease any of the Premises shall be subject to the conditions that:

20.1.1.1 Such Debtor's Law shall provide to Tenant's Representative a right of assumption of this Lease which Tenant's Representative shall have timely exercised and Tenant's Representative shall have fully cured any default of Tenant under this Lease.

20.1.1.2 Tenant's Representative or the proposed assignee, as the case shall be, shall have deposited with Landlord as security for the timely payment of rent an amount equal to the larger of: (a) three (3) months' rent and other monetary charges accruing under this Lease; and (b) any sum specified in Article 5; and shall have provided Landlord with adequate other assurance of the future performance of the obligations of the Tenant under this Lease. Without limitation, such assurances shall include, at least, in the case of assumption of this Lease, demonstration to the satisfaction of the Landlord that Tenant's Representative has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that Tenant's Representative will have sufficient funds to fulfill the obligations of Tenant under this Lease; and, in the case of assignment, submission of current financial statements of the proposed assignee, audited by an independent certified public accountant reasonably acceptable to Landlord and showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of all of the Tenant's obligations under this Lease.

20.1.1.3 The assumption or any contemplated assignment of this Lease or subleasing any part of the Premises, as shall be the case, will not breach any provision in any other lease, mortgage, financing agreement or other agreement by which Landlord is bound.

20.1.1.4 Landlord shall have, or would have had absent the Debtor's Law, no right under Article 9 to refuse consent to the proposed assignment or sublease by reason of the identity or nature of the proposed assignee or sublessee or the proposed use of the Premises concerned.

21. **QUIET ENJOYMENT.** Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord subject to the terms and provisions of this Lease. Landlord shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

22. **CASUALTY.**

22.1 In the event the Premises or the Building are damaged by fire or other cause and in Landlord's reasonable estimation such damage can be materially restored within two hundred thirty (230) days following the date of the casualty, Landlord shall forthwith repair the same and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate abatement in rent from the date of such damage. Such abatement of rent shall be made pro rata in accordance with the extent to which the damage and the making of such repairs shall interfere with the use and occupancy by Tenant of the Premises (including if the same prevents access to the Premises) from time to time. Within forty-five (45) days from the date of such damage, Landlord shall notify Tenant, in writing, of Landlord's reasonable estimation of the length of time within which material restoration can be made, and Landlord's determination shall be binding on Tenant. For purposes of this Lease, the Building or Premises shall be deemed "materially restored" if they are in such condition as would not prevent or materially interfere with Tenant's use of the Premises for the purpose for which it was being used immediately before such damage.

22.2 If such repairs cannot, in Landlord's reasonable estimation, be made within two hundred thirty (230) days following the date of the casualty, Landlord and Tenant shall each have the option of giving the other, at any time within thirty (30) days after Landlord's notice of estimated restoration time, notice terminating this Lease as of the date of such damage. In the event of the giving of such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate as of the date of such damage as if such date had been originally fixed in this Lease for the expiration of the Term. In the event that neither Landlord nor Tenant exercises its option to terminate this Lease, then Landlord shall repair or restore such damage, this Lease continuing in full force and effect, and the rent hereunder shall be proportionately abated as provided in Section 22.1.

22.3 Landlord shall not be required to repair or replace any damage or loss by or from fire or other cause to any panelings, decorations, partitions, additions, railings, ceilings, floor coverings, office fixtures or any other property or improvements installed on the Premises by, or belonging to, Tenant. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or Premises shall be for the sole benefit of the party carrying such insurance and under its sole control.

22.4 In the event that Landlord should fail to complete such repairs and material restoration within sixty (60) days after the date estimated by Landlord therefor as extended by this Section 22.4, Tenant may at its option and as its sole remedy terminate this Lease by delivering written notice to Landlord, within fifteen (15) days after the expiration of said period of time, whereupon this Lease shall end on the date of such notice or such later date fixed in such notice as if the date of such notice was the date originally fixed in this Lease for the expiration of the Term; provided, however, that if construction is delayed because of changes, deletions or additions in construction requested by Tenant, strikes, lockouts, casualties, Acts of God, war, material or labor shortages, government regulation or control or other causes beyond the reasonable control of Landlord, the period for restoration, repair or rebuilding shall be extended for the amount of time Landlord is so delayed.

22.5 Notwithstanding anything to the contrary contained in this Article: (a) Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damages resulting from any casualty covered by the provisions of this Article 22 occur during the last twelve (12) months of the Term or any extension thereof, but if Landlord determines not to repair such damages Landlord shall notify Tenant and if such damages shall render any material portion of the Premises untenable Tenant shall have the right to terminate this Lease by notice to Landlord within fifteen (15) days after receipt of Landlord's notice; and (b) in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or Building requires that any insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon this Lease shall end on the date of such damage as if the date of such damage were the date originally fixed in this Lease for the expiration of the Term. In addition to Landlord's and Tenant's right to terminate as provided herein, Tenant shall have the right to terminate this Lease if: (i) a material portion of the Premises is rendered untenable by fire or other casualty and Landlord's completion estimate described in Section 22.1 provides that such damage cannot reasonably be repaired (as determined by Landlord) within sixty (60) days after Landlord's receipt of all required permits to restore the Premises; (ii) there is less than one (1) year of the Term remaining on the date of such casualty; (iii) the casualty was not caused by the negligence or willful misconduct of Tenant or any Tenant Entities; and (iii) Tenant provides Landlord with written notice of its intent to terminate within thirty (30) days after the date of Landlord's completion estimate.

22.6 In the event of any damage or destruction to the Building or Premises by any peril covered by the provisions of this Article 22, it shall be Tenant's responsibility to properly secure the Premises and upon notice from Landlord to remove forthwith, at its sole cost and expense, such portion of all of the property belonging to Tenant or its licensees from such portion or all of the Building or Premises as Landlord shall request.

22.7 Tenant hereby waives any and all rights under and benefits of Sections 1932(2) and 1933(4) of the California Civil Code, or any similar or successor Regulations or other laws now or hereinafter in effect.

23. **EMINENT DOMAIN.** If all or any substantial part of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, or conveyance in lieu of such appropriation, either party to this Lease shall have the right, at its option, of giving the other, at any time within thirty (30) days after such taking, notice terminating this Lease, except that Tenant may only terminate this Lease by reason of taking or appropriation, if such taking or appropriation shall be so substantial as to materially interfere with Tenant's use and occupancy of the Premises. If neither party to this Lease shall so elect to terminate this Lease, the rental thereafter to be paid shall be adjusted on a fair and equitable basis under the circumstances. In addition to the rights of Landlord above, if any substantial part of the Building shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and regardless of whether the Premises or any part thereof are so taken or appropriated, Landlord shall have the right, at its sole option, to terminate this Lease. Landlord shall be entitled to any and all income, rent, award, or any interest whatsoever in or upon any such sum, which may be paid or made in connection with any such public or quasi-public use or purpose, and Tenant hereby assigns to Landlord any interest it may have in or claim to all or any part of such sums, other than any separate award which may be made with respect to Tenant's trade fixtures and moving expenses; Tenant shall make no claim for the value of any unexpired Term. Tenant hereby waives any and all rights under and benefits of Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Regulations or other laws now or hereinafter in effect.

24. **SALE BY LANDLORD.** In event of a sale or conveyance by Landlord of the Building, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, contained in this Lease in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. Except as set forth in this Article 24, this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. If any security has been given by Tenant to secure the faithful performance of any of the covenants of this Lease, Landlord may transfer or deliver said security, as such, to Landlord's successor in interest and thereupon Landlord shall be discharged from any further liability with regard to said security.

25. **ESTOPPEL CERTIFICATES.** Within ten (10) business days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord or mortgagee or prospective mortgagee a sworn statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) such other matters as may be reasonably requested by Landlord pertaining to the status of the Lease. Landlord and Tenant intend that any statement delivered pursuant to this Article 25 may be relied upon by any mortgagee, beneficiary or purchaser. Tenant irrevocably agrees that if Tenant fails to execute and deliver such certificate within such ten (10) business day period Landlord or Landlord's beneficiary or agent may execute and deliver such certificate on Tenant's behalf, and that such certificate shall be fully binding on Tenant.

26. **SURRENDER OF PREMISES.**

26.1 Tenant shall arrange to meet Landlord for two (2) joint inspections of the Premises, the first to occur at least thirty (30) days (but no more than sixty (60) days) before the last day of the Term, and the second to occur not later than forty-eight (48) hours after Tenant has vacated the Premises. In the event of Tenant's failure to arrange such joint inspections and/or participate in either such inspection, Landlord's inspection at or after Tenant's vacating the Premises shall be conclusively deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

26.2 All alterations, additions, and improvements in, on, or to the Premises made or installed by or for Tenant, including, without limitation, carpeting (collectively, "Alterations"), shall be and remain the property of Tenant during the Term. Upon the expiration or sooner termination of the Term, all Alterations shall become a part of the realty and shall belong to Landlord without compensation, and title shall pass to Landlord under this Lease as by a bill of sale. At the end of the Term or any renewal of the Term or other sooner termination of this Lease, Tenant will peaceably deliver up to Landlord possession of the Premises, together with all Alterations by whomsoever made, in the same condition received or first installed, broom clean and free of all debris, excepting only ordinary wear and tear and damage by fire or other casualty. Notwithstanding the foregoing, and provided that Landlord did not elect for removal at the time of Landlord's consent pursuant to Section 6.4 above, if Landlord elects by notice given to Tenant at least ninety (90) days prior to expiration of the Term, Tenant shall, at Tenant's sole cost, remove any Alterations, including carpeting, so designated by Landlord's notice, and repair any damage caused by such removal; provided, however, Landlord's failure to elect shall be deemed an affirmative obligation on Tenant to remove such Alterations, and Tenant must, at Tenant's sole cost, remove upon termination of this Lease, any and all of Tenant's furniture, furnishings, equipment, movable partitions of less than full height from floor to ceiling and other trade fixtures and personal property, as well as all data/telecommunications cabling and wiring installed by or on behalf of Tenant, whether inside walls, under any raised floor or above any ceiling (collectively, "Personalty"). Personalty not so removed shall be deemed abandoned by the Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale, but Tenant shall remain responsible for the cost of removal and disposal of such Personalty, as well as any damage caused by such removal. In the event Tenant fails to remove Alterations and Personalty and repair the Premises on or before the termination or expiration of the Lease and otherwise as aforesaid, Landlord may perform such work on Tenant's behalf and Tenant shall reimburse Landlord the actual out of pocket cost incurred by Landlord in connection with such work. The foregoing reimbursement shall be payable by Tenant as additional rent hereunder within ten (10) days of notice from Landlord (which notice shall be accompanied by documented evidence of such costs incurred by Landlord).

26.3 All obligations of Tenant under this Lease not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term. Upon the expiration or earlier termination of the Term, Tenant shall pay to Landlord the amount, as estimated by Landlord, necessary to repair and restore the Premises as provided in this Lease and/or to discharge Tenant's obligation for unpaid amounts due or to become due to Landlord. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant, with Tenant being liable for any additional costs upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied. Any otherwise unused Security Deposit shall be credited against the amount payable by Tenant under this Lease.

27. **NOTICES.** Any notice or document required or permitted to be delivered under this Lease shall be addressed to the intended recipient, by fully prepaid registered or certified United States Mail return receipt requested, or by reputable independent contract delivery service furnishing a written record of attempted or actual delivery, and shall be deemed to be delivered when tendered for delivery to the addressee at its address set forth on the Reference Pages, or at such other address as it has then last specified by written notice delivered in accordance with this Article 27, or if to Tenant at either its aforesaid address or its last known registered office or home of a general partner or individual owner, whether or not actually accepted or received by the addressee. Any such notice or document may also be personally delivered if a receipt is signed by and received from, the individual, if any, named in Tenant's Notice Address.

28. **TAXES PAYABLE BY TENANT.** In addition to rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse to Landlord, upon demand, any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties to this Lease: (a) upon, allocable to, or measured by or on the gross or net rent payable under this Lease, including without limitation any gross income tax or excise tax levied by the State, any political subdivision thereof, or the Federal Government with respect to the receipt of such rent; (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises or any portion thereof, including any sales, use or service tax imposed as a result thereof; (c) upon or measured by the Tenant's gross receipts or payroll or the value of Tenant's equipment, furniture, fixtures and other personal property of Tenant or leasehold improvements, alterations or additions located in the Premises; or (d) upon this transaction or any document to which Tenant is a party creating or transferring any interest of Tenant in this Lease or the Premises. In addition to the foregoing, Tenant agrees to pay, before delinquency, any and all taxes levied or assessed against Tenant and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property of Tenant located in the Premises.

29. **RELOCATION OF TENANT.** [INTENTIONALLY OMITTED]

30. **PARKING.**

30.1 During the Term of this Lease, Tenant agrees to lease from Landlord and Landlord agrees to lease to Tenant, the number and type of parking passes as set forth on the Reference Pages of this Lease. This right to park in the Building's parking facilities (the "Parking Facility") shall be on an unreserved, nonexclusive, first come, first served basis, for passenger-size automobiles and is subject to the following terms and conditions:

30.1.1 Tenant shall at all times abide by and shall cause each of Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees and subtenants (collectively, "Tenant's Parties") to abide by any rules and regulations ("Rules") for use of the Parking Facility that Landlord or Landlord's garage operator reasonably establishes from time to time, and otherwise agrees to use the Parking Facility in a safe and lawful manner. Landlord reserves the right to adopt, modify and enforce the Rules governing the use of the Parking Facility from time to time including any key-card, sticker or other identification or entrance system and hours of operation. Landlord may refuse to permit any person who violates such Rules to park in the Parking Facility, and any violation of the Rules shall subject the car to removal from the Parking Facility.

30.1.2 Unless specified to the contrary above, the parking spaces hereunder shall be provided on a non-designated "first-come, first-served" basis. Landlord reserves the right to assign specific spaces, and to reserve spaces for visitors, small cars, disabled persons or for other tenants or guests, and Tenant shall not park and shall not allow Tenant's Parties to park in any such assigned or reserved spaces. Tenant may validate visitor parking by such method as Landlord may approve, at the validation rate from time to time generally applicable to visitor parking. Tenant acknowledges that the Parking Facility may, following reasonable prior notice (so long as such notice is practicable), be closed entirely or in part in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the Parking Facility, or if required by casualty, strike, condemnation, act of God, governmental law or requirement or other reason beyond the operator's reasonable control.

30.1.3 Tenant acknowledges that to the fullest extent permitted by law, Landlord shall have no liability for any damage to property or other items located in the parking areas of the Project (including without limitation, any loss or damage to tenant's automobile or the contents thereof due to theft, vandalism or accident), nor for any personal injuries or death arising out of the use of the Parking Facility by Tenant or any Tenant's Parties, whether or not such loss or damage results from Landlord's active negligence or negligent omission. The limitation on Landlord's liability under the preceding sentence shall not apply however to loss or damage arising directly from Landlord's willful misconduct. Without limiting the foregoing, if Landlord arranges for the parking areas to be operated by an independent contractor not affiliated with Landlord, Tenant acknowledges that Landlord shall have no liability for claims arising through acts or omissions of such independent contractor. Tenant and Tenant's Parties each hereby voluntarily releases, discharges, waives and relinquishes

any and all actions or causes of action for personal injury or property damage occurring to Tenant or any of Tenant's Parties arising as a result of parking in the Parking Facility, or any activities incidental thereto, wherever or however the same may occur, and further agrees that Tenant will not prosecute any claim for personal injury or property damage against Landlord or any of its officers, agents, servants or employees for any said causes of action and in all events, Tenant agrees to look first to its insurance carrier and to require that Tenant's Parties look first to their respective insurance carriers for payment of any losses sustained in connection with any use of the Parking Facility. Tenant hereby waives on behalf of its insurance carriers all rights of subrogation against Landlord or any Landlord Entities.

30.1.4 Except as to a Permitted Transferee or approved sublease or assignment pursuant to Article 9 of this Lease, Tenant's right to park as described in this Article and this Lease is exclusive to Tenant.

30.1.5 In the event any surcharge or regulatory fee is at any time imposed by any governmental authority with reference to parking, Tenant shall (commencing after two (2) weeks' notice to Tenant) pay, per parking pass, such surcharge or regulatory fee to Landlord in advance on the first day of each calendar month concurrently with the monthly installment of rent due under this Lease. Landlord will enforce any surcharge or fee in an equitable manner amongst the Building tenants.

30.2 If Tenant violates any of the terms and conditions of this Article, the operator of the Parking Facility shall have the right to remove from the Parking Facility any vehicles hereunder which shall have been involved or shall have been owned or driven by parties involved in causing such violation, without liability therefor whatsoever. In addition, Landlord shall have the right to cancel Tenant's right to use the Parking Facility pursuant to this Article upon ten (10) days' written notice, unless within such ten (10) day period, Tenant cures such default. Such cancellation right shall be cumulative and in addition to any other rights or remedies available to Landlord at law or equity, or provided under this Lease.

31. **DEFINED TERMS AND HEADINGS.** The Article headings shown in this Lease are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. Any indemnification or insurance of Landlord shall apply to and inure to the benefit of all the following "Landlord Entities", being Landlord, Landlord's investment manager, and the trustees, boards of directors, officers, general partners, beneficiaries, stockholders, employees and agents of each of them. Any option granted to Landlord shall also include or be exercisable by Landlord's trustee, beneficiary, agents and employees, as the case may be. In any case where this Lease is signed by more than one person, the obligations under this Lease shall be joint and several. The terms "Tenant" and "Landlord" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof. The term "rentable area" shall mean the rentable area of the Premises or the Building as calculated by the Landlord on the basis of the plans and specifications of the Building including a proportionate share of any common areas. Tenant hereby accepts and agrees to be bound by the figures for the rentable square footage of the Premises and Tenant's Proportionate Share shown on the Reference Pages; however, Landlord may adjust either or both figures if there is manifest error, addition or subtraction to the Building or any business park or complex of which the Building is a part, remeasurement or other circumstance reasonably justifying adjustment. The term "Building" refers to the structure in which the Premises are located and the common areas (parking lots, sidewalks, landscaping, etc.) appurtenant thereto. If the Building is part of a larger complex of structures, the term "Building" may include the entire complex, where appropriate (such as shared Expenses or Taxes) and subject to Landlord's reasonable discretion.

32. **TENANT'S AUTHORITY.**

32.1 If Tenant signs as a corporation, partnership, trust or other legal entity each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has been and is qualified to do business in the state in which the Building is located, that the entity has full right and authority to enter into this Lease, and that all persons signing on behalf of the entity were authorized to do so by appropriate actions. Tenant agrees to deliver to Landlord, simultaneously with the delivery of this Lease, a corporate resolution, proof of due authorization by partners, opinion of counsel or other appropriate documentation reasonably acceptable to Landlord evidencing the due authorization of Tenant to enter into this Lease.

32.2 Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing

representation is untrue at any time during the Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

33. **FINANCIAL STATEMENTS AND CREDIT REPORTS.** At Landlord's request, Tenant shall deliver to Landlord a copy, certified by an officer of Tenant as being a true and correct copy, of Tenant's most recent audited financial statement, or, if unaudited, certified by Tenant's chief financial officer as being true, complete and correct in all material respects. Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report. Notwithstanding the foregoing, Landlord shall not request financial statements more than once in each consecutive one (1) year period during the Term unless (i) Tenant is in default beyond any applicable notice and cure period, (ii) Landlord reasonably believes that there has been an adverse change in Tenant's financial position since the last financial statement provided to Landlord, or (iii) requested (a) in connection with a proposed sale or transfer of the Building by Landlord, or (b) by an investor of Landlord, any Landlord Entity or any lender or proposed lender of Landlord or any Landlord Entity. At Tenant's request, Landlord shall enter into a confidentiality agreement with Tenant, which agreement is reasonably acceptable to Landlord and covers confidential financial information provided by Tenant to Landlord. Notwithstanding the foregoing, so long as Tenant is a publicly traded company on an "over-the-counter" market or any recognized national or international securities exchange, the foregoing shall not apply so long as Tenant's current public annual report (in compliance with applicable securities laws) for such applicable year is available to Landlord in the public domain.

34. **COMMISSIONS.** Each of the parties represents and warrants to the other that it has not dealt with any broker or finder in connection with this Lease, except as described on the Reference Pages.

35. **TIME AND APPLICABLE LAW.** Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the state in which the Building is located. Whenever a period of time is prescribed for the taking of an action by Landlord, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of the performing party.

36. **SUCCESSORS AND ASSIGNS.** Subject to the provisions of Article 9, the terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties to this Lease.

37. **ENTIRE AGREEMENT.** This Lease, together with its exhibits, contains all agreements of the parties to this Lease and supersedes any previous negotiations. There have been no representations made by the Landlord or any of its representatives or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease.

38. **EXAMINATION NOT OPTION.** Submission of this Lease shall not be deemed to be a reservation of the Premises. Landlord shall not be bound by this Lease until it has received a copy of this Lease duly executed by Tenant and has delivered to Tenant a copy of this Lease duly executed by Landlord, and until such delivery Landlord reserves the right to exhibit and lease the Premises to other prospective tenants. Notwithstanding anything contained in this Lease to the contrary, Landlord may withhold delivery of possession of the Premises from Tenant until such time as Tenant has paid to Landlord any security deposit required by Article 5, the first month's rent as set forth in Article 3 and any sum owed pursuant to this Lease.

39. **RECORDATION.** Tenant shall not record or register this Lease or a short form memorandum hereof without the prior written consent of Landlord, and then shall pay all charges and taxes incident to such recording or registration.

40. **OPTION TO RENEW.** Provided this Lease is in full force and effect and Tenant is not in default under any of the other terms and conditions of this Lease beyond any applicable notice and cure periods at the time of notification or commencement, Tenant shall have one (1) option to renew (the "Renewal Option") this Lease for a term of twelve (12) months or thirty-six (36) months (the "Renewal Term"), at Tenant's option, for the portion of the Premises being leased by Tenant as of the date the Renewal Term is to commence, on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions as set forth below:

40.1 If Tenant elects to exercise the Renewal Option, then Tenant shall provide Landlord with written notice no earlier than the date which is two hundred and seventy (270) days prior to the expiration of the Term of this Lease but no later than the date which is one hundred and eighty (180) days prior to the expiration of the Term of this Lease. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the Term of this Lease. At the

time of Tenant's election, Tenant notice to Landlord must specify whether Tenant is exercising the twelve (12) month or thirty-six (36) month Renewal Term, and Tenant's choice shall be binding upon Tenant.

40.2 The Annual Rent and Monthly Installment of Rent in effect at the expiration of the Term of this Lease shall be increased to reflect the Prevailing Market (as defined in Section 40.8) rate. Landlord shall advise Tenant of the new Annual Rent and Monthly Installment of Rent for the Premises no later than thirty (30) days after receipt of Tenant's written request therefor. Said request shall be made no earlier than thirty (30) days prior to the first date on which Tenant may exercise its Renewal Option under this Article 40.

40.3 If Tenant and Landlord are unable to agree on a mutually acceptable Annual Rent and Monthly Installment of Rent for the Renewal Term not later than sixty (60) days prior to the expiration of the initial Term, then Landlord and Tenant, within five (5) days after such date, shall each simultaneously submit to the other, in a sealed envelope, its good faith estimate of the Prevailing Market rate for the Premises during the Renewal Term (collectively referred to as the "Estimates"). If the higher of such Estimates is not more than one hundred five percent (105%) of the lower of such Estimates, then the Prevailing Market rate shall be the average of the two Estimates. If the Prevailing Market rate is not established by the exchange of Estimates, then, within seven (7) days after the exchange of Estimates, Landlord and Tenant shall each select an appraiser to determine which of the two Estimates most closely reflects the Prevailing Market rate for the Premises during the Renewal Term. Each appraiser so selected shall be certified as an MAI appraiser or as an ASA appraiser and shall have had at least five (5) years experience within the previous ten (10) years as a real estate appraiser working in Sunnyvale, California, with working knowledge of current rental rates and practices. For purposes hereof, an "MAI" appraiser means an individual who holds an MAI designation conferred by, and is an independent member of, the American Institute of Real Estate Appraisers (or its successor organization, or in the event there is no successor organization, the organization and designation most similar), and an "ASA" appraiser means an individual who holds the Senior Member designation conferred by, and is an independent member of, the American Society of Appraisers (or its successor organization, or, in the event there is no successor organization, the organization and designation most similar).

40.4 Upon selection, Landlord's and Tenant's appraisers shall work together in good faith to agree upon which of the two Estimates most closely reflects the Prevailing Market rate for the Premises. The Estimates chosen by such appraisers shall be binding on both Landlord and Tenant. If either Landlord or Tenant fails to appoint an appraiser within the seven (7) day period referred to above, the appraiser appointed by the other party shall be the sole appraiser for the purposes hereof. If the two appraisers cannot agree upon which of the two Estimates most closely reflects the Prevailing Market rate within ten (10) days after their appointment, then, within ten (10) days after the expiration of such ten (10) day period, the two appraisers shall select a third appraiser meeting the aforementioned criteria. Once the third appraiser (i.e., the arbitrator) has been selected as provided for above, then, as soon thereafter as practicable but in any case within fourteen (14) days, the arbitrator shall make his or her determination of which of the two Estimates most closely reflects the Prevailing Market rate and such Estimate shall be binding on both Landlord and Tenant as the Prevailing Market rate for the Premises. If the arbitrator believes that expert advice would materially assist him or her, he or she may retain one or more qualified persons to provide such expert advice. The parties shall share equally in the costs of the arbitrator and of any experts retained by the arbitrator. Any fees of any appraiser, counsel or experts engaged directly by Landlord or Tenant, however, shall be borne by the party retaining such appraiser, counsel or expert.

40.5 If the Prevailing Market rate has not been determined by the commencement date of the Renewal Term, Tenant shall pay Monthly Installments of Rent upon the terms and conditions in effect during the last month of the initial Term until such time as the Prevailing Market rate has been determined. Upon such determination, the Annual Rent and Monthly Installments of Rent for the Premises shall be retroactively adjusted to the commencement of such Renewal Term for the Premises.

40.6 Except as to a Permitted Transferee, this Renewal Option is not transferable; the parties hereto acknowledge and agree that they intend that the aforesaid option to renew this Lease shall be "personal" to Tenant as set forth above and that in no event will any assignee or sublessee have any rights to exercise this Renewal Option.

40.7 If Tenant validly exercises or fails to exercise this Renewal Option, Tenant shall have no further right to extend the Term of this Lease.

40.8 For purposes of this Renewal Option, "Prevailing Market" shall mean the arms length fair market annual rental rate per rentable square foot under renewal leases and amendments entered into on or about the date on which the Prevailing Market is being determined hereunder for space comparable to the Premises in the Building and buildings comparable to the Building in the same rental market in the Sunnyvale, California area as of the date the Renewal Term is to commence, taking into account the specific provisions of this Lease which will remain constant. The determination of Prevailing Market shall take into account any material economic differences between the terms of this Lease and any

comparison lease or amendment, such as rent abatements, construction costs and other concessions and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes.

41. ACCELERATION OPTION.

41.1 Tenant shall have the right to accelerate the Termination Date (“Acceleration Option”) of this Lease, with respect to the entire Premises only, from the expiration of the thirty-sixth (36th) full calendar month of the Term to the expiration of the twelfth (12th), eighteenth (18th), twenty-fourth (24th) or thirtieth (30th) full calendar month of the Term, at Tenant’s option (the “Accelerated Termination Date”), if:

41.1.1 There is no default by Tenant under this Lease beyond any applicable notice and cure period at the date Tenant provides Landlord with an Acceleration Notice (hereinafter defined); and

41.1.2 No part of the Premises is sublet for a term extending past the Accelerated Termination Date; and

41.1.3 This Lease has not been assigned (except to a Permitted Transferee); and

41.1.4 Landlord receives notice of acceleration (“Acceleration Notice”) not less than six (6) full calendar months prior to the applicable Accelerated Termination Date.

41.2 If Tenant exercises its Acceleration Option, within thirty (30) days after Tenant’s delivery to Landlord of Tenant’s Acceleration Notice, Tenant shall pay to Landlord the sum of an amount equal to the unamortized portion of all of the following: (a) any leasing commissions, (b) the Initial Alterations, (c) the HVAC Allowance, if any, and (d) the Allowance (as defined in Exhibit B), (clauses (a), (b), (c) and (d) are collectively referred to herein as the “Acceleration Fee”) as a fee in connection with the acceleration of the Termination Date and not as a penalty; provided that the Acceleration Fee shall be increased by an amount equal to the unamortized portion of any leasing commissions, tenant improvements and allowances or other concessions incurred by Landlord in connection with any additional space other than the initial Premises leased by Tenant under this Lease and that is subject to acceleration hereunder. Landlord estimates that, as of the end of the 12th month of the Term, the Acceleration Fee shall be \$7.10 per rentable square foot of the Premises (as the same is initially set forth in this Lease). The foregoing estimate of the Acceleration Fee assumes a Wall Street Journal Prime lending rate of 3.25% and a full disbursement of the HVAC Allowance and the Allowance as of the Commencement Date of this Lease. Tenant shall remain liable for all Monthly Installments of Rent, additional rent and all other sums due under this Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Accelerated Termination Date. The “unamortized portion” of any of the foregoing shall be determined using an interest rate with interest at one percent (1%) in excess of the Wall Street Journal prime lending rate announced from time to time

41.3 If Tenant, subsequent to providing Landlord with an Acceleration Notice, defaults in any of the provisions of this Lease (including, without limitation, a failure to pay the Acceleration Fee due hereunder), and such default is not cured within the applicable notice and cure period set forth herein, Landlord, at its option, may (i) declare Tenant’s exercise of the Acceleration Option to be null and void, or (ii) continue to honor Tenant’s exercise of its Acceleration Option, in which case, Tenant shall remain liable for the payment of the Acceleration Fee and for all Monthly Installments of Rent and any additional rent and other sums due under this Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Accelerated Termination Date. Further, in the event that Landlord shall declare Tenant’s exercise of the Acceleration Option to be null and void as provided in clause (i) above, Tenant shall protect, indemnify and hold Landlord and the Landlord Entities harmless from and against any and all loss, claims, liability or costs (including court costs and attorney’s fees) incurred by reason of such nullification of Tenant’s Acceleration Option, including, without limitation, any claims by any potential replacement tenants for the Premises.

41.4 As of the date Tenant provides Landlord with an Acceleration Notice, any unexercised rights or options of Tenant to renew the Term of this Lease or to expand the Premises (whether expansion options, rights of first or second refusal, rights of first or second offer, or other similar rights), and any outstanding tenant improvement allowance not claimed and properly utilized by Tenant in accordance with this Lease as of such date, shall immediately be deemed terminated and no longer available or of any further force or effect.

42. CONSULTANT FEE. Provided Tenant is not in default under this Lease beyond any applicable notice and cure periods and provided that this Lease is fully executed on or before May 1, 2009, Landlord shall provide Tenant with a consultant fee in the amount not to exceed \$5,000.00 (the “Consultant Fee”) for Tenant’s transaction costs with respect to this Lease. Landlord shall disburse the Consultant Fee, at Tenant’s option, either directly to Tenant or to the consultant performing the services. If such Consultant Fee is paid to Tenant and not directly to the consultant, Landlord shall pay such Consultant Fee within thirty (30) days after receipt of an invoice or other supporting documentation evidencing the actual

transaction costs incurred by Tenant with respect to this Lease for which Tenant desires to apply the Consultant Fee. However, in no event shall Landlord have any obligation to disburse the Consultant Fee on or after September 1, 2009.

43. **ROOF SPACE FOR DISH/ANTENNA.**

43.1 During the initial Term and any extension thereof, Tenant shall have the right to lease space on the roof of the Building for the purpose of installing (in accordance with Article 6 of this Lease), operating and maintaining communication antennas and associated communication devices and cabling (the "Dish/Antenna") to be approved by Landlord. The location of the space on the roof to be leased by Tenant is referred to herein as the "Roof Space". Landlord reserves the right to relocate the Roof Space as reasonably necessary during the Term, so long as such relocation does not interfere with or diminish the quality of Tenant's ability to transmit and receive radio signals, as reasonably determined by Landlord. Landlord's designation shall take into account Tenant's use of the Dish/Antenna. Notwithstanding the foregoing, Tenant's right to install the Dish/Antenna shall be subject to the approval rights of Landlord and Landlord's architect and/or engineer, which approvals shall not be unreasonably denied, with respect to the plans and specifications of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna. The precise specifications and a general description of the Dish/Antenna, or any replacements thereof, along with all documents Landlord reasonably requires to review the installation of the Dish/Antenna (the "Plans and Specifications") shall be submitted to Landlord for Landlord's written approval no later than twenty (20) days before Tenant commences to install the Dish/Antenna. Tenant shall be solely responsible for obtaining and maintaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna. If Landlord determines that the Dish/Antenna equipment does not comply with the approved Plans and Specifications, that the Building has been damaged during installation of the Dish/Antenna or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant promptly shall cure the defects. If the Tenant fails to immediately cure the defects, Tenant shall pay to Landlord upon demand the cost, as reasonably determined by Landlord, of correcting any defects and repairing any damage to the Building caused by such installation. If at any time Landlord, in its sole discretion, deems it necessary, Tenant shall provide and install, at Tenant's sole cost and expense, appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "Aesthetic Screening").

43.2 Landlord agrees that Tenant, upon reasonable prior written notice to Landlord (except in the event of an emergency or equipment failure that materially affects Tenant's ability to transmit and receive radio signals), shall have access to the roof of the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, all of which shall be performed by Tenant or Tenant's authorized representative or contractors, which shall be reasonably approved by Landlord, at Tenant's sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant, FCC (defined below) inspectors, or persons under their direct supervision will be permitted to have access to the roof of the Building and the Roof Space. Tenant further agrees to exercise firm control over the people requiring access to the roof of the Building and the Roof Space in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof, or interfere with the use of the Building and roof by Landlord. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any Tenant Entity.

43.3 Tenant agrees to install and maintain only equipment of types and frequencies which will not cause unreasonable interference to Landlord or any other tenant of the Building as determined by Landlord in its good faith prudent business judgment. In the event Tenant's equipment causes such interference, Tenant will change the frequency on which it transmits and/or receives and take any other steps necessary to eliminate the interference. If said interference cannot be eliminated within a reasonable period of time, in the reasonable judgment of Landlord, then Tenant shall cease operating the Dish/Antenna from the Roof Space (except for intermittent testing) until such interference is resolved. Landlord shall make commercially reasonable efforts to ensure that any new equipment installed on the roofs by other tenants or users does not have frequencies which causes unreasonable interference to Tenant's Dish/Antenna. Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Dish/Antenna in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, the Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor any Landlord Entity shall be liable to Tenant for any stoppages or shortages of

electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord any Landlord Entity shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

43.4 The Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of this Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's sole discretion. Such maintenance and operation shall be performed in a manner to avoid any interference with any other tenants or Landlord. Tenant agrees that at all times during the Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

43.5 In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. In the event the Landlord contemplates roof repairs that could affect Tenant's Dish/Antenna, or which may result in an interruption of the Tenant's telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

43.6 Tenant shall not allow any provider of telecommunication, video, data or related services ("Communication Services") to locate any equipment on the roof of the Building or in the Roof Space for any purpose whatsoever, nor may Tenant use the Roof Space and/or Dish/Antenna to provide Communication Services to an unaffiliated tenant, occupant or licensee of another building, or to facilitate the provision of Communication Services on behalf of another Communication Services provider to an unaffiliated tenant, occupant or licensee of the Building or any other building. Tenant acknowledges that Landlord may at some time establish a standard license agreement (the "License Agreement") with respect to the use of roof space by tenants of the Building. Tenant, upon request of Landlord, shall enter into such License Agreement with Landlord provided that such agreement does not materially or adversely alter the rights of Tenant hereunder with respect to the Roof Space. Tenant specifically acknowledges and agrees that the terms and conditions of Article 10 of this Lease shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

43.7 If Tenant defaults under any of the terms and conditions of this Section or this Lease, and Tenant fails to cure said default within the time allowed by Article 18 of this Lease, Landlord shall be permitted to exercise all remedies provided under the terms of this Lease, including removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, and restoring the Building and the Roof Space to the condition that existed prior to the installation of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any. If Landlord removes the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, as a result of an uncured default, Tenant shall be liable for all costs and expenses Landlord incurs in removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, and repairing any damage to the Building, the roof of the Building and the Roof Space caused by the installation, operation or maintenance of the Dish/Antenna, the appurtenances, and the Aesthetic Screening, if any. Tenant's rights pursuant to this Article 43 are personal to the named Tenant under this Lease and assignees or subtenant consented to by Landlord pursuant to Article 9 above, and are not otherwise transferable.

44. **RIGHT OF FIRST OPPORTUNITY.** In the event that Landlord determines that it will sell the Building to an unrelated third-party and will imminently commence marketing efforts to sell the Building to an unrelated third-party, Landlord shall provide a written notice of such intended sale to Tenant and, within ten (10) days following Landlord's notice to Tenant, Tenant may provide to Landlord a formal offer to purchase the Building (the "Purchase Offer"). The Purchase Offer shall contain all material terms of Tenant's offer, including, without limitation, the proposed purchase price, earnest money deposit, timing of close of transaction and any other material terms. Landlord hereby agrees to use good faith in considering Tenant's Purchase Offer prior to accepting any other offers to purchase the Building. Landlord shall have no

obligation to accept Tenant's Purchase Offer. The terms of this section shall in no event be deemed an exclusive right of and/or opportunity for Tenant. In the event Tenant fails to respond to Landlord's written notice described above within the five (5) day period, Tenant shall be deemed to have waived its rights as provided in this section.

45. MONUMENT SIGNAGE.

45.1 So long as (a) Tenant is not in default under the terms of this Lease beyond any applicable notice and cure period; (b) Tenant is leasing the entire Premises and has not assigned the Lease other than to a Permitted Transferee; and (c) Tenant has not assigned this Lease or sublet the Premises, Tenant shall have the right to have its name listed on the monument sign for the Building (the "Monument Sign"), subject to the terms of this Article 45. The design, size and color of Tenant's signage with Tenant's name to be included on the Monument Sign, and the manner in which it is attached to the Monument Sign, shall comply with all applicable Regulations and shall be subject to the approval of Landlord and any applicable governmental authorities. Landlord reserves the right to withhold consent to any sign that, in the sole judgment of Landlord, is not harmonious with the design standards of the Building and Monument Sign. Landlord shall have the right to require that all names on the Monument Sign be of the same size and style. Tenant must obtain Landlord's written consent to any proposed signage and lettering prior to its fabrication and installation, and the location of Tenant's name on the Monument Sign shall be further subject to Landlord's reasonable approval. To obtain Landlord's consent, Tenant shall submit design drawings to Landlord showing the type and sizes of all lettering; the colors, finishes and types of materials used; and (if applicable and Landlord consents in its sole discretion) any provisions for illumination. Although the Monument Sign will be maintained by Landlord, Tenant shall pay its proportionate share of the cost of any maintenance and repair associated with the Monument Sign. In the event that additional names are listed on the Monument Sign, all future costs of maintenance and repair shall be prorated between Tenant and the other parties that are listed on such Monument Sign.

45.2 Tenant's name on the Monument Sign shall be designed, constructed, installed, insured, maintained, repaired and removed from the Monument Sign all at Tenant's sole risk, cost and expense. Tenant, at its cost, shall be responsible for the maintenance, repair or replacement of Tenant's signage on the Monument Sign, which shall be maintained in a manner reasonably satisfactory to Landlord.

45.3 If during the Term (and any extensions thereof) (a) Tenant is in default under the terms of this Lease after the expiration of applicable cure periods; (b) Tenant leases and occupies less than the entire Premises; or (c) Tenant assigns this Lease, then Tenant's rights granted herein will terminate and Landlord may remove Tenant's name from the Monument Sign at Tenant's sole cost and expense and restore the Monument Sign to the condition it was in prior to installation of Tenant's signage thereon, ordinary wear and tear excepted. The cost of such removal and restoration shall be payable as additional rent within five (5) days of Landlord's demand. Landlord may, at anytime during the Term (or any extension thereof), upon five (5) days prior written notice to Tenant, relocate the position of Tenant's name on the Monument Sign. The cost of such relocation of Tenant's name shall be at the cost and expense of Landlord.

45.4 The rights provided in this Article 45 shall be non-transferable unless otherwise agreed by Landlord in writing in its sole discretion.

46. PREMISES SIGNAGE. Tenant shall be entitled to one non-illuminated identification sign to be located on the lobby window area of the Building (the "Premises Signage"). The exact location of the Premises Signage shall be subject to all applicable Regulations and Landlord's prior written approval. Such right to Premises Signage is personal to Tenant and is subject to the following terms and conditions: (i) Tenant shall submit plans and drawings for the Premises Signage to any and all public authorities having jurisdiction and shall obtain written approval from each such jurisdiction prior to installation, and shall fully comply with all applicable Regulations; (ii) Tenant shall, at Tenant's sole cost and expense, design, construct and install the Premises Signage; (iii) the Premises Signage shall be subject to Landlord's prior written approval, which Landlord shall have the right to withhold in its reasonable discretion; and (iv) Tenant shall maintain the Premises Signage in good condition and repair, and all costs of maintenance and repair shall be borne by Tenant. Maintenance shall include, without limitation, cleaning at reasonable intervals. Upon the expiration or earlier termination of this Lease, Tenant shall remove, at Tenant's sole cost, the Premises Signage, repair any damage to the Building caused by such removal and restore the Building to the condition which existed prior to the installation of the Premises Signage. If Tenant fails to remove the Premises Signage and repair the Building in accordance with the terms of this Lease, Landlord shall cause the Premises Signage to be removed from the Building and the Building to be repaired and restored to the condition which existed prior to the installation of the Premises Signage (including, if necessary, the replacement of any precast concrete panels), all at the sole cost and expense of Tenant and otherwise in accordance with this Lease, without further notice from Landlord notwithstanding anything to the contrary contained in this Lease. Tenant shall pay all costs and expenses for such removal and restoration upon demand. Except as to a Permitted Transferee, the rights provided in this Article 46 shall be non-transferable unless otherwise agreed by Landlord in writing in its sole discretion.

47. **TENANT'S SECURITY SYSTEM.** Subject to the terms of this Lease, including, without limitation, Tenant's compliance with Article 6 above, Tenant, at Tenant's sole cost and expense, shall have the right to install and maintain a security and card access system in the Premises and at the entrance to the Premises ("Tenant's Security System"), subject to the following conditions: (i) Tenant's plans and specifications for the proposed Tenant's Security System shall be subject to Landlord's prior written approval, which approval will not be unreasonably withheld; provided, however, that Tenant shall coordinate the installation and operation of Tenant's Security System with Landlord to assure that Tenant's Security System is compatible with the Building's systems and equipment and to the extent that Tenant's Security System is not compatible with the Building systems and equipment, Tenant shall not be entitled to install or operate it (and Tenant shall not actually install or operate Tenant's Security System unless Tenant has obtained Landlord's approval of such compatibility in writing prior to such installation or operation); (ii) Tenant's Security System shall be and shall remain compatible with any security and other systems existing in the Premises and the Building; (iii) Tenant's Security System shall be installed and used in compliance with all other provisions of this Lease; and (iv) Tenant shall keep Tenant's Security System in good operating condition and repair and Tenant shall be solely responsible, at Tenant's sole cost and expense, for the monitoring, operation and removal of Tenant's Security System. Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Security System. All costs and expenses associated with the removal of Tenant's Security System and the repair of any damage to the Premises and the Building resulting from the installation and/or removal of same shall be borne solely by Tenant. Notwithstanding anything to the contrary, neither Landlord nor any Landlord Entities shall be directly or indirectly liable to Tenant, any Tenant Entities or any other person and Tenant hereby waives any and all claims against and releases Landlord and the Landlord Entities from any and all claims arising as a consequence of or related to Tenant's Security System, or the failure thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

48. **LIMITATION OF LANDLORD'S LIABILITY.** Redress for any claim against Landlord under this Lease shall be limited to and enforceable only against and to the extent of Landlord's interest in the Building. The obligations of Landlord under this Lease are not intended to be and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its or its investment manager's trustees, directors, officers, partners, beneficiaries, members, stockholders, employees, or agents, and in no case shall Landlord be liable to Tenant hereunder for any lost profits, damage to business, or any form of special, indirect or consequential damages.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Lease Reference Date set forth in the Reference Pages of this Lease.

LANDLORD:

**SILICON VALLEY CA-I, LLC,
a Delaware limited liability company**

By: RREEF Management Company,
a Delaware corporation, its Authorized Agent

By: _____

Name: James H. Ida

Title: Vice President, District Manager

Dated: _____

TENANT:

**8X8, INC.,
a Delaware corporation**

By: _____

Name: Bryan R. Martin

Title: Chairman and CEO

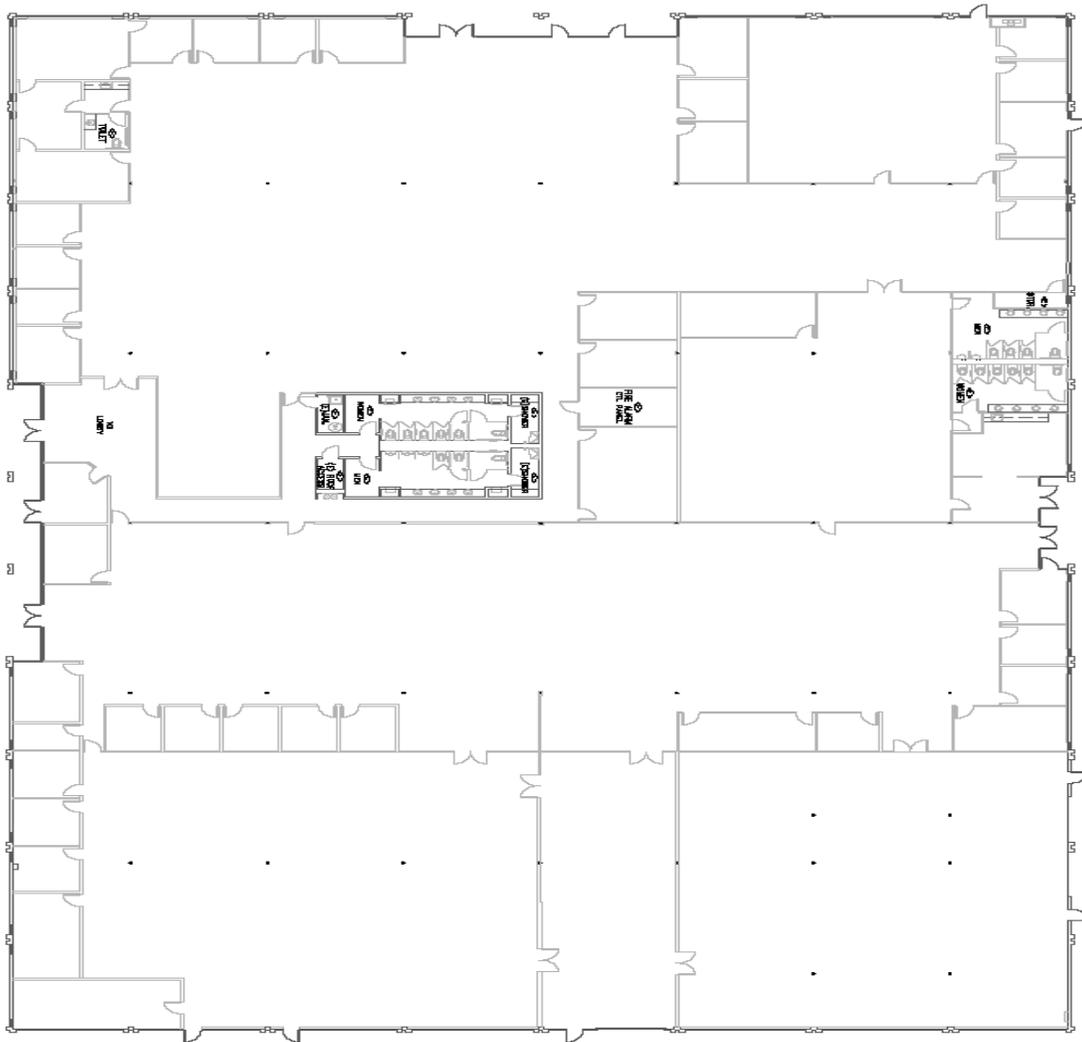
Dated: _____

EXHIBIT A – FLOOR PLAN DEPICTING THE PREMISES

attached to and made a part of the Lease bearing the
Lease Reference Date of April 30, 2009 between
SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and
8X8, INC., a Delaware corporation, as Tenant

**810 West Maude Avenue
Sunnyvale, California 94089**

Exhibit A is intended only to show the general layout of the Premises as of the beginning of the Term of this Lease. It does not in any way supersede any of Landlord's rights set forth in Article 17 of the Lease with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.



RREEF

**810 MAUDE
SUNNYVALE, CA**

JOB NO.:

DATE:

SCALE:

--	--

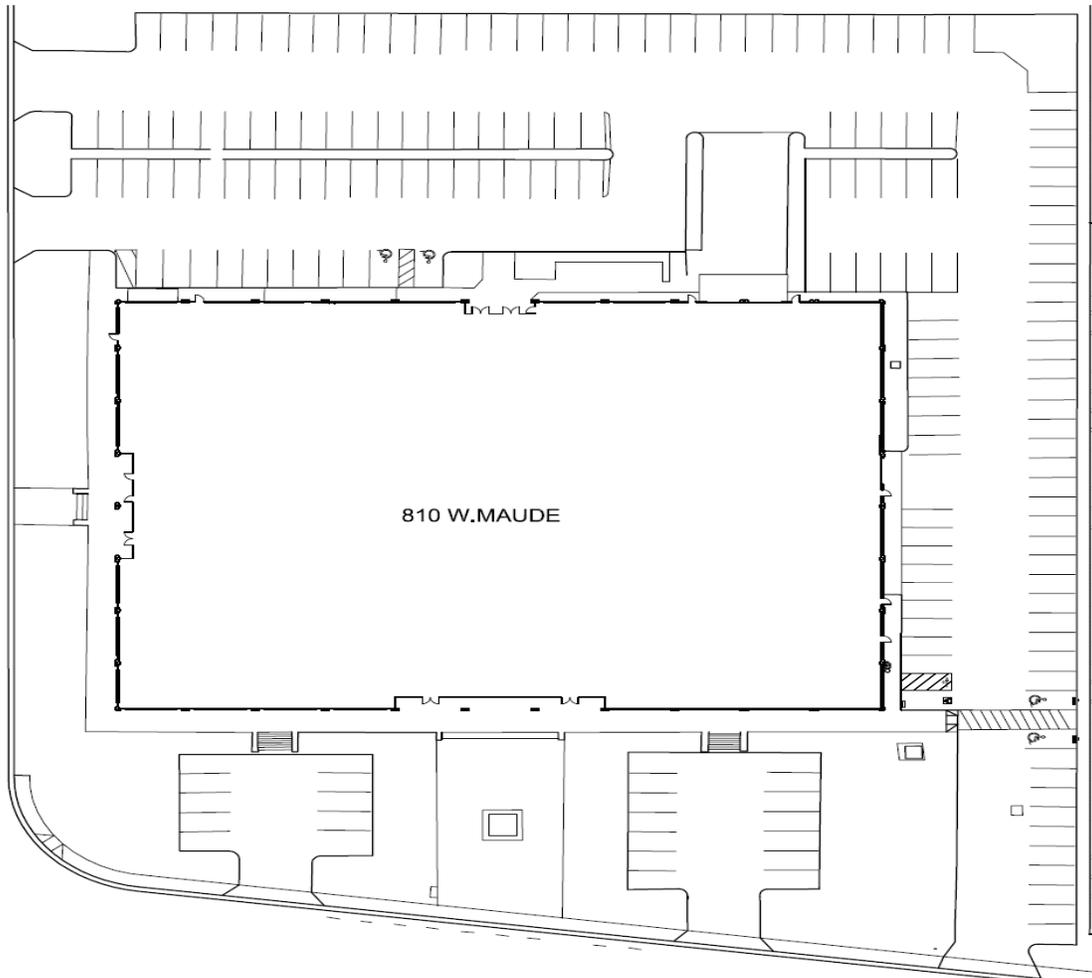
Initials

EXHIBIT A-1 – SITE PLAN

**attached to and made a part of the Lease bearing the
Lease Reference Date of April 30, 2009 between
SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and
8X8, INC., a Delaware corporation, as Tenant**

**810 West Maude Avenue
Sunnyvale, California 94089**

Exhibit A-1 is intended only to show the general layout of the Building and/or the project of which the Building is a part as of the beginning of the Term of the Lease. It does not in any way supersede any of Landlord's rights set forth in Article 17 of the Lease with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate, and the location and number of parking spaces should be taken as approximate.



EXISTING SITE PLAN

**810 MAUDE
SUNNYVALE, CA**

AP + I DESIGN. 200 BLOSSOM LANE

MOUNTAIN VIEW, CA 94041 650.254.1444 FAX: 650.254.1411

JOB NO.: 09064

DATE: 04.21.09

SCALE: N.T.S.

SITE.1



--	--

Initials

EXHIBIT B – INITIAL ALTERATIONS

**attached to and made a part of the Lease bearing the
Lease Reference Date of April 30, 2009 between
SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and
8X8, INC., a Delaware corporation, as Tenant**

**810 West Maude Avenue
Sunnyvale, California 94089**

1. Landlord, at its sole cost and expense (subject to the terms and provisions of Section 2 below) shall perform improvements to the Premises in accordance with the following work list (the “Work List”) using Building standard methods, materials and finishes and as reasonably determined by Landlord, except as otherwise set forth in the preliminary space plans attached hereto as Schedule I. The improvements to be performed in accordance with the Work List, as further depicted and described on Schedules I, II and III, are hereinafter referred to as the “Initial Alterations”. Landlord shall enter into a direct contract for the Initial Alterations with a general contractor selected by Landlord. In addition, Landlord shall have the right to select and/or approve of any subcontractors used in connection with the Initial Alterations.

WORK LIST

- A. Construct a 43’ X30’ board conference room;
 - B. Wall off a portion of the office core and install windows on two walls of the NOC Room portion of the Premises;
 - C. Remove and modify walls at the break room as depicted on Schedule I;
 - D. Replace carpet with vinyl tile in the break room in the Premises;
 - E. Install drop ceiling office finish in open area between electrical room and Q&A/Shipping/Receiving area of the Premises;
 - F. Expand server room as depicted on Schedule II attached hereto;
 - G. Install double locks on exterior man doors as depicted on Schedule III; and
 - H. Install dishwashers in the main break room and in the sink area between the two executive offices.
2. All other work and upgrades, subject to Landlord’s approval, shall be at Tenant’s sole cost and expense, plus any applicable state sales or use tax thereon, payable upon demand as additional rent. Tenant shall be responsible for any Tenant Delay in completion of the Premises resulting from any such other work and upgrades requested or performed by Tenant.
3. Landlord’s supervision or performance of any work for or on behalf of Tenant shall not be deemed to be a representation by Landlord that such work complies with applicable insurance requirements, building codes, ordinances, laws or regulations or that the improvements constructed will be adequate for Tenant’s use.
4. Landlord and Tenant agree to cooperate with each other in order to enable the Initial Alterations to be performed in a timely manner and with as little inconvenience to the operation of Tenant’s business as is reasonably possible. Notwithstanding anything herein to the contrary, any delay in the completion of the Initial Alterations or inconvenience suffered by Tenant during the performance of the Initial Alterations shall not delay the Commencement Date nor shall it subject Landlord to any liability for any loss or damage resulting therefrom or entitle Tenant to any credit, abatement or adjustment of rent or other sums payable under the Lease.
5. Landlord shall use reasonable efforts to substantially complete the Initial Alterations on or before July 31, 2009, subject to events of force majeure and Tenant Delays.
6. This Exhibit B shall not be deemed applicable to any additional space added to the Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions to the Premises in the event of a renewal or extension of the original Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease.

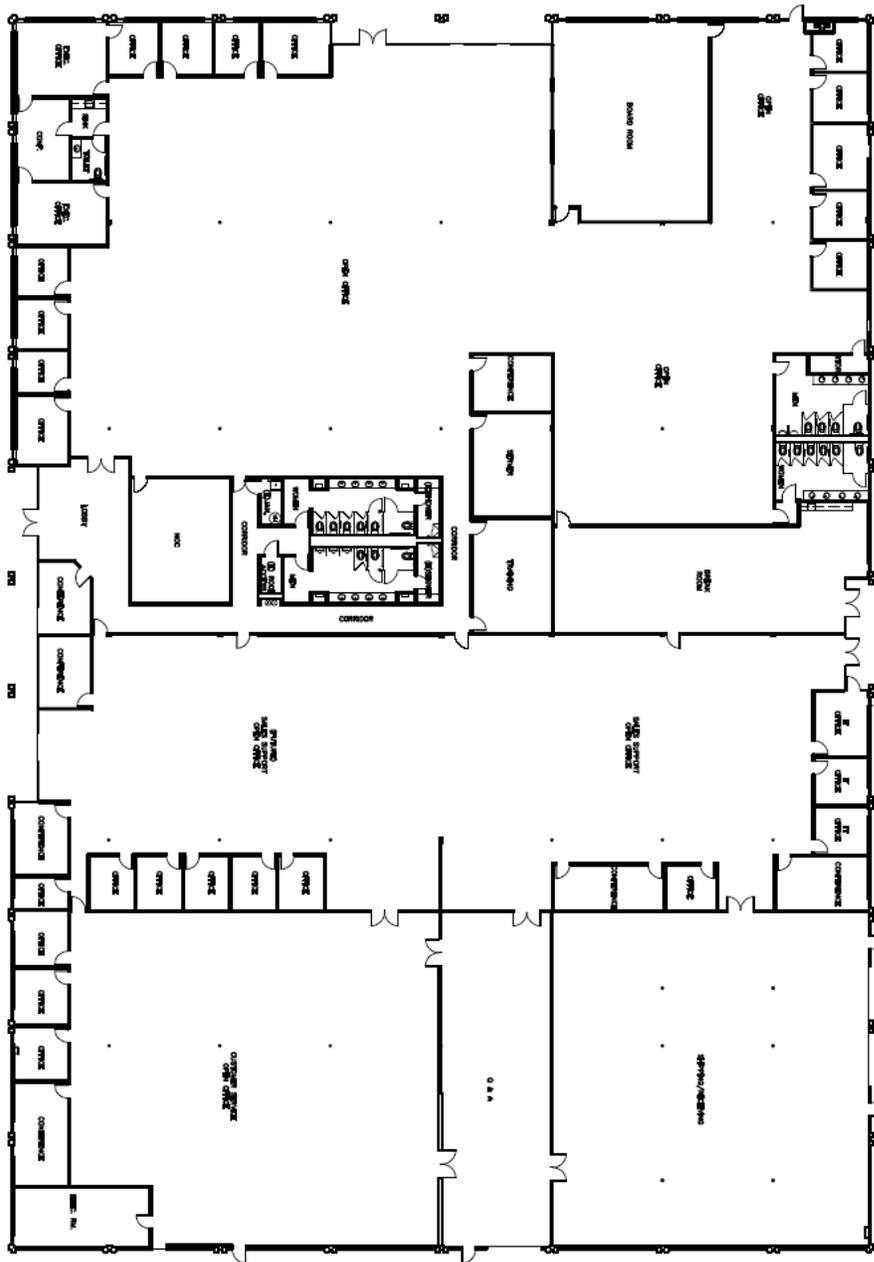
--	--

7. So long as Tenant is not in default under the Lease, on or before December 15, 2009, Tenant may request an allowance of up to **\$100,000.00** (the "Allowance") from in order for Tenant to perform alterations or improvements at the Premises during the initial Term so long as such alterations or improvements are approved in advance by Landlord and performed by Tenant all in accordance with the terms and conditions of the Lease (the "Approved Alterations"). Landlord shall disburse the Allowance to Tenant in one payment only and otherwise subject to and in accordance with the remaining terms and conditions of this Section 7. Any Allowance paid to or on behalf of Tenant hereunder shall be repaid to Landlord as additional rent in equal monthly installments throughout the remainder of the initial Term, commencing on the first day of the first full calendar month following the date the Allowance is disbursed to Tenant, with interest at one percent (1%) in excess of the Wall Street Journal prime lending rate announced from time to time. If Tenant is in default under the Lease after the expiration of applicable cure periods, the entire unpaid balance of the Allowance paid to or on behalf of Tenant shall become immediately due and payable and, except to the extent required by applicable law, shall not be subject to mitigation or reduction in connection with a reletting of the Premises by Landlord. Upon request of Landlord, Tenant shall execute an amendment to the Lease or other appropriate agreement, prepared by Landlord, evidencing the amount of the Allowance requested by Tenant and the repayment schedule relating to Tenant's repayment of the Allowance, as described herein. In no event shall Tenant be entitled to request disbursement of the Allowance after December 15, 2009. The Allowance may only be used for the cost of preparing design and construction documents and mechanical and electrical plans for the Approved Alterations and for hard costs in connection with the Approved Alterations (including the installation of cabling and wiring at the Premises) and to reasonable and actual third party costs incurred by Tenant in connection with its moving to the Premises. The Allowance shall be paid to Tenant or, at Landlord's option, to the order of the general contractor that performed the Approved Alterations, within thirty (30) days following receipt by Landlord of (a) receipted bills covering all labor and materials expended and used in the Approved Alterations; (b) a sworn contractor's affidavit from the general contractor and a request to disburse from Tenant containing an approval by Tenant of the work done; (c) full and final waivers of lien; (d) as-built plans of the Approved Alterations; and (e) the certification of Tenant and its architect that the Approved Alterations have been installed in a good and workmanlike manner in accordance with the approved plans, and in accordance with applicable laws, codes and ordinances. The Allowance shall be disbursed in the amount reflected on the receipted bills meeting the requirements above. Notwithstanding anything herein to the contrary, Landlord shall not be obligated to disburse any portion of the Allowance during the continuance of an uncured default under the Lease, and Landlord's obligation to disburse shall only resume when and if such default is cured.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

--	--

SCHEDULE I TO EXHIBIT B – SPACE PLANS



8 x 8 INC.

810 MAUDE
SUNNYVALE, CA

AP + I DESIGN, 200 BLOSSOM LANE

MOUNTAIN VIEW, CA 94041 650.254.1444 FAX: 650.254.1411

JOB NO.: 09064

DATE: 04.21.09

SCALE: N.T.S.

SP.3.2

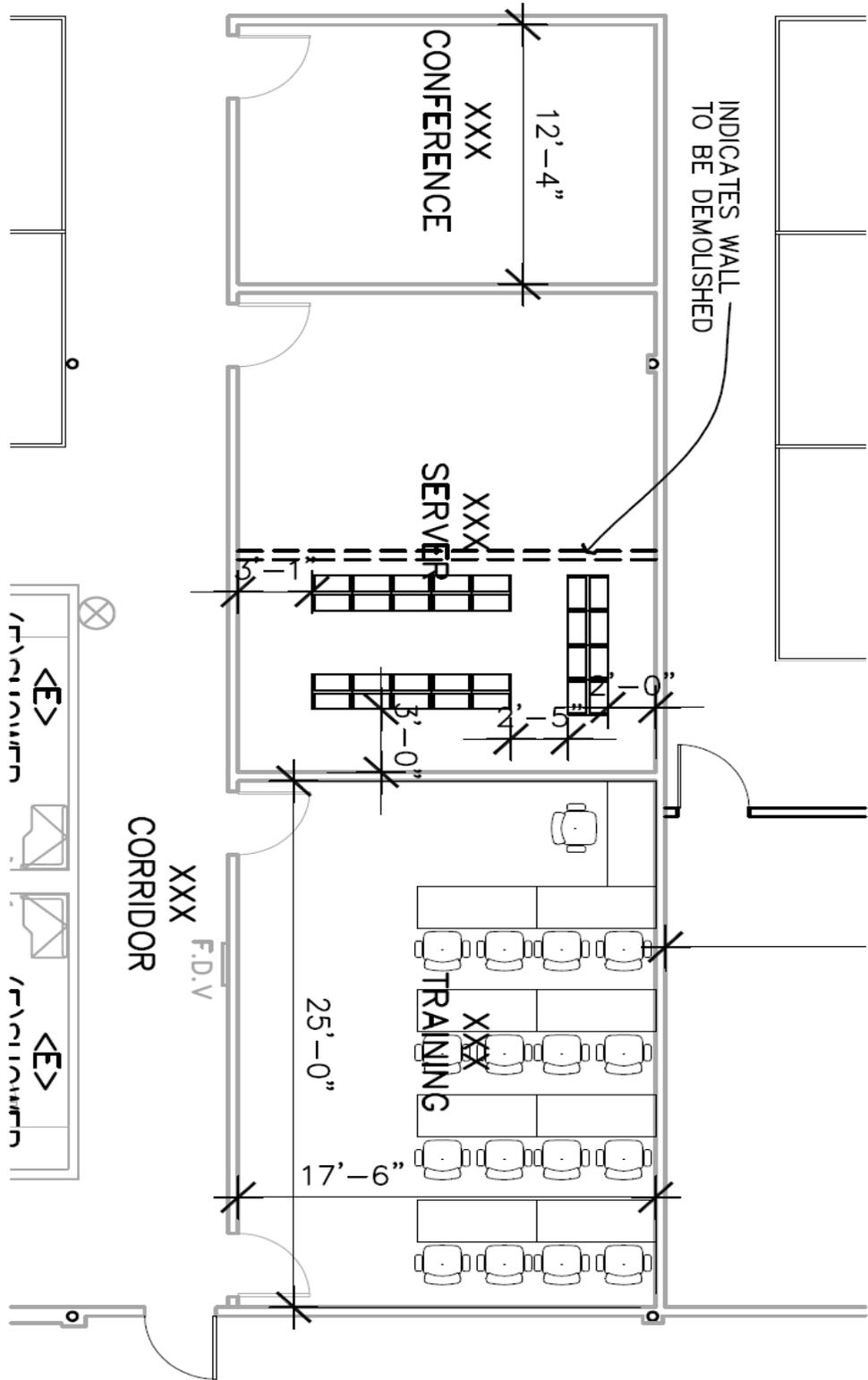


DESIGN

--	--

Initials

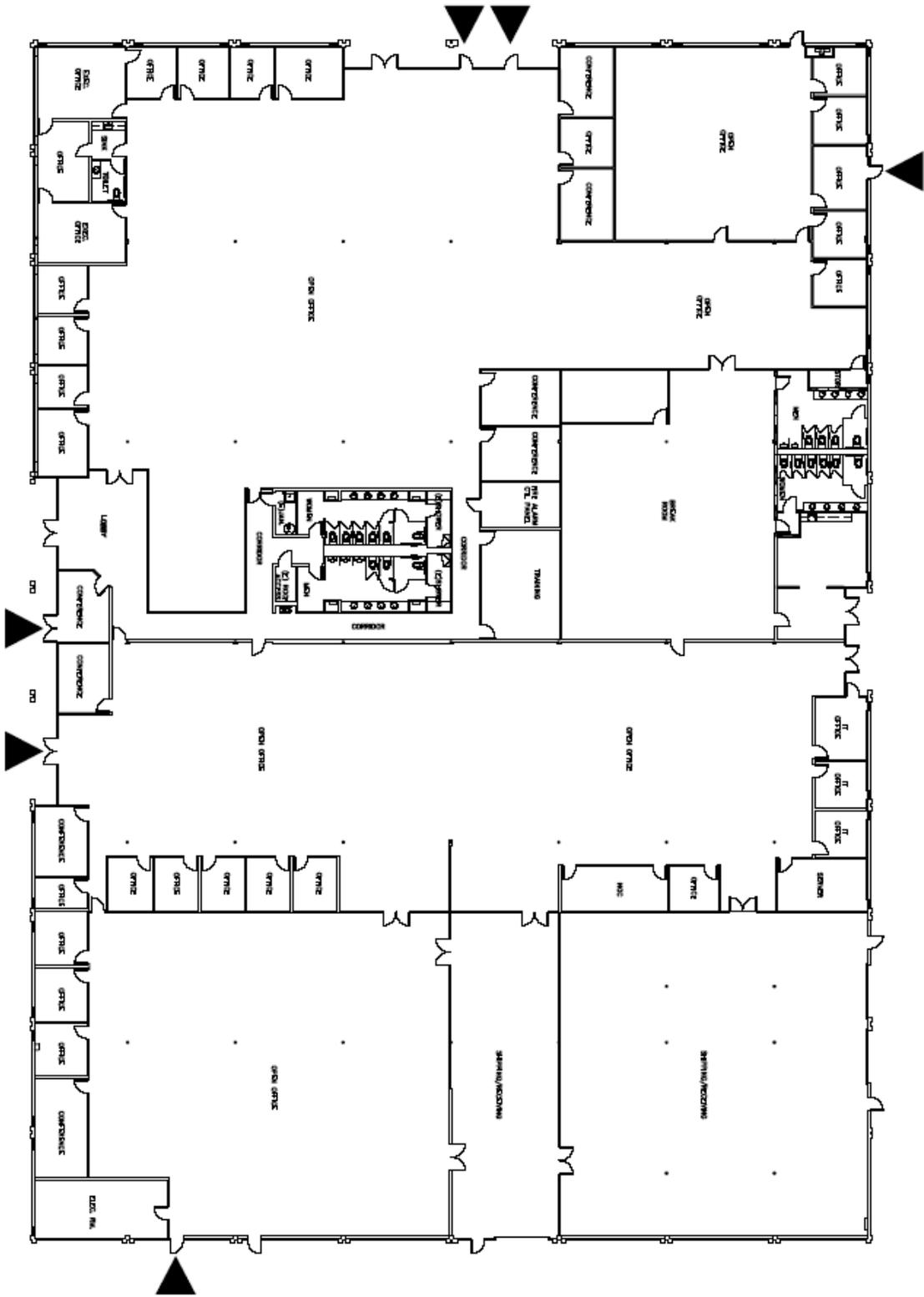
SCHEDULE II TO EXHIBIT B – SPACE PLANS



--	--

Initials

SCHEDULE III TO EXHIBIT B – SPACE PLANS



--	--

EXHIBIT C – COMMENCEMENT DATE MEMORANDUM

attached to and made a part of the Lease bearing the Lease Reference Date of April 30, 2009 between SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and 8X8, INC., a Delaware corporation, as Tenant

**810 West Maude Avenue
Sunnyvale, California 94089**

COMMENCEMENT DATE MEMORANDUM

THIS MEMORANDUM, made as of _____, 20____, by and between **SILICON VALLEY CA-I, LLC, a Delaware limited liability company** (“Landlord”) and **8x8, INC., a Delaware corporation** (“Tenant”).

Recitals:

- A. Landlord and Tenant are parties to that certain Lease, dated for reference April 30, 2009 (the “Lease”) for certain premises (the “Premises”) consisting of approximately 51,680 square feet at the building commonly known as 801 Maude Avenue.
- B. Tenant is in possession of the Premises and the Term of the Lease has commenced.
- C. Landlord and Tenant desire to enter into this Memorandum confirming the Commencement Date, the Termination Date and other matters under the Lease.

NOW, THEREFORE, Landlord and Tenant agree as follows:

- 1. The actual Commencement Date is _____.
- 2. The actual Termination Date is _____.
- 3. The schedule of the Annual Rent and the Monthly Installment of Rent set forth on the Reference Pages is deleted in its entirety, and the following is substituted therefor:

[insert rent schedule]

- 4. Capitalized terms not defined herein shall have the same meaning as set forth in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

LANDLORD:

**SILICON VALLEY CA-I, LLC,
a Delaware limited liability company**

By: RREEF Management Company,
a Delaware corporation, its Authorized Agent

By: _____ DO NOT SIGN _____
Name: _____
Title: _____

TENANT:

**8X8, INC.,
a Delaware corporation**

By: _____ DO NOT SIGN _____
Name: _____
Title: _____

--	--

EXHIBIT D – RULES AND REGULATIONS

**attached to and made a part of the Lease bearing the
Lease Reference Date of April 30, 2009 between
SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and
8X8, INC., a Delaware corporation, as Tenant**

**810 West Maude Avenue
Sunnyvale, California 94089**

1. Except as expressly provided in the Lease, no sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside of the Building without the prior written consent of the Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at Tenant's expense by a vendor designated or approved by Landlord. In addition, Landlord reserves the right to change from time to time the format of the signs or lettering and to require previously approved signs or lettering to be appropriately altered.
2. If Landlord objects in writing to any curtains, blinds, shades or screens attached to or hung in or used in connection with any window or door of the Building that are visible from the exterior of the Building, Tenant shall immediately discontinue such use. No awning shall be permitted on any part of the Premises. Tenant shall not place anything or allow anything to be placed against or near any glass partitions or doors or windows which may appear unsightly, in the opinion of Landlord, from outside the Premises.
3. Tenant shall be responsible for providing janitorial service for the Premises at its sole cost and expense, and Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide janitorial service to the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage to any Tenant's property by the janitor or any other employee or any other person.
4. Except as expressly provided in the Lease (including, without limitation, Tenant's right to install and operate Tenant's Security System as set forth in Article 47 of the Lease), Tenant shall not alter any lock or other access device or install a new or additional lock or bolt on any door at the entrance of the Premises without prior written consent of Landlord, which approval shall not be commercially unreasonably withheld, conditioned or delayed.
5. If Tenant requires telephone, data, burglar alarm or similar service, the cost of purchasing, installing and maintaining such service shall be borne solely by Tenant.
6. Tenant shall not place a load upon any floor of its Premises which exceeds the load per square foot that such floor was designed to carry and that is allowed by law. Heavy objects shall stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.
7. Except as expressly provided in the Lease, Tenant shall not install any radio or television antenna, satellite dish, loudspeaker or other device on the roof or exterior walls of the Building without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion, and which consent may in any event be conditioned upon Tenant's execution of Landlord's standard form of license agreement. Tenant shall be responsible for any interference caused by such installation.
8. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.
9. No cooking shall be done or permitted on the Premises, except that Underwriters' Laboratory approved microwave ovens or equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted provided that such equipment and use is in accordance with all applicable Regulations.
10. Tenant shall not use any hand trucks except those equipped with the rubber tires and side guards, and may use such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building. Forklifts which operate on asphalt areas shall only use tires that do not damage the asphalt.

--	--

11. Except as otherwise expressly provided herein, Tenant shall not permit any motor vehicles to be washed or mechanical work or maintenance of motor vehicles to be performed on any portion of the Premises or parking area. Tenant may perform washing of the surface of company vehicles owned and operated by Tenant at the parking area so long as all of the following are satisfied: (i) Such activity does not interfere with normal use, operation, maintenance and repair of the Building, the parking facility and or any common areas; and (ii) all wash water shall be collected by Tenant or its contractors and disposed of off the property on which the Building is located. In no event shall Tenant or any of its employees, contractors, invitees or agents change any automotive fluids or otherwise service any vehicles in the parking area. In the event that Tenant violates any of the foregoing (as reasonably determined by Landlord), Landlord may terminate Tenant's right to wash such company trucks in the parking area by providing notice of such termination to Tenant. The foregoing activities by Tenant are subject to the terms of the Lease and must be performed in accordance with all applicable Regulations.

12. Tenant shall not permit smoking or carrying of lighted cigarettes or cigars other than in areas designated by Landlord as smoking areas. So long as Tenant is the sole tenant of the Building, Tenant may designate reasonable smoking areas at the Building so long as the same complies with all applicable Regulations.

13. All trash and refuse shall be contained in suitable receptacles at locations approved by Landlord. Tenant shall not place in the trash receptacles any personal trash or material that cannot be disposed of in the ordinary and customary manner of removing such trash without violation of any law or ordinance governing such disposal.

14. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by Landlord or any governing authority.

15. Tenant assumes all responsibility for securing and protecting its Premises and its contents including keeping doors locked and other means of entry to the Premises closed.

16. Small desk fans excepts, Tenant shall not use any method of heating or air conditioning other than that supplied by Landlord without Landlord's prior written consent.

17. Tenant shall not permit any animals other than service animals, e.g. seeing-eye dogs, to be brought or kept in or about the Premises or any common area of the Building.

18. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease. Landlord may waive any one or more of the Rules and Regulations for the benefit of any tenant or tenants, and any such waiver by Landlord shall not be construed as a waiver of such Rules and Regulations for any and all tenants.

19. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order in and about the Building. Tenant agrees to abide by all such rules and regulations herein stated and any additional rules and regulations which are adopted. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

--	--

EXHIBIT E – EARLY POSSESSION AGREEMENT

**attached to and made a part of the Lease bearing the
Lease Reference Date of April 30, 2009 between
SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and
8X8, INC., a Delaware corporation, as Tenant**

**810 West Maude Avenue
Sunnyvale, California 94089**

EARLY POSSESSION AGREEMENT

Reference is made to that certain lease dated April 30, 2009, between SILICON VALLEY CA-I, LLC, a Delaware limited liability company (“Landlord”) and 8X8, INC., a Delaware corporation (“Tenant”), for the premises located in the City of Sunnyvale, County of Santa Clara, State of California, commonly known as 810 Maude Avenue.

It is hereby agreed that, notwithstanding anything to the contrary contained in the Lease but subject to the terms of Section 2.3 of the Lease, Tenant may occupy the Premises on _____. The first Monthly Installment of Rent is due on _____.

Landlord and Tenant agree that all the terms and conditions of the above referenced Lease are in full force and effect as of the date of Tenant's possession of the Premises prior to the Commencement Date pursuant to Section 2.3 [*insert "other than the payment of rent", if the possession date and rent payment date are different*].

LANDLORD:

TENANT:

**SILICON VALLEY CA-I, LLC,
a Delaware limited liability company**

**8X8, INC.,
a Delaware corporation**

By: RREEF Management Company,
a Delaware corporation, its Authorized Agent

By: _____

By: _____

Name: DO NOT SIGN

Name: DO NOT SIGN

Title: _____

Title: _____

Dated: _____

Dated: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

--	--

**EXHIBIT F – FORM OF SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

**attached to and made a part of the Lease bearing the
Lease Reference Date of April 30, 2009 between
SILICON VALLEY CA-I, LLC, a Delaware limited liability company, as Landlord and
8X8, INC., a Delaware corporation, as Tenant**

**810 West Maude Avenue
Sunnyvale, California 94089**

(see attached)

--	--

**RECORDING REQUESTED BY AND
AFTER RECORDING, RETURN TO:**

Capmark Finance Inc.
116 Welsh Road
Horsham, PA 19044-8015
Attn: Executive Vice President – Servicing Administration

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**"), is made as of this ____ day of _____, 200__ among _____, not individually, but solely as Trustee for the Certificate Holders of _____, Series _____ - _____ under that certain {Pooling/Trust} and Servicing Agreement dated as of _____, ____ ("**Lender**"), by and through Capmark Finance Inc., a California corporation, its [Master] Servicer under said {Pooling/Trust} and Servicing Agreement, _____, a _____ ("**Landlord**"), and _____, a _____ ("**Tenant**").

Background

A. Lender is the owner and holder of a deed of trust or mortgage or other similar security instrument (either, the "Security Instrument"), covering, among other things, the real property commonly known and described as _____, and further described on Exhibit "A" attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "Property").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated _____ ("**Lease**"), demising a portion of the Property described more particularly in the Lease ("**Leased Space**").

C. Landlord, Tenant and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument.

2. Nondisturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the leased space provided, however, that (a) the term of the Lease has commenced, (b) Tenant is in possession of the premises demised pursuant to the Lease, and (c) the Lease is in full force and effect and no uncured default exists under the Lease.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("**Successor Owner**"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owners of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease, (except that Successor Owner shall not be relieved from the obligation to cure any defaults which are non-monetary and

© CAPMARK FINANCE INC. 2000. All Rights Reserved.
Snda Agr. (existing lease) v. 6/2000

--	--

Initials

continuing in nature, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease); (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender's written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property; or (g) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Lender Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is released by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender (a) written notice of the alleged Landlord default and (b) the opportunity to cure such default within the time periods provided for cure by Landlord, measured from the time notice is given to Lender. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the subordination and nondisturbance of the Lease. This Agreement controls any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law. If the Security Instrument is a deed of trust, this Agreement is entered into by the trustee of the Security Instrument solely in its capacity as trustee and not individually.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days

--	--

from performance shall be calendar days, and a "business day" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

(g) WAIVER OF JURY TRIAL. TENANT, AS AN INDUCEMENT FOR LENDER TO PROVIDE THIS AGREEMENT AND THE ACCOMODATIONS TO TENANT OFFERED HEREBY, HEREBY WAIVES ITS RIGHT, TO THE FULL EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

IN WITNESS WHEREOF, this Agreement is executed this ___ day of _____, 200__.

LENDER:

TENANT:

[insert Trustee's name here], Trustee

[insert Tenant's name here]

By: Capmark Finance Inc.,
its [Master] Servicer

By: _____
Name:
Title:

By: _____
Name:
Title:

Lender Notice Address:

Tenant Notice Address:

[insert Trustee's name here], Trustee
c/o Capmark Finance Inc.
116 Welsh Road
Horsham, PA 19044
Attn: Executive Vice President – Servicing Administration

[insert Tenant's name here]

Attn:

LANDLORD:

[insert Landlord's name here]
By: _____
Name:
Title:

Landlord Notice Address:

[insert Landlord's name here]

Attn:

--	--

Notary Acknowledgement for Lender:

Commonwealth of Pennsylvania :
:ss
County of Montgomery :

On this, the __ day of _____, 200_, before me, the undersigned Notary Public, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and who acknowledged to me that he/she is an officer of Capmark Finance Inc. in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

{seal}

Notary Acknowledgement for Tenant:

State of _____ :
:ss
County of _____ :

On this, the __ day of _____, 200_, before me, the undersigned Notary Public, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is an officer of the Tenant in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

{seal}

Notary Acknowledgement for Landlord:

State of _____ :
:ss
County of _____ :

On this, the __ day of _____, 200_, before me, the undersigned Notary Public, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is an officer of the Landlord in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

{seal}

--	--

Exhibit "A"
(Legal Description of the Property)

--	--

SUBSIDIARIES OF REGISTRANT

Name	Jurisdiction of Incorporation
8x8 Europe SARL	France
Netergy Microelectronics, Inc.	California, USA
Visit, Inc.	California, USA

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements on Form S-3 (Nos. 333-32930, 333-49414, 333-80379, 333-75402, 333-108289, 333-111120, 333-114133, 333-118643, 333-120457, 333-126330, 333-126350 and 333-131823) and Form S-8 (Nos. 333-30943, 333-50519, 333-41594, 333-49410, 333-66296, 333-90172, 333-108290, 333-118642, 333-126337 and 333-137599) of our reports dated May 22, 2009, relating to the financial statements, financial statement schedule II, and the effectiveness of internal controls over financial reporting, appearing in this Annual Report on Form 10-K of 8X8, Inc. for the year ended March 31, 2009.

/s/ Moss Adams LLP

San Francisco, CA
May 22, 2009

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-32930, 333-49414, 333-80379, 333-75402, 333-108289, 333-111120, 333-114133, 333-118643, 333-120457, 333-126330, 333-126350 and 333-131823) and Form S-8 (Nos. 333-30943, 333-50519, 333-41594, 333-49410, 333-66296, 333-90172, 333-108290, 333-118642, 333-126337 and 333-137599) of 8x8, Inc. of our report dated May 23, 2008 relating to the financial statements and financial statement schedule, which appears in this Form 10-K.

/s/PricewaterhouseCoopers LLP

San Jose, California
May 22, 2009

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Bryan R. Martin, certify that:

1. I have reviewed this annual report on Form 10-K of 8x8, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 26, 2009

/s/ BRYAN R. MARTIN

Bryan R. Martin
Chairman and Chief Executive Officer

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Daniel Weirich, certify that:

1. I have reviewed this annual report on Form 10-K of 8x8, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 26, 2009

/s/ DANIEL WEIRICH

Daniel Weirich
Chief Financial Officer, President and Secretary

CERTIFICATION PURSUANT TO

18 U.S. C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of 8x8, Inc. (the "Company") for the year ended March 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bryan R. Martin, Chairman and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ BRYAN R. MARTIN

Bryan R. Martin
Chairman and Chief Executive Officer

May 26, 2009

This certification accompanies this Report pursuant to §906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, or otherwise required, be deemed filed by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended.

CERTIFICATION PURSUANT TO

18 U.S. C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of 8x8, Inc. (the "Company") for the year ended March 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Daniel Weirich, Chief Financial Officer, President and Secretary of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ DANIEL WEIRICH

Daniel Weirich
Chief Financial Officer, President and Secretary

May 26, 2009

This certification accompanies this Report pursuant to §906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, or otherwise required, be deemed filed by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended.